



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes (Deputy Mayor)
C Cherry
R Cooper
J Owen
W Polglase

Agenda

Ordinary Council Meeting Thursday 7 June 2018

held at

**Council Chambers, Murwillumbah Civic & Cultural Centre,
Tumbulgum Road, Murwillumbah**

commencing at the conclusion of the Planning Committee meeting
which commences at 5.30pm.

Principles for Local Government

The object of the principles for Tweed Shire Council, as set out in Section 8 of the Local Government Amendment (Governance and Planning) Bill 2016, is to provide guidance to enable council to carry out its functions in a way that facilitates a local community that is strong, healthy and prosperous.

Guiding Principles for Tweed Shire Council

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by Tweed Shire Council:

- (a) Provide strong and effective representation, leadership, planning and decision-making.
- (b) Carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Work with others to secure appropriate services for local community needs.
- (h) Act fairly, ethically and without bias in the interests of the local community.
- (i) Be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by Tweed Shire Council (subject to any other applicable law):

- (a) Recognise diverse local community needs and interests.
- (b) Consider social justice principles.
- (c) Consider the long term and cumulative effects of actions on future generations.
- (d) Consider the principles of ecologically sustainable development.
- (e) Decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Council should actively engage with the local community, through the use of the integrated planning and reporting framework and other measures.

Items for Consideration of Council:

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CONFIRMATION OF PLANNING COMMITTEE MINUTES

1 [CONMIN-CM] Adoption of the Recommendations of the Planning Committee Meeting held Thursday 7 June 2018

SUBMITTED BY: Corporate Governance

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Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2 Making decisions with you
- 2.2 Engagement
- 2.2.4 Councillor and Civic Business - To provide assistance to Councillors and support for Council to operate within its legal framework.

ROLE: **Leader**

SUMMARY OF REPORT:

The recommendations of the Ordinary Planning Committee Meeting held Thursday 7 June 2018 require their adoption by Council for the resolutions to be acted upon.

RECOMMENDATION:

That the recommendations of the Ordinary Planning Committee Meeting held Thursday 7 June 2018 be adopted.

REPORT:

As per Summary.

COUNCIL IMPLICATIONS:

a. Policy:

Code of Meeting Practice.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

*To view any "**non confidential**" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au or visit Council's offices at Tweed Heads or Murwillumbah (from Friday the week before the meeting) or Council's libraries (from Monday the week of the meeting).*

Nil.

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR COMMUNITY AND NATURAL RESOURCES

2 [CNR-CM] Management Recommendation for Stotts Creek Resource Recovery Centre - Tip Shop and Salvage Operations

SUBMITTED BY: Waste Management

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Leaving a Legacy
Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.3 Utility Services
- 1.3.1 Rubbish and Recycling Services - To collect, recycle and dispose of residential and commercial waste, manage landfill sites and deliver community education so as to divert rubbish from landfill.

ROLE: Provider

SUMMARY OF REPORT:

In light of a number of significant changes programmed to occur at the Stotts Creek Resource Recovery Centre over the next 3-5 years and a number of changes that are proposed by the NSW State Government to legislation governing the operation of landfills and waste transfer facilities, Council resolved at its meeting on 1 March 2018 to:

- "1. Council rescinds parts two and three of minute number 254 of 15 June 2017 meeting being:
 - '12. [CNR-CM] RFO2016129 for the Management of the Stotts Creek Resource Recovery Centre:
 - ...
 2. Council undertakes a new procurement process for the management of the Stotts Creek Recovery Centre with an amended specification that makes specific provision to deal with the likelihood of legislative change.
 3. Council receives a further report for Council's consideration on the subsequent procurement process."
2. Council notifies Solo Resource Recovery that Council is terminating the current contract EC2013139 effective 31 May 2018, and will not be proceeding with a

further procurement process at this stage as the proposed legislative changes have still not proceeded.

