

TITLE: [PR-CM] PP10/0007 - Mooball Planning Proposal

SUBMITTED BY: Planning Reforms

FILE REFERENCE: PP10/0007 Pt2



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

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| 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:

The purpose of this report is to present a request received from the planning consultant acting on behalf of the Proponent for this Planning Proposal to the Council for consideration and determination. This request was outlined in a letter received from Planit Consulting dated 28 May 2014, and through a further clarifying email dated 4 June 2014. The request seeks the following review of that part of Points 3 and 6 of the resolution on this matter from Council's Meeting of 21 November 2013:

- "3. *On receiving an affirmative Determination Notice all outstanding studies, to include Flood Impact Study (including cumulative impacts), Geotechnical and Slope Stability Assessment and Bushfire Hazard Assessment, and works be prepared and the Planning Proposal finalised, following which it is to be exhibited in accordance with the Determination or where there is no condition or a condition requiring a public notification less than 28 days, for a period not less than 28 days; and,*"

Planit's Request: *"As highlighted we do not want to nor see the need, to undertake any of these studies right now".* Planit's request relies in part on the content of the NSW Department of Planning and Environment's 'Gateway Determination Notice', which they consider lends support for the view that those additional studies are not justified. Planit has estimated the cost of preparing the additional studies at \$120,000.

- "6. *Prior to any public exhibition of the Planning Proposals provisions are put in place to protect the existing agricultural land-use pursuits of Lot B and against noise complaints, protection of the existing Right of Way servicing Lot B and for the exclusive use of Lot B, provision of an adequate clear buffer to retain rural amenity for the life of Lot B as a rural Lot and Plan of how the buffer is to be maintained/managed and including during earthworks/construction phase."*

Planits' Request: *"We do not agree to do this and consider these elements to have either been addressed in detail previously or should be addressed in a detailed plan to be prepared (perhaps even in the DCP). I am sure that through the exhibition period, the same requests will be made and we will need to respond accordingly before Council further resolves to push forward. As such we are formally seeking to have this element removed also."*

The Council officers have previously reported to Council their view that additional studies identified in Point 3 of the resolution were not required at this point of the planning process. Council resolved to include these additional studies at the 21 November Council Meeting.

The requirements of Point 6 of the resolution are considered to be important elements of a lengthy negotiation process that occurred between the proponent and adjoining owners.

This is now a matter for Council's consideration and determination.

RECOMMENDATION:

That in respect of Planning Proposal PP10/0007 relating to the site Lot 2 in DP 534493 and Lot 7 in DP 593200, Mooball, Council makes a determination of preferred action from one of the two following options:

Option 1

Reject the request of the planning consultant acting on behalf of the Proponent for this Planning Proposal to remove Points 3 and 6 of the resolution on this matter at Council's Meeting of 21 November 2013, which requires additional studies and other matters to be prepared by the proponent as part of the proposed exhibited Planning Proposal documents, and that Council officers are to proceed with preparing the Planning Proposal in accordance with the resolution; or

Option 2

Resolve to remove Points 3 and 6 of the resolution on this matter at Council's Meeting of 21 November 2013, whereby no further studies or actions as necessitated by these Points are required. Council officers are to proceed with preparing the Planning Proposal in accordance with Points 1, 2, 4 and 5 of the resolution.

REPORT:

At its meeting of 21 November 2013 Council considered a report regarding PP10/0007 - Mooball Planning Proposal (the Proposal), which sought a resolution to refer the Proposal to NSW Department of Planning and Environment (DP&E) for a Gateway Determination. A copy of that report is provided at Attachment 2, for the present purposes the resolution of Council was in the following terms:

- "1. *The Planning Proposal PP10/0007 relating Lot 2 in DP 534493 and Lot 7 in DP 593200 be updated to align with the preliminary subdivision layout illustrated in the Concept Master plan detailed within Figure 1 of this report;*
2. *The Planning Proposal, as amended in accordance with Resolution 1 above, be referred to the NSW Department of Planning and Infrastructure requesting a Gateway Determination under Section 56(1) of the Environmental Planning and Assessment Act 1979;*
3. *On receiving an affirmative Determination Notice all outstanding studies, to include Flood Impact Study (including cumulative impacts), Geotechnical and Slope Stability Assessment and Bushfire Hazard Assessment, and works be prepared and the Planning Proposal finalised, following which it is to be exhibited in accordance with the Determination or where there is no condition or a condition requiring a public notification less than 28 days, for a period not less than 28 days; and,*
4. *Following public exhibition of the Planning Proposal a report is to be submitted to Council at the earliest time detailing the content of submissions received and how those, if any, issues have been addressed.*
5. *Prior to any public exhibition of the Planning Proposal a Site Contamination Report demonstrating compliance with the provisions and requirements of State Environmental Planning Policy 55 - Remediation of Land, Clause 6, is to be prepared to Council's satisfaction.*
6. *Prior to any public exhibition of the Planning Proposals provisions are put in place to protect the existing agricultural land-use pursuits of Lot B and against noise complaints, protection of the existing Right of Way servicing Lot B and for the exclusive use of Lot B, provision of an adequate clear buffer to retain rural amenity for the life of Lot B as a rural Lot and Plan of how the buffer is to be maintained/managed and including during earthworks/construction phase."*

