

ADDENDUM REPORT

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE ACTING DIRECTOR PLANNING AND REGULATION

a10 [PR-CM] Planning Proposal PP15/0004 - Water Extraction and Bottling Facilities in Certain Rural Zones

SUBMITTED BY: Strategic Planning and Urban Design

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 |
| 1.5.2 | Land use plans and development controls will be applied and regulated rigorously and consistently and consider the requirements of development proponents, the natural environment and those in the community affected by the proposed development |
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SUMMARY OF REPORT:

Council officers submitted a report to the Planning Committee meeting of 3 December 2015. The report recommended as follows:

"That Planning Proposal PP15/0004 (version 3), being Tweed Local Environmental Plan 2014 Amendment No. 16, to enable 'water extraction and bottling facilities' in the RU1 Primary Production and RU2 Rural Landscape zones be forwarded to NSW Planning and Environment requesting the making of the Plan under s.59 of the Environmental Planning and Assessment Act 1979."

Council proposed an amendment to the above recommendation which reads as follows:

- "1. Planning Proposal PP15/0004 (version 3), being Tweed Local Environmental Plan 2014 Amendment No. 16, to enable 'water extraction and bottling facilities' in the RU1 Primary Production and RU2 Rural Landscape zones be forwarded to NSW Planning and Environment requesting the making of the Plan under s.59 of the Environmental Planning and Assessment Act 1979.*
- 2. The above Planning Proposal PP15/0004 is to include a provision to exclude State and Regionally Significant Agricultural Land."*

It is noted that this motion was lost on the casting vote of the Mayor. The application remains undetermined as it was neither approved nor refused.

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On the basis of a legal advice received by Council following the Planning Committee of 5 November 2015 (sought in relation to the undetermined application for BP highway service centre in Chinderah) the report is resubmitted for consideration based upon that advice.

If it is Council's intent to not approve this application the reasons for refusal need to be provided as part of the final determination.

PREVIOUS SUMMARY:

Planning Proposal PP15/0004 seeks to amend the Tweed Local Environmental Plan 2014 to permit water extraction and bottling facilities, with development consent, on land zoned RU1 Primary Production and RU2 Rural Landscape. This report outlines the background of the planning proposal and summarises the outcome of the public consultation undertaken following the Gateway determination.

Water extraction and bottling facilities are located in various rural areas in Tweed Shire. These uses were established prior to gazettal of Tweed Local Environmental Plan (LEP) 2014. Following an approach by an existing operator to modify their facility, it became apparent that water extraction and bottling facilities were no longer permissible in rural zones. This was as a consequence of land use definition changes contained in the standard state-wide LEP template, and consequently, the Tweed LEP 2014.

Water extraction and bottling facilities are considered to be a legitimate land use where it can be demonstrated that they are suitably located by way of the development application process. Consequently, it is recommended that Council should resolve to support the planning proposal, and it be referred to the Department of Planning and Environment for the Local Environmental Plan to be made.

Council, at its meeting of 6 August 2015, resolved to prepare a planning proposal in respect of this matter and submit it to the Department of Planning and Environment for a Gateway Determination.

The planning proposal was exhibited for 28 days and two (2) public submissions have been received. Responses have also been received from NSW Department of Primary Industries – Water and Rural Fire Services.

RECOMMENDATION:

That Planning Proposal PP15/0004 (version 3), being *Tweed Local Environmental Plan 2014 Amendment No. 16*, to enable 'water extraction and bottling facilities' in the RU1 Primary Production and RU2 Rural Landscape zones be forwarded to NSW Planning and Environment requesting the making of the Plan under s.59 of the *Environmental Planning and Assessment Act 1979*.

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REPORT:

1. Background

1.1 Planning Proposal request

Mount Warning Springwater operate a water extraction and bottling facility at Kyogle Road, Kunghur. This facility was approved in 2006 (DA05/0995) when the controlling local planning instrument was the Tweed LEP 2000. Mount Warning Springwater are proposing to relocate the operation to land adjoining their existing facility.

During the preparation of the development application it became apparent that under the Tweed LEP 2014, water extraction and bottling facilities were no longer a permissible use in rural zones. Consequently, Mount Warning Springwater made a request to Council to prepare a planning proposal to amend the Tweed LEP 2014 to facilitate their proposal.

The specific request from Mount Warning Springwater was to amend the Tweed LEP to incorporate the proposed facility as an additional permitted use contained in Schedule 1 of the Tweed LEP 2014. Following this request, Council was approached by other land owners enquiring about water extraction and bottling facilities in rural areas of the Shire. As this is a shire-wide matter resulting from a legislation drafting change, rather than a planning consideration change, the planning proposal was examined as a shire-wide amendment to the Tweed LEP 2014, rather than a site-specific Schedule 1 matter.

