

TITLE: [PR-PC] Update on Strategic Planning and Urban Design Unit Work Program Planning Proposals Termination of Specific and Targeted Planning Proposals

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0004 Pt1, PP10/0005 Pt3, PP12/0003 Pt1

Valid



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- | | |
|-------|---|
| 1 | Civic Leadership |
| 1.5 | Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land |
| 1.5.3 | The Tweed Local Environmental Plan will be reviewed and updated as required to ensure it provides an effective statutory framework to meet the needs of the Tweed community |

SUMMARY OF REPORT:

Reporting of the Planning Reform Unit's Work-Program in 2013 and 2014 highlighted the need for Council to more rigorously vet requests being made of it to exercise its statutory functions in regard to preparing development led planning proposals.

In particular, Council considered the resource implications associated with proposals that had become protracted through no fault of its own and that nonetheless placed significant limitations on its ability to resource higher value projects or those more likely to be completed within a reasonable time horizon.

Council endorsed the Work Plan 2014/15 at its meeting of 19 June 2014. In doing so it signalled the key strategic planning priority areas for the allocation of resources. Taking that information into account along with the standing resolutions of the Council, and requests of project proponents seeking termination of their proposals, this report recommends that three planning proposals be discontinued.

RECOMMENDATION:

That:

- 1. Planning Proposal PP10/0005 Hundred Hills Murwillumbah be discontinued and the Proponent notified. That the Work Plan 2014/15 is amended to remove all reference to this item; and**
- 2. The Proponent's request to discontinue Planning Proposal PP12/0003 Palms Village Caravan Park, Tweed Heads, and PP10/0004 Enterprise Avenue, Tweed Heads, is accepted. That the Work Plan 2014/15 is amended to remove all reference to these items; and**

3. **The General Manager writes to the General Manager, Northern Region, Department of Planning and Environment to advise on the status of the planning proposals discussed within this report and to raise awareness of the significant resource impact on councils arising from planning proposal requests that are made permissible under the current legislative scheme.**

REPORT:

Background

This report details three current planning proposal requests that have been earmarked for discontinuance either because of a specific request by their Proponent or owing to an unsatisfactory progress performance for their proposal. The latter action is consistent with the standing resolutions of the Council, and was relevant the resolution and Meeting date is provided.

The three planning proposals are:

PP10/0005 "Hundred Hills, Murwillumbah"

PP12/0003 "Palms Village Caravan Park"

PP10/0004 "Enterprise Avenue, Tweed Heads South"

Each of the above is discussed in detail below.

1. PP10/0005 HUNDRED HILLS RESIDENTIAL EXPANSION, MURWILLUMBAH

Proposal Overview

This planning proposal seeks the urban expansion of the Hundred Hills Estate in West Murwillumbah, as shown on location map 1 below. This was to be achieved through the rezoning of the current large-lot residential zoned land (R5) to a R2 Low Density Residential zoning under the Tweed Local Environmental Plan (LEP) 2014.

Council first considered this proposal at their meeting of 19 October 2010, where it was resolved:

- "2. Council endorses the Planning Reform Unit (PRU) to enter into dialogue with the landowner of Lot 1 DP 10469357 regarding the relevant supporting documentation and technical assessment to satisfy the RPA's requirements for preparing a planning proposal for subsequent lodgement of a planning proposal with the Department of Planning for Gateway Determination."

A report on this proposal was further considered by Council at the meeting of 19 July 2011. As part of the preparation of the planning proposal it was identified that part of the adjoining Lot 279 DP1145129 was also subject to the rezoning request. Council resolved:

- "That Planning Proposal PP10/0005 for Lot 1 DP 1046935 Old Lismore Road, Murwillumbah be amended to include that part of Lot 279 DP 1145129 currently zoned 1(c) Rural Living, as shown on map 3 within this report."

In August 2011, the owners of the site, Stockland Development, entered into a Memorandum of Understanding (MOU) to guide the completion of additional studies required to inform the Planning Proposal and support the application to the Department of Planning and Environment (DPE) for a gateway determination.

The requirements of this MOU include the following:

- Traffic: The Castlefield Drive extension assessment;
- Geotechnical, Engineering and Stormwater Assessment;
- Flora and Fauna Assessment;
- Aboriginal Cultural Heritage Due Diligence Assessment; and
- Contaminated Land Assessment

The annual Planning Reform Unit (PRU) Work Plan report to the Council Meeting of 16 May 2013 highlighted the slow progress that was being made by the Proponent of this planning

proposal. It was noted that there had been no demonstrated commitment to complete the project within a reasonable timeframe.