Resolutions 1 and 2 have been actioned and a Gateway Determination was issued on 1 May 2014 (Attachment 4). It included a condition that the proposal be completed within 12 months. This was communicated to the Proponent on 12 May.

A letter from Planit Consulting dated 28 May 2014 (Attachment 1) advances a request on behalf of the Proponent for the Mooball Planning Proposal. The particulars of the request were further clarified in an email dated 4 June 2014 (Attachment 2), and are collectively referred to in this report as the 'proponent's request'.

The collective requests put forward the view that the additional studies and provisions required through Points 3 and 6 of Council's 21 November resolution are not justified. The Proponent also contends that view to be consistent with the DP&E's view, which is to be implied from the conditions upon the Gateway Determination Notice issued by them. Planit Consulting has also estimated the cost of preparing the additional studies at \$120,000.00.

Planit Consulting requested a meeting with The Mayor, General Manager, and Director Planning and Regulation to discuss the content of their letter. The meeting was held at Council on 29 May 2014, and included another representative of the proponent, Don Neale.

This occurred prior to the email correspondence of 4 June, which raised additional matters to those addressed in the meeting.

It was agreed at this meeting that the matter be reported to the June Council Meeting.

OPTIONS:

The Council officers have previously reported to Council their view that additional studies were not required. Council resolved to include these additional studies in Point 3 of the 21 November 2013 Council Meeting.

The requirements of Point 6 of the resolution are considered to be important elements of a lengthy negotiation process that occurred between the proponent and adjoining owners.

It is therefore considered appropriate to seek a determination from Council from the following two options:

Option 1

Reject the request of the planning consultant acting on behalf of the Proponent for this Planning Proposal to remove Points 3 and 6 of the resolution on this matter at Council's Meeting of 21 November 2013, which requires additional studies and other matters to be prepared by the proponent as part of the proposed exhibited Planning Proposal documents, and that Council officers are to proceed with preparing the Planning Proposal in accordance with the resolution; or

Option 2

Resolve to remove Points 3 and 6 of the resolution on this matter at Council's Meeting of 21 November 2013, whereby no further studies or actions as necessitated by these Points are required. Council officers are to proceed with preparing the Planning Proposal in accordance with Points 1, 2, 4 and 5 of the resolution.

CONCLUSION:

In accordance with Council's resolution of 21 November 2013, the planning proposal was updated to reflect the indicative concept plan and referred to DP&E. The Gateway Determination Notice was issued on 1 May 2014. Among other matters, the conditions of the Notice (No. 2) indicate that the DP&E are satisfied with the present level of technical studies and that additional studies are not required for the public exhibition of the planning proposal. Condition No. 3 of the Notice clearly indicates an acknowledgement that Council intends on preparing additional studies however; DP&E take the view that this should not delay the making of the LEP beyond the 12 months timeframe stipulated in their covering letter.

The Proponent has submitted a further contaminated land assessment in satisfaction of the earlier resolution. This report is essential as it is needed to demonstrate compliance with a State Environmental Planning Policy as a precondition to the LEP being made.

The correspondence from Planit Consulting dated 28 May and 4 June 2014 (as provided in Attachment 1 and 2 of this report) puts forward the view that the additional studies and provisions required by Points 3 and 6 of Council's current resolutions are not justified and that it would be unreasonable to require studies at a cost of about \$120,000 under those conditions.

It was detailed in the report to the Council meeting of 21 November 2013 that Council Officers were of the view that additional studies were not required.

The proponents' request to seek a review of the requirements for the additional studies is a matter for Council's consideration and determination.

In the meantime Council Officers will proceed to implement the Council resolutions as made, and until such time, if any, Council resolves differently.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Not Applicable

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:

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| Attachment 1. | Planit Consulting letter of 28 May 2014 (ECM 3381003) |
| Attachment 2. | Planit Consulting email (extract) of 4 June 2014 (ECM 3381004) |
| Attachment 3. | Council report of 21 November 2013 (ECM 3381005) |
| Attachment 4. | Gateway Determination Notice dated 1 May 2014 (ECM 3381006) |