Council, at its meeting of 6 August 2015, resolved to include this planning proposal as a new Local Environmental Plan on the Work Priorities Plan 2015-2016 and submit it to the Department of Planning and Environment for a Gateway Determination.

1.2 Sustainable use and management of groundwater in Australia

Groundwater is a public resource. In New South Wales, the entitlement (often called a licence) to access and use this resource is granted by the NSW Office of Water (part of the Department of Primary Industries). The licence generally specifies matters related with management of groundwater use such as volume of water permitted to be extracted, length of tenure and other conditions of use. One of the conditions is the permissibility of water extraction in a local environmental plan. Should this LEP amendment be finalised, development applications for water extraction facilities will be assessed by Council, whilst granting a licence will remain a matter of the Office of Water.

One of the statutory obligations of the Office of Water is ongoing monitoring of groundwater levels. This is carried out through drilling to investigate the states' groundwater resources. Currently, the Office of Water has more than 3000 monitoring bores across the State and uses computer-based groundwater modelling to simulate aquifer behaviour, estimate 'sustainable yield' and predict the effects of groundwater extraction. The models are available on the Office of Water website.

According to the *Groundwater in Australia* report (by National Centre for Groundwater Research and Training, 2014), management of groundwater is based on determination of a 'sustainable yield', which is defined in the *National Water Initiative* as *the level of water*

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extraction from a particular system that, if exceeded, would compromise key environmental assets, or ecosystem functions and the productive base of the resource.

Generally, methods of estimating a sustainable yield vary with the characteristics of each groundwater system. According to the classification provided under the National Groundwater Information System, rural parts of the Tweed are located within the Tweed River Alluvium groundwater management unit, and are generally characterised by high levels of groundwater development for irrigation, town supply and some industrial purposes (source: *Climate change impact on groundwater resources in Australia*, 2011).

While assessing impacts of groundwater use on the natural environment, consideration is also given to groundwater-dependant ecosystems, which require the input of groundwater to maintain their current composition and functioning. In 2012, The Office of Water assessed the risk to the ecological value and associated groundwater dependant ecosystem in the Tweed River Alluvium as low (on a low-moderate-high scale).

Overall, whilst in many inland parts of Australia major aquifers have been developed to the point where groundwater use is equivalent to the 'sustainable yield', available data appears to indicate that land subject to this planning proposal, being the rural areas of the Tweed Shire, may be a subject of sustainable development and use of groundwater resources, as long as that use continues to be monitored and licensed by the Office of Water.

1.3 Land use definitions

Prior to the gazettal of the Tweed LEP 2014 on 4 April 2014, the extraction of spring water and its associated bottling fell under the definition of a "rural industry" which was a use that was permitted with development consent under the Tweed LEP 2000 in the 1 (a) Rural and 1(b) Agricultural Protection zones. Tweed LEP 2014 contains an amended definition of 'rural industry' which is:

*"**rural industry** means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:*

- (a) agricultural produce industries,*
- (b) livestock processing industries,*
- (c) composting facilities and works (including the production of mushroom substrate),*
- (d) sawmill or log processing works,*
- (e) stock and sale yards,*
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise."*

Other definitions which are associated with agricultural, processing (light industrial) and extractive land uses include:

*"**agricultural produce industry** means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter*

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factories, and juicing or canning plants, but does not include a livestock processing industry.

agriculture means any of the following:

- (a) aquaculture,*
- (b) extensive agriculture,*
- (c) intensive livestock agriculture,*
- (d) intensive plant agriculture.*

extensive agriculture means any of the following:

- (a) the production of crops or fodder (including irrigated pasture and fodder crops) for commercial purposes,*
- (b) the grazing of livestock for commercial purposes,*
- (c) bee keeping,*
- (d) a dairy (pasture-based).*

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

extractive material means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the Mining Act 1992.

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,*
- (b) home industry."*

Council staff has determined that water extraction, processing and its associated bottling does not strictly fall within any of these definitions and therefore this land use has been treated as a "commercial premises". Consequently, the use of land zoned RU1 Primary Production and RU2 Rural Landscape under the Tweed LEP 2014 for this purpose is prohibited. This is considered to be an unintended consequence resulting from the change in definition of "rural industry" under the standard instrument.

2. Planning Proposal Provisions

Consultation with the NSW Department of Planning & Environment (DPE) indicated that water extraction and bottling facilities, whilst not defined directly as a standalone land use, should be considered as a type of *light industry* land use. Considering that *light industry* land use is prohibited in the rural zones, an amendment to Schedule 1 Additional Permitted Uses appears to be the preferred way of enabling this use on rural land with development consent and was exhibited this way. The proposed enabling clause has been drafted as follows:

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Use of land in RU1 Primary Production and RU2 Rural Landscape zones for water extraction & bottling facilities

- (1) This clause applies to any land zoned RU1 Primary Production or RU2 Rural Landscape.
- (2) Development for the purposes of water extraction and bottling facilities is permitted with development consent.
- (3) For the purposes of this clause, water extraction and bottling facility is a light industry involving the extraction of groundwater and the handling, treating, production, processing, storage, packing and wholesale removal of groundwater for commercial purposes.