3. *Council takes over the management of the Stotts Creek Resource Recovery Centre site until the Masterplan and associated capital works program have been delivered.*
4. *A further report be brought back to Council following delivery of the capital works program, on the best options for the long term management of the Stotts Creek Resource Recovery Centre site.*
5. *Council maintains a watching brief and report to Council any significant decisions made by the State Government or regulators that will impact Council's short and longer term options for management of the site.*

Council has provided notice to Solo Resource Recovery (Solo) and awarded tenders to ensure adequate plant and equipment is available for the operation of the landfill and waste processing areas. Arrangements have also been put in place to establish the requisite staffing for the site, however the arrangement for the management of the tip shop still needs to be determined.

St Vincent de Paul Society NSW has operated the tip shop as a sub-contractor to Solo Resource Recovery under the current landfill contract which expires on 31 May 2018. Council's General Manager has given approval under delegation to extend the operation of the tip shop with St Vincent de Paul Society NSW until 30 June 2018 to allow this report to go to Council for a decision. No payment will be made by Tweed Shire Council for the interim operation of the tip shop and salvage operation with any income from the sale of salvaged items through the tip shop to be kept by St Vincent de Paul Society to fund plant, equipment and staff associated with operating the service.

This report seeks the endorsement of Council to enter into an interim arrangement with St Vincent de Paul Society NSW for the operation of the tip shop and salvage operations up to 30 June 2019 to enable Council to capture and assess information to allow a more informed procurement process to be undertaken.

RECOMMENDATION:

That:

1. **Council enters into an interim arrangement for the operation of the tip shop and salvage operations at the Stotts Creek Resource Recovery Centre with St Vincent de Paul Society NSW to maintain their current level of service up to 30 June 2019.**
2. **A workshop with Councillors be scheduled to discuss the development of specifications for the provision of the service regarding social benefit and waste diversion options over the medium to longer term.**

- 3. Council uses the period July 2018 to 31 March 2019 to investigate options, capture the necessary information and determine the most effective way to undertake salvage operations at the site including the management of a tip shop from 1 July 2019.**

REPORT:

BACKGROUND:

The Stotts Creek Resource Recovery Centre (SCRRC) is currently managed using a combination of Council staff and contractors. The contract (EC2013139) for the management of operations at the site has been extended by agreed variation with Solo Resource Recovery to 31 May 2018.

At its meeting on 1 March 2018 Council resolved that:

- "1. Council rescinds parts two and three of minute number 254 of 15 June 2017 meeting being:*
- '12. [CNR-CM] RFO2016129 for the Management of the Stotts Creek Resource Recovery Centre:*
- ...*
- 2. Council undertakes a new procurement process for the management of the Stotts Creek Recovery Centre with an amended specification that makes specific provision to deal with the likelihood of legislative change.*
- 3. Council receives a further report for Council's consideration on the subsequent procurement process."*
- 2. Council notifies Solo Resource Recovery that Council is terminating the current contract EC2013139 effective 31 May 2018, and will not be proceeding with a further procurement process at this stage as the proposed legislative changes have still not proceeded.*
- 3. Council takes over the management of the Stotts Creek Resource Recovery Centre site until the Masterplan and associated capital works program have been delivered.*
- 4. A further report be brought back to Council following delivery of the capital works program, on the best options for the long term management of the Stotts Creek Resource Recovery Centre site.*
- 5. Council maintains a watching brief and report to Council any significant decisions made by the State Government or regulators that will impact Council's short and longer term options for management of the site.*

Council has provided notice to Solo Resource Recovery and awarded tenders to ensure adequate plant and equipment is available for the operation of the landfill and waste processing areas.

Arrangements have been put in place to establish the requisite staffing for the site, however the arrangement for the management of the tip shop still needs to be resolved.

Salvage operations at the site

The salvage operations at the SCRRC have been part of the Solo Resource Recovery Contract EC2013139 since 2013 with Council stipulating in the tender that the tip shop must be operated by a not for profit organisation. Council has had two separate charities operate

the tip shop over the duration of the contract, being On-track and most recently St Vincent de Paul Society NSW.