It was recommended that the project should remain in the work plan, but that a firm commitment from the proponent of their intention to proceed expeditiously be sought, and that the progress of the project be reviewed and if necessary it be terminated if reasonable progress was not be made.

This was reflected in the resolution of Council on 16 May 2013, as follows:

"3. Council approves Recommendation 2 – Planning Proposal PP10/0004 Enterprises Avenue and Recommendation 3 – Planning Proposal PP10/0002 and PP10/0005 within the report and the proponent(s) of the projects detailed are, on request, to provide to the coordinator Planning Reform a sufficiently detailed schedule demonstrating a commitment to progress the projects(s) through to completion within an agreed timeframe and a failure to comply within a reasonable time or the show adequate commitment to the completion of the project(s) will terminate Council's resourcing of the project(s)."

In accordance with Council's resolution of 16 May 2013, a letter was sent (23 July 2013) to the proponent highlighting the need to progress the planning proposal and suggesting a suitable timeframe, as follows:

	Task	Timeframe
1	Receipt of all draft additional studies	End Aug 2013
2	Finalisation of all draft studies following TSC feedback	End Oct 2013
3	TSC prepares Stage 1 Planning Proposal	Mid Nov 2013
4	Gateway Referral to the DP&I for	End Nov 2013
5	Subject to Gateway determination and conditions public exhibition could occur Late Jan/Feb	Jan-Feb 2014
6	Assessment of submissions and report to Council to proceed	April 2014
7	Subject to the resolution of Council forward the plan to DP&I for making	May 2014

The Proponent (RPS Pty Ltd), in their letter dated 5 August 2013, highlighted the causes of the delay and broadly indicated their commitment to proceed, agreeing that the suggested timeframes would be achievable.

In July 2013 the PRU moved to a full cost recovery fee structure on all planning proposals. A "Costs Agreement" was prepared and forwarded to the proponent's consultant in September 2013. The costs agreement was later executed in March 2014.

Council subsequently considered a report on the Planning Reform Unit Work Plan 2014/15 at the meeting of 19 June 2014, which included a low priority resource nomination for this proposal, and as adopted as a Priority 3 project.

Status

Tasks	Status
MOU for additional studies	Executed August 2011
Traffic: The Castlefield Drive extension assessment	Signed off as Final 22 August 2013
Geotechnical, Engineering and Stormwater Assessment	Yet to be received
Flora and Fauna Assessment	Draft 31 January 2014
Aboriginal Cultural Heritage Due Diligence Assessment	Final received 11 Sept 2013
Contaminated Land Assessment	Signed off as final 11 Feb 2013

Costs Agreement Sent 23 Sept 2013 Reminders 5 Nov 2013; 31 January 2014	Executed March 2014
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Since the agreement of the timeframe, the Flora and Fauna Assessment has been received (31 January 2014) and the Costs Agreement has been executed (March 2014). The Geotechnical, Engineering and Stormwater Assessment remain as outstanding.