3. Public Exhibition

3.1 Timeframes and conditions imposed by the Gateway determination

On 9 September 2015, the proposal was referred to the Department of Planning and Environment (DPE) for a Gateway determination. The Gateway Determination was issued on 23 September 2015 subject to conditions, one of which required amendments to the planning proposal prior to community consultation. The amendments were required to clarify a number of matters relating to drafting of the proposal, which were to be approved by the Minister's delegate prior to exhibition.

Other conditions of the Gateway Determination required public exhibition for a minimum of 28 days and included requirements to consult with the NSW Rural Fire Service, and Department of Primary Industries - Water.

The planning proposal was amended in accordance with the Gateway Determination and approved by the Minister's delegate for community consultation on 1 October 2015.

In accordance with s.56 and s.57 of the Environmental Planning and Assessment Act 1979 (the EP&A Act), the DPE Gateway Determination, this planning proposal was publicly exhibited from Wednesday 7 October to Wednesday 4 November 2015 at the Murwillumbah Civic Centre, Tweed Heads Civic Centre and on Council's website.

3.2 Submissions received in response to the public exhibition

In accordance with the requirements of the Gateway Determination, the planning proposal was referred to:

- NSW Rural Fire Service, and
- Department of Primary Industries – Office of Water.

The Office of Water advised that following review of the planning proposal, they are satisfied that no submission is required. A submission received from NSW Rural Fire Service did not raise any objections to the proposal.

Two (2) public submissions were received which are evaluated as follows:

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Summary of Issue	Planning Response
Submission 1	
<p>Issue 1: <u>Not enough information in the Planning Proposal.</u></p> <p>The planning Proposal does not make a convincing case to amend the LEP in the proposed manner. Further information should be made available to clarify how Council and NSW Government will manage the applications. It is in Tweed Shire interest to clearly state a set of principles governing the quantities of water taken from commercial extraction and bottling. Small communities expect that the outcomes of approval process are transparent and deliver sustainability. Baseline data must be developed and made publicly available, otherwise Council will need to provide strategies and principles enabling determination of cumulative impacts of water extraction.</p>	<p>The Planning Proposal seeks to re-instate water extraction as a land use, as it was under previous Local Environmental Plans 1987 and 2000. The exhibited version of the proposal focused on the incompatibility of the current land use definitions, with limited attention offered to outline the approval and licensing process. In response to this submission, and in order to provide that information, the Planning Proposal has been amended to include an overview of a licensing process and data available in resources of the NSW Office of Water.</p>
<p>Issue 2: <u>The proposal does not recognise the importance of groundwater to the Tweed community.</u></p>	<p>As above</p>
<p>Issue 3: <u>Impact on rural amenity.</u></p> <p>Development of water extraction and bottling facilities may negatively impact on amenity of rural residents who chose to move to the rural areas because of visual amenity and quiet solitude.</p>	<p>The rural zones allow many land uses other than rural housing. This is necessary for rural communities and their economic viability. Further, it is suggested that in some rural locations, it is incorrect to assume that rural lifestyle is tranquil as suggested due to agricultural and rural land uses that occur (eg. farm machinery noise from dawn, airplane spraying, rural industries, extractive industries and associated traffic, noise, vibration etc.).</p> <p>It is considered that water extraction proposals can be sited in rural locations and appropriately managed to co-exist with rural living. Of course this is dependant on the characteristics of an individual proposal and the locality itself which can be appropriately assessed with a development application.</p>

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Summary of Issue	Planning Response
<p>Issue 4: <u>Questions the need for a shire-wide amendment.</u> The proposal has been prepared for all land zoned RU1 or RU2 yet there is only one application for this development.</p>	<p>This LEP applies to all RU1 and RU2 zoned land for the following reasons: The prohibition of these facilities was an unintended consequence of the change of definitions in the State-wide standard LEP template. It was not intended that this potential land use be removed as an option for land holders where water extraction for commercial purposes is demonstrated to be a suitable use. The development application process provides safeguards in determining the suitability of the proposal for each individual site. It is not considered necessary to require an amendment to the LEP for each future water extraction proposal when safeguards are available through the development application, and licensing processes.</p> <p>If individual planning proposals (LEP amendments) are required for each water extraction proposal that Council may receive, it would result in a duplication of processes and resources and lead to further delays in the process. This is not considered necessary for a land use that has been traditionally accepted in rural areas, where the development application process can adequately deal with potential issues.</p>
<p>Issue 5: <u>The approval process.</u> To what extent is Council's DA approval process subjugated by the <i>Water Management Act 2000</i>? Is Council required to approve a DA for landowner who had obtained a licence?</p>	<p>The development application approval process is governed by the requirements of the Environmental Planning and Assessment Act 1979, including the 'integrated development' provisions. The application processing requirements are set out in this legislation. Development applications for commercial water extraction development applications are assessed by both Council and relevant state government agencies prior to any consents being issued.</p> <p>Although development applications are assessed for individual properties, the impact on the wider catchment must be taken into consideration and assessed. The development application must address how the proposal impacts on groundwater</p>