St Vincent de Paul Society NSW has been on site for approximately 2 years. They provide a valuable role in diverting waste from disposal and in providing a level of oversight and support for the operations of the drop off area.

With Council taking over the management of the site, it is proposed that Council enter into an agreement with St Vincent de Paul Society NSW to retain their services for an interim 12 month period to allow Council to determine what form any salvage operator and tip shop should take.

This interim arrangement would allow Council to retain the services of St Vincent de Paul Society NSW providing valuable training and employment opportunities for socially disadvantaged workers whilst investigations are undertaken to allow the establishment of a longer term contract.

OPTIONS:

With Council taking over the operations of the SCRRC there is a need to make arrangements for the operation of the salvage centre (tip shop). The following four options could be considered for the management of the tip shop:

Option 1 - Temporary close the tip shop

This is not preferred as this will disrupt customers using the site and reduce the amount of material being recovered at the site. In the last 12 months over 15,300 people visited the tip shop with 216 tonnes of waste has being diverted from landfill.

Option 2 - Council manage the tip shop

Council does not currently have the staff with specific experience in running the tip shop. Council may wish to consider recruiting staff with this experience to run the tip shop and take over this aspect of the site.

Option 3 - Appoint a new organisation to manage the tip shop

The immediate procurement of a new not-for-profit or salvage operator could be an option but more time is required to allow Council to undertake a suitable procurement process. Twelve months is required to enable data collection of the salvage potential and is therefore not a preferred option prior to Council taking over operation of the site on 1 June 2018.

Option 4 - Temporary agreement to retain current tip shop operator

This option involves Council reaching a temporary agreement with the St Vincent de Paul Society NSW to maintain their current operation of the tip shop up to 30 June 2019. During this period information will be collected to inform a suitable procurement process for the salvage and tip shop operations at the site.

CONCLUSION:

Council resolved to take over the management of operations at the Stotts Creek Resource Recovery Centre at the end of the current contract with Solo Resource Recovery. Solo have been advised that their contract will conclude on 31 May 2018 when the current term of the contract expires.

A schedule of rates tender has been established to support the operation of the site as well as sufficient staffing resources. The St Vincent de Paul Society NSW currently operates the tip shop and salvage operations under subcontract to Solo Resource Recovery.

This report recommends the establishment of an interim arrangement to retain St Vincent de Paul Society NSW on site up to 30 June 2019, after which a formal longer term arrangement may be established. This period will allow Council to determine necessary details that will inform a formal procurement process for tip shop and salvage operations.

COUNCIL IMPLICATIONS:

a. Policy:

Procurement Policy v1.7

b. Budget/Long Term Financial Plan:

No payment will be made by Tweed Shire Council for the operation of the tip shop and salvage operation. St Vincent de Paul Society NSW will be required to fund staff, plant and equipment costs associated with management of the tip shop. St Vincent de Paul Society NSW will retain any income associated with the sale of recovered items sold through the tip shop that will assist them in funding costs associated with managing the tip shop.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Inform - We will keep you informed.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

REPORTS FROM THE DIRECTOR ENGINEERING

3 [E-CM] Northern Rivers Rail Trail - Stage 1 Murwillumbah to Crabbes Creek: Environmental Planning and Approvals

SUBMITTED BY: Director

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People, places and moving around
Who we are and how we live

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 3 People, places and moving around
- 3.3 Moving around
- 3.3.3 Design Services - To produce civil designs and undertake environmental assessment for public infrastructure.

ROLE: **Leader**

SUMMARY OF REPORT:

As part of Council's commitment to the establishment of the first stage of the Northern Rivers Rail Trail from Murwillumbah to Crabbes Creek, Council's Engineering Division is undertaking the necessary environmental and planning due diligence and assessment for the purpose of gaining the necessary approvals to meet the tight delivery timeframe for an opening in June 2020.