Summary and recommendation

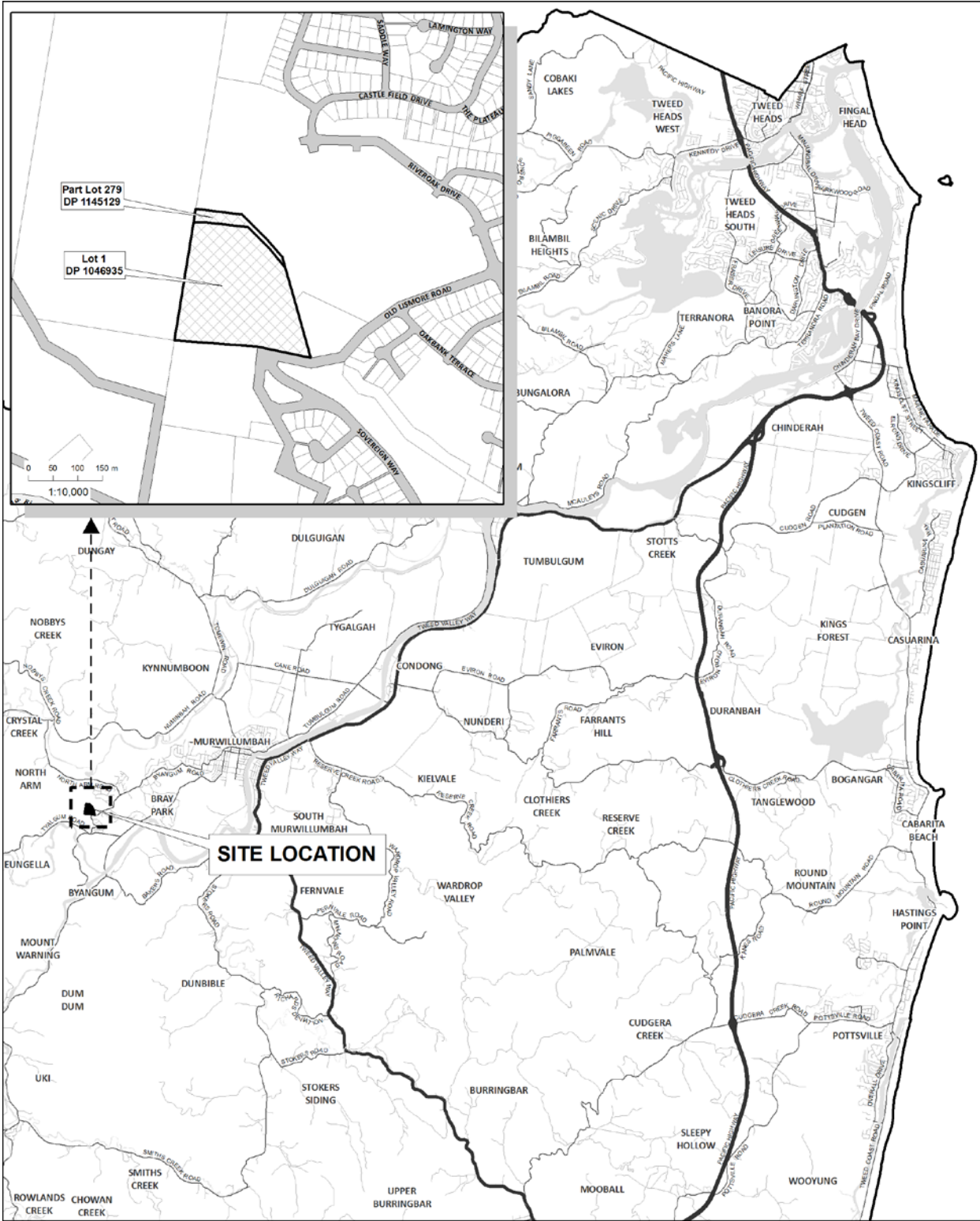
Planning Proposal PP10/0005 has been in the system since October 2010, with the MOU signed in August 2011; however, Council has still not received all required studies. The project is not progressing in a timely manner and the proponents have not demonstrated an acceptable level of commitment to progress the proposal within a reasonable timeframe. Further, the earlier studies received are now approaching two years of age, and may ultimately require updating to ensure their currency and compliance for supporting information under the NSW DPE "Guide to Preparing Planning Proposals".

The NSW DPE generally does not accept supporting studies that are more than two years old, particularly in relation to applications for "pre-Gateway" reviews.

The proponent has not achieved the previously agreed timeframe requiring completion of all studies by October 2013 to submit the gateway request by November 2013. The proposal represents a burden on Council, particularly with regard to resource allocation.

In light of the above, it is recommended that Planning Proposal PP10/0005 be discontinued and the Proponent notified. The 'project' should be removed from the PRU Works Plan and the NSW DPE should be advised of the planning proposal, in particular highlighting the challenges and costs that confront councils when receiving and processing planning proposals under the current legislative scheme.

Location Map 1: PP10/0005 Hundred Hills Residential Expansion, Murwillumbah



Locality Plan

Lot 1 DP 1046935 and Part Lot 279 DP 1145129
Old Lismore Road, Murwillumbah

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Cadastral: 23 June, 2011
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Grid: Map Grid of Australia, Zone 56

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2. PP12/0003 PALMS VILLAGE CARAVAN PARK, TWEED HEADS SOUTH

Proposal Overview

A planning proposal request was received by Council in November 2012 seeking a rezoning in association with the Palms Village Caravan Park, as follows and as shown on location Map 2:

- Lot 1 DP 777875 (was 2(a) low density residential under LEP 2000 and now R2 Low Density Residential, under the LEP 2014),
- Lot 1 DP 416535 (was 6(b) Recreation under the LEP 2000 and now RE2 Private Recreation under the LEP 2014), and
- Lot 1 DP 860069 (was 3(b) General Business under the LEP 2000 and now B1 Neighbourhood Centre under the LEP 2014).