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Summary of Issue	Planning Response
	<p>quantity and quality and associated potential environmental impacts within the catchment.</p> <p>The applicant must supply this information which would be assessed by Council staff and relevant state government agencies. Development applications for individual proposal would also be notified and advertised in accordance with Councils DCP.</p>
<p>Issue 6: <u>Over extraction.</u> Over extraction will have a long-term and possibly a permanent impact on the groundwater availability and surface flows. Tweed Council should be in position to impose extraction limits or advise the State government of its concerns on a shire-wide basis.</p>	<p>The comments in Section 1.2 of this report address the sustainable use and management of groundwater. It is not the role of this planning proposal to establish extraction limits. Development consent can be conditioned to specify extraction limits. This would be done in consultation with relevant state government agencies as part of the licensing process. The planning proposal is simply to clarify that commercial extraction a permissible use which will give the land owners the opportunity to make an application which will contain the details necessary to make an informed decision.</p> <p>The licensing process will consider the details of the proposal including extraction rates, the nature and extent of the groundwater resource, potential impacts on other users, scale of the proposal etc.</p> <p>Each water extraction application will be unique in terms of its local environment and the proposal itself. There are adequate safeguards in place with existing legislation to ensure that each development application is fully assessed taking into consideration the precautionary principle.</p>
Submission 2	
<p>Issue 1 – Inadequate information base on which to adequately assess individual proposals.</p>	<p>Applicants for individual development applications will need to employ suitably qualified experts to provide technical information concerning impacts on groundwater which will need to be submitted with the application. If there are gaps in the information base when preparing the</p>

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Summary of Issue	Planning Response
	necessary reports then further studies by the applicant's consultant(s) will need to be undertaken to address this matter. The information will be assessed by Council staff and relevant State government agencies to ensure its adequacy to make an informed decision.
Issue 2 – Potential impacts on endangered species needs to be carefully considered.	Again, suitably qualified expert advice will need to be provided with the development application addressing this potential impact which will be assessed by Council and relevant State government agency staff. As outlined in section 1.2 of this Report, the Office of Water assessed the risk to the ecological value and associated groundwater dependant ecosystem in the Tweed River Alluvium as low (on a low-moderate-high scale).
Issue 3 – Impacts of over-extraction	This issue was discussed in Submission 1 (Issue 6).
Issue 4 - Climate change will increase the likelihood of seasonal and periodic hydrological stress.	This issue will need to be addressed with any development application.

Having regard to the issues discussed above no amendments to the provisions contained in planning proposal are necessary. However, and in response to those issues raised in the submissions, the planning proposal has been amended to include an overview of the licensing process and available data resources provided by the NSW Office of Water.

The Planning Proposal (Version 3) is provided as Attachment 1 to this report, and is suitable for referral to the DPE.

OPTIONS:

1. Proceed with the planning proposal, in accordance with the recommendations within this report, and forward a request to NSW Department of Planning and Environment for the making of the proposed planning instrument.
2. Defer further consideration of the Planning Proposal and provide staff the opportunity to clarify any matters of concern at a Councillor workshop.

It is recommended that Council proceed with Option (1).

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CONCLUSION:

The planning proposal was publicly exhibited for the required timeframe. Two (2) public submissions were received with the key issues being the potential impact on groundwater, lack of detail and data concerning groundwater reserves and the need to take a precautionary approach to the preservation of groundwater systems. In response to these submissions, the Planning Proposal document has been updated to provide an overview of the licensing and monitoring processes undertaken by the NSW Office of Water to ensure sustainable use of groundwater resources.

This report has evaluated these submissions and it is considered the extraction of groundwater for commercial purposes can be satisfactorily managed as part of the development application process, and that this is a land use option that should be available for rural landowners where it can be demonstrated that impacts on the groundwater are satisfactory. It is not considered necessarily to completely prohibit this land use as in certain circumstances this can be a viable alternative use for rural land.

It is recommended that the Proposal be supported and referred to the Department of Planning and Environment requesting the plan be made.

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:

Attachment 1.

Planning Proposal PP15/0004 (ECM 3867608)