The initial scoping of the project for the purpose of seeking State and Federal funding commenced about 5 years ago and as might ordinarily be expected the level of detail, due diligence, and investigation was thorough, but not to the same extent as is required now that funding for the project has been secured and the necessary resources can be applied. To this end and going to the purpose of this report, this fine detail review has, with the assistance of Council's Solicitors (Marsden's Law Group), identified that the approvals pathway on which the project was scoped has changed, or not least is being interpreted differently, such that it will bear on the cost and timing of gaining the necessary approvals.

Based on the legal advice received, Council officers have determined that there are three planning approval pathway options for the rail trail, each with their own benefits and limitations. As a result Council officers are seeking the input from Councillors to determine a preferred planning approval pathway for the Stage 1 Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail, to provide continuity and efficiency in the overall process and where possible ensure that the approval is sufficiently flexible to allow for an

on-formation, off-formation, or part on and off formation trail without the need for substantial cost and delay arising with modification applications.

The substantial coverage and linear nature of the project presents a number of challenges for each option. The identified majority of benefits and similar timeframes presented indicate the project preceding either entirely under Part 5, as originally envisaged by Council staff, or as a combined Part 4 and Part 5 project.

To enable the project in its entirety to proceed as a public work under Part 5 there would need to be an amendment to the Tweed Local Environmental Plan(s). This would entail making permissible without consent those areas of the rail infrastructure corridor that would presently require a Part 4 development application.

RECOMMENDATION:

That Council consider the planning approval pathway options for assessing the planning and environmental aspects of the Stage 1 Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail and resolve on the preferred approach.

SELECT ONLY ONE OPTION FROM 1, 2 OR 3

- 1. Development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* be sought for the entire Stage 1 Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail.**

OR

- 2. Prepare a Planning Proposal to amend the Tweed Local Environmental Plan to enable the rail trail to be carried out and assessed under Part 5 of the *Environmental Planning and Assessment Act 1979* and request the Department of Planning facilitate the expeditious assessment and making of the Plan AND concurrently proceed with preparing the Part 5 assessment of the rail trail.**

OR

- 3. Seek development consent under Part 4 AND planning approval under Part 5 of the *Environmental Planning and Assessment Act 1979* for two individual components of the Stage 1 Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail.**

REPORT:

1. Project background

The Northern Rivers Rail Trail – Stage 1 Murwillumbah to Crabbes Creek (“the project” or “the rail trail”) includes the establishment of a rail trail within the curtilage of the disused Murwillumbah to Casino railway.

The project would provide a pedestrian and cycle pathway including directional signage and safety measures e.g. traffic barriers, handrails and chicanes.

The rail trail would cover an approximate distance of 24km, passing through a number of Tweed villages including Stokers Siding, Burringbar, Mooball and Crabbes Creek and is intended to be utilised by Tweed residents and visitors, as both an alternative commute option as well as major tourist and visitor attraction.

The budget allocated to deliver the project as provided by way of State and Federal grants is \$13m and is scheduled for opening in June 2020.

2. Legal advice

Council’s Engineering Division is seeking the planning and other approvals required to deliver the agreed project deliverables within time, including its consideration pursuant to the *Environmental Planning and Assessment Act 1979* (EP&A Act). Council staff had been proceeding with consideration of the project under Part 5 pursuant to Clause 79 of the *State Environmental Planning Policy (Infrastructure) 2007*. This would have included the preparation of a Review of Environmental Factors (REF) document that considers the environmental impacts of the project pursuant to Part 5 of the EP&A Act, followed by its determination by Tweed Shire Council as the determining authority.

Council staff members have subsequently sought preliminary legal advice regarding the project’s consideration under the EP&A Act. The advice was provided by an accredited specialist in local government and planning law employed by Marsden’s Law Group. The preliminary advice received by Council from the accredited specialist is that the project does not meet the requisite ‘test’ under Part 5 pursuant to Clause 79 of the ISEPP.

Instead, the advice identifies the proposal as a *recreation facility (outdoor)* under the *Tweed Local Environmental Plan 2014* (TLEP 2014). This legal advice presents a number of options to Council in terms of the environmental planning and assessment provisions applicable to the project, as well as nomination of the determining authority. These options are discussed below.