The proposal seeks to rezone the above properties to RE2 Private Recreation to enable the expansion of the Palms Village Caravan Park and to enable permanent long-stay tourist or visitor accommodation.

The planning proposal has not previously been reported to Council, as it had not progressed beyond preliminary review wherein potential constraints and strategic justification for the proposal had not been finalised nor accepted.

This review process identified the site as significantly constrained by aircraft noise and the requirement to provide for a safe flood evacuation access route, both of which render the site unsuitable for the proposed permanent long-stay accommodation.

Council staff requested an Aircraft Noise Impact Assessment to better understand whether the indoor noise limit criteria would be reasonably achievable with targeted building material treatment. The Report by CRG Pty Ltd, dated 18 June 2013, was found to be insufficient to enable Council staff to determine whether the required 'indoor' noise levels could be readily attenuated and achieved.

An amended report was submitted in September 2013.

Correspondence with the NSW DPE has indicated that the proposed development would only be considered consistent with the *Ministerial S117 Direction 3.5 Development Near Licensed Aerodromes* if the site was to be used for short-term accommodation only. This outcome, which might have been achievable through a restrictive covenant, was put to the Proponent in November 2013.

Council subsequently considered a report on the Planning Reform Unit Work Plan 2014/15 at the meeting of 19 June 2014. The slow progress and unreconciled position with regard to how the proposal outcomes could be delivered with certainty through the LEP amendment was reflected in the Work Plan nomination of this project as a priority 2 project.

Status

The Proponent wrote to Council on 15 August 2014 requesting that the planning proposal be withdrawn.

Summary and recommendation:

Following the acceptance of the Proponent's request to withdraw Planning Proposal PP12/0003 by the owners of the site, it is recommended that Council formally resolve to discontinue the planning proposal and notify the Proponent accordingly. The 'project' should be removed from the PRU Works Plan and the NSW DPE should be advised of the planning proposal, in particular highlighting the challenges and costs that confront councils when receiving and processing planning proposals under the current legislative scheme.

Location Map 2: PP12/0003 Palms Village Caravan Park, Tweed Heads South

3. PP10/0004 ENTERPRISE AVENUE

Project Overview

A Planning Proposal request PP10/0004 was received by Council in May 2010 with respect of:

- Lots 2 and 3 DP 1077990 Enterprise Avenue (was part 4(a) General Industrial and Part 6(b) Recreation under LEP 2000 and now Part IN1 General Industrial and Part RE2 Private Recreation and
- Lot 2145 DP 879149 Greenway Drive, Tweed Heads South (was 3(c) Commerce and Trade under LEP 2000 and now B5 Business Development under the LEP 2014).

The proposal seeks to rezone the above parcels to facilitate a bulky goods, large format retail precinct, direct factory outlet and waste transfer station. Lot 1 and 2 are vacant land and Lot 2145 contains the Harvey Norman complex, and known as "Expo Park".

Lot 2145 currently permits *Bulky goods premises* and *Waste or resource management facility*. Lots 2 and 3 currently permit *Bulky goods premises* and *Waste or resource management facility* on land zoned IN1 (the predominantly cleared area of the site) and *Waste or resource management facility* on land zoned RE2, however, *Bulky goods premises* are not permitted on the land zoned RE2.

Council considered a report on the proposal at their meeting of 17 August 2010, at which time it was resolved:

- "1. *Planning Proposal PP10/0004 for Lots 2 and 3 of DP 1077990, Enterprise Avenue, and Lot 2145 DP 879149, Greenway Drive, Tweed Heads South not be referred to the Department of Planning for a gateway determination under section 56 of the Environmental Planning and Assessment Act 1979 based on the uncertainty of the adequate provision for roads and traffic and financial implications for ongoing operations of the Banora Point Waste Water Treatment Plant.*
2. *The proponent be advised that additional investigation is required and will need to include pre application consultation with all relevant agencies and is to include additional information relating but not limited to:*
 - i. *An assessment of potential impacts arising as between the Banora Point Waste Water Treatment Plant (WWTP) and the proposed future development, any mitigation measures as required, and cost estimates / allocation or apportionment of any cost arising on the WWTP as a result of the proposed development.*
 - ii. *A roads and traffic needs assessment arising from the proposed development including estimates of the current future road funding under the Council's TRCP, identification of new roads or upgrading required to support the future development along with projected timeframes for construction and cost. The Applicant must clearly identify their contribution either by way of funding, contribution estimates, works in kind or any other means.*
 - iii. *An assessment of the ecological constraints (including the traversing of SEPP14 Wetlands) of the footprint of the proposed extension of Enterprise Ave and how these constraints may be addressed to permit the road to proceed.*
3. *The Applicant be advised that any costs to Council associated with any additional investigation or assessment of Stage 1 of Planning Proposal PP10/0004 be in*