Note: By way of further background, the project intercepts a number of land use zones pursuant to the TLEP 2014 and for land that is a deferred matter, the Tweed Local Environmental Plan 2000 (TLEP 2000). The land use zones of the subject site are produced below in Table 1.

Table 1: Subject site land use zones (TLEP 2014 and TLEP 2000)

Lot and DP	Zoning*	Locality	Owner details
100//865105	B5 Business Development	South Murwillumbah	Transport for NSW
Unidentified	RU2 Rural Landscape	South Murwillumbah	Transport for NSW
Unidentified	RU2 Rural Landscape	South Murwillumbah	Transport for NSW
Unidentified	RU2 Rural Landscape	South Murwillumbah	Transport for NSW
1//1045525	RU2 Rural Landscape	South Murwillumbah	Department of Public Works and Services
122//915234	RU2 Rural Landscape	Dunbible	State Rail Authority of NSW
3//1184422	RU2 Rural Landscape	Dunbible	No owner recorded
1//1184422	RU2 Rural Landscape	Dunbible	No owner recorded
1//1054156	RU2 Rural Landscape	Dunbible	State Rail Authority of NSW
102//914390	RU2 Rural Landscape	Dunbible	No owner recorded
4739//1231019	RU2 Rural Landscape, W1 Natural Waterways	Dunbible	Transport for NSW – Country Regional Network
1//914069	RU2 Rural Landscape	Stokers Siding	No owner recorded
4738//1231020	RU2 Rural Landscape, W1 Natural Waterways, Deferred Matter – 5(a) Special Uses: Railway (TLEP 2000)	Stokers Siding to Burringbar	Transport for NSW – Country Regional Network
Unidentified	RU2 Rural Landscape	Burringbar	No owner recorded
4737//1230989	RU2 Rural Landscape	Burringbar	Transport for NSW
61//915493	RU2 Rural Landscape	Mooball	State Rail Authority of NSW
4736//1231018	RU2 Rural Landscape	Mooball to Crabbes Creek	Transport for NSW – Country Regional Network

Notes to Table 1:

* The land use zones specified are as per the TLEP 2014, except where noted as per the TLEP 2000; which is limited to part of Lot 4738 DP 1231020.

3. Options overview

Following the provision of preliminary legal advice, Council staff have identified the three options open to Council. These are outlined in Table 2 below.

Table 2: EP&A Act Options Overview

No	Environmental planning instrument/s	EP&A Act provision	Approval type	Consent / determining authority	Notes
1	TLEP 2014 (Clause 2.3 and Clause 5.10); TLEP 2000 (Clause 49)	Part 4 Development permitted with consent	Development consent	NSW Joint Regional Planning Policy (JRPP)	<p>1. Clause 2.3 Zone objectives and Land Use Table provides for a recreation facility (outdoor) to be permitted with consent in the RU2 and W1 land use zones.</p> <p>2. A recreation facility (outdoor) is prohibited in the B5 zone. However clause 5.10(10) of the TLEP 2014 provides for development consent to be granted for development that would conserve a heritage item, amongst other things. In this situation, the B5 zoned land includes Murwillumbah Railway Station, a State heritage item and the works as proposed is considered to provide for future embellishment and heritage conservation of the site which is currently subject to infrequent management in light of its heritage significance.</p> <p>3. The provisions of the TLEP 2000 apply to the part of the site zoned 5(a) Special Uses (Railway) as a deferred matter under the TLEP 2014. Clause 49 of TLEP 2000 provides for development consent to be granted to development that would not jeopardise the intended development of the site, in this case a railway. While the proposed development could remove the railway tracks, it is understood the intention of the landowner being Transport for NSW is to ensure the land could be developed for the purpose of a railway in the future if required.</p> <p>4. The JRPP would be the consent authority because the capital investment value of the project is greater than \$5 million and Council would be the applicant for development consent pursuant to Clause 20 (and Schedule 7) of the <i>State and Environmental Planning Policy (State and</i></p>

No	Environmental planning instrument/s	EP&A Act provision	Approval type	Consent / determining authority	Notes
2	TLEP 2014 (Clause 2.5 and Schedule 1) LEP Amendment (Planning Proposal)	Part 5 Development permitted without consent	Part 5 planning approval	Tweed Shire Council (existing Council processes provide for this determination to be made by the Councillors rather than delegated authority, if necessary)	<p><i>Regional Development) 2011.</i></p> <p>5. This option would require the preparation and lodgement of a Statement of Environmental Effects in support of a Development Application (DA) as well as a heritage management document to Council; however the NSW JRPP would determine the DA.</p> <p>1. Clause 2.5 of the TLEP 2014 provides for additional permitted uses to be included in Schedule 1. This option would require a planning proposal and gateway determination under Division 3.4 of the EP&A Act. This avenue would require an authority from the NSW Department of Planning as well as trigger public consultation and Council reporting requirements.</p> <p>2. The current deferred matter zoned as 5(a) Special Uses (Railway) under the TLEP 2000 could also be rezoned to RU2 Rural Landscape, subject also to a planning proposal and gateway determination under Division 3.4 of the EP&A Act. Given the current deferred matter appears to be related to an anomaly associated with the adjacently zoned environmental protection zone, such a planning proposal could be supported based on facilitating a continuation of the operational use of the railway corridor and would provide consistency in terms of the remaining railway corridor being zoned RU2 under the TLEP 2014.</p> <p>3. Following an amendment of the TLEP 2014 as outlined above, a Review of Environmental Factors (REF) report would be prepared that considers the environmental impacts of the project. The REF would be lodged in support of a "Part</p>

No	Environmental planning instrument/s	EP&A Act provision	Approval type	Consent / determining authority	Notes
3	TLEP 2014 (Clause 5.10); TLEP 2014 (Clause 2.5 and Schedule 1)	Part 4 Development permitted with consent for works on land identified as the Murwillumbah Railway Station and zoned B5 under the TLEP 2014. Part 5 Development permitted without consent for the remainder of the works south of the Murwillumbah Railway Station to Crabbes Creek.	Development consent. Part 5 planning approval.	Tweed Shire Council would be the consent authority for the Part 4 development consent. Tweed Shire Council would be the determining authority for the Part 5 planning approval.	5 planning application ⁿ to Tweed Shire Council as the determining authority. 1. This is a combination of options 1 and 2, refer to the relevant notes above.

Additional notes to Table 2:

- The lodgement of applications seeking development consent and planning approval does not guarantee the granting of consent or approval by the relevant authorities and each option would be subject to a merit based assessment in consideration of applicable environmental planning and assessment policies.
- The preparation of a Review of Environmental Factors which considers relevant factors under Part 5 of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* infers an onus on Council as the proponent to determine whether the project would have a significant impact on the environment. If the project is determined as likely to result in a significant impact on the environment, an Environmental Impact Statement (EIS) is required to be prepared. An EIS requires the receipt of environmental assessment requirements from the NSW Department of Planning and the EIS must be placed on public exhibition and any comments received must be addressed prior to its determination.