accordance with the draft Fees and Charges adopted for exhibition at the Council meeting of 20 July 2010."

No noteworthy progress has occurred on this proposal since the August 2010, and no costs agreement has been executed between the Council and the Proponent.

In light of the above, the proposal was nominated as a Priority 3 project in the Planning Reform Unit Work Plan 2014/15, as approved by Council at its meeting of 19 June 2014.

Status

In response to Council's correspondence that sought an update on the proposal, the Proponent advised in their email correspondence of 31 March 2014 that they no longer wish to proceed with Planning Proposal PP10/0004.

Summary and recommendation

The original studies in support of the planning proposal are now 3-4 years old and are likely to be no longer current, or suitable for consideration by the NSW DPE for a Gateway determination or review.

Following the withdrawal of Planning Proposal PP10/0004 by the owners of the site, it is recommended that Council formally resolve to discontinue the planning proposal and notify the Proponent accordingly. The 'project' should be removed from the PRU Works Plan and the NSW DPE should be advised of the planning proposal, in particular highlighting the challenges and costs that confront councils when receiving and processing planning proposals under the current legislative scheme.

Location Map 3: PP10/0004 Enterprise Avenue, Tweed Heads South



Locality Plan

Lots 2 & 3 DP1077990; No.42-44 Enterprise Avenue, Tweed Heads South
 Lot 2145 DP879149; No.13-17 Corporation Circuit, Tweed Heads South

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OPTIONS:

1. Council accepts the recommendations within this report to:
 - a) Discontinue and close Council's file in regard to PP10/0005 "Hundred Hills";
 - b) Accept the Proponent's request to discontinue PP12/0003 "Palms Village Caravan Park"; and
 - c) Accept the Proponent's request to discontinue PP10/0004 "Enterprise Avenue".
2. Council resolves to proceed with one or more of the Planning Proposals referred to under Option 1, noting that with exception to Planning Proposal PP10/0005 that Council will be liable for all costs associated with preparing the LEP amendment(s).

Council staff recommend proceeding with Option 1.

CONCLUSION:

All three planning proposals have been subject to uncertain commitment and very slow progress by their respective Proponents.

PP12/0003 Palm Village Caravan Park and PP10/0004 Enterprise Avenue have both recently had a formal request by the proponents to discontinue with the proposals. This report recommends accepting those withdrawals.

The proponents of PP10/0005 Hundred Hills expansion have been advised on a number of occasions that a commitment to progress the proposal in a timely manner is essential to the continued commitment of Council to resource the proposal., and this has not materialised in any reasonable way. The Proponent committed to a timeframe for completing the outstanding studies by October 2013, and this has not been achieved. Whilst there is now only one significant study remaining the time elapsed now casts doubt on the currency of the earlier studies. Consequently, taking all factors into account, this report recommends discontinuing with the proposal.

It is noted that two of the projects are Priority 3 and one is a Priority 2, under the Council adopted Planning Reform Unit Work Plan 2014/15, and resource allocation is very limited in any event, and that discontinuing with these projects will not lead to release of resources for other, higher priority, projects.

COUNCIL IMPLICATIONS:

Given that PP10/0005 has not yet been submitted for a Gateway Determination, the proponents may seek a review of the planning proposal request by the NSW DPE as provided by the Pre Gateway review process, however, as noted in the report, studies more than two years old are generally not accepted by the NSW DPE as part of this process. Any potential review will be undertaken by the Planning Assessment Committee and may be referred to the Joint Regional Planning Panel prior to recommendations being made to the Minister.

a. Policy:

Not applicable

b. Budget/Long Term Financial Plan:

No budget implications as planning proposals are based on a cost recovery

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult-We will listen to you, consider your ideas and concerns and keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