Table 3: Planning approval pathway options assessment

No	Option	Benefits	Challenges	Estimated timeframes
1	Part 4 development permitted with consent (DA)	<ul style="list-style-type: none"> The project would be considered under a single approval pathway in terms of the EP&A Act provisions. The concept design within this approval would be fixed and inflexible requiring further approval (amendment) should an alternative design be proposed by a tenderer. This increases costs and will add significantly to commencement and construction start-up / completion. It may be a deterrent to alternative and more innovative design solutions. 	<ul style="list-style-type: none"> The project requires additional permits and approvals under NSW legislation including a fisheries permit under the <i>Fisheries Management Act 1994</i> and a heritage approval under <i>the Heritage Act 1977</i>. These requirements would trigger the integrated development provisions under Part 4 of the EP&A Act. A heritage management document would be required to support the DA which demonstrates heritage conservation measures incorporated as part of the Murwillumbah Railway Station design works. Council is not the consent authority; rather JRPP is the consent authority. The project is likely to trigger the biodiversity offset thresholds of the <i>Biodiversity Conservation Act 2016</i> and require the preparation of a Biodiversity Development Assessment Report in support of the DA. Biodiversity offsetting (if required) would be in accordance with the Biodiversity Offset Scheme. 	3 to 9 months
2	Part 5 development permitted without consent (REF)	<ul style="list-style-type: none"> Council would be the determining authority for the project. This provides the most flexible approach for alternative designs. This is so because technically there is no actual 'approval' under Part 5, rather it is an assessment of the environmental factors and their mitigation where required, consequently variations can be managed expeditiously and to some extent built into the initial assessment. 	<ul style="list-style-type: none"> The project may require an EIS to be prepared based on the assessed significance of environmental impacts as determined by Council as the determining authority. The requirement to perform LEP amendments is associated with substantial timeframe implications associated with Department of Planning involvement, public exhibition and reporting requirements. 	6 months for planning proposal. Concurrent REF 3 months, ready to go on making of LEP.

No	Option	Benefits	Challenges	Estimated timeframes
3	Part 4 and Part 5 combined option (DA and REF)	<ul style="list-style-type: none"> If the project component assessed under Part 4 has a capital investment value of less than \$5 million, Council is the consent authority. Council would also be the determining authority for the Part 5 component of the project. This option may reduce the likelihood of triggering the <i>Biodiversity Conservation Act 2016</i> and may result in providing local biodiversity offsets if required. 	<ul style="list-style-type: none"> The Part 4 component of the project would trigger the integrated development provisions of the EP&A Act because a heritage approval is required. A heritage management document would be required to support the DA component of the project. The requirement to perform an LEP amendment is associated with substantial timeframe implications associated with Department of Planning involvement, public exhibition and reporting requirements. This avenue introduces project splitting considerations which would require careful consideration in terms of the isolated and incidental benefits of the two components of the project. 	6 to 9 months

In term of cost, time and flexibility allowing for alternative design solutions the Staff recommend Option 2.

4. Options assessment

The three options each present a range of benefits and challenges in terms of timing and associated costs as well as their integration with other environmental and heritage protection legislation in NSW. Council staff have attempted to assess the implications of each option in consideration of these benefits and challenges in order to further assist Council's decision. Refer to Table 3 below.

OPTIONS:

The planning approval pathway options presented in this report for Council's consideration are:

1. Seek development consent under Part 4 of the EP&A Act for the entire Stage 1 Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail; OR
2. Amend the Tweed Local Environmental Plan and seek planning approval under Part 5 of the EP&A Act for the entire Stage 1 Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail, OR
3. Seek development consent under Part 4 AND planning approval under Part 5 for two individual components of Stage 1 Murwillumbah to Crabbes Creek section of the Northern Rivers Rail Trail.

There are benefits and challenges with all of the options however when weighed against the needs of the project and given that Council is overseeing the development of the rail trail and would benefit from cost savings, more certain timeframes and in particular flexibility to allow for innovation in design the Staff recommend proceeding with Option 2.

CONCLUSION:

Options to consider the environmental impacts and seek planning approval for the Northern Rivers Rail Trail – Tweed Stage are presented for Council's consideration based on preliminary legal advice sought from Marsden's Law Group. The substantial coverage and linear nature of the project presents a number of challenges for each option.

The identified majority of benefits and similar timeframes presented indicate the project preceding either entirely under Part 5, as originally proposed by Council staff, or as a combined Part 4 and Part 5 project.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

There are budgetary risks associated with the Part 4 process as it introduces additional complexities to the process, along with the potential for additional costs such as Road Contributions (TRCP), biodiversity offsets and the like.

c. Legal:

Yes, legal advice has been received.

d. Communication/Engagement:

Involve/Collaborate-We will work with you on an ongoing basis to ensure your ideas, concerns and aspirations are considered. We will provide feedback on Council's decisions.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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