

TITLE: [PR-CM] Filming on Private Land

SUBMITTED BY: Strategic Planning and Urban Design

Validms



Civic Leadership



Strengthening the Economy

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 |
| 3 | Strengthening the Economy |
| 3.1 | Expand employment, tourism and education opportunities |
| 3.1.6 | Support creative practitioners and entrepreneurs to access professional and business development opportunities, to enhance their contribution to the creative economy |

SUMMARY OF REPORT:

This report seeks Council endorsement for the preparation of a planning proposal to amend Tweed LEP 2014 to permit filming with development consent on rural zoned land for extended periods.

With implementation of the 'Standard Instrument Template' and conversion of Tweed LEP 2000, changes introduced into Tweed LEP 2014 have unexpectedly altered the permissibility of some filming activities within the LEP's closed zones. As a consequence, long-term filming productions are technically prohibited.

The potential benefits of having the Tweed promoted as a destination and the multiplier effects of longer term movie production for the Tweed are considered to be significant.

The Department of Planning and Environment has offered support to expedite the making of this amendment.

Preparation of this planning proposal will require its addition to the work program of the Strategic Planning and Urban Design Unit, but would be treated as a priority.

RECOMMENDATION:

That:

- 1. The Tweed Local Environmental Plan 2014 be amended to permit filming, with development consent, on rural zoned land within the Tweed Shire local government area, and**

2. **A planning proposal be prepared detailing the extent of the required amendment(s) to the Tweed Local Environmental Plan 2014, and**
3. **The Planning Proposal is to be forwarded to the Department of Planning and Environment for a Gateway determination at the earliest time.**

REPORT:

Through discussion with film industry representatives it has come to light that changes made to the Tweed LEP 2014, through implementation of the 'Standard Instrument Template', have unexpectedly altered the permissibility of some filming activities within the LEP's closed zones. As a consequence, long-term filming productions are technically prohibited.

Closed zones are those, like the Rural zones, where the only uses permitted are explicitly described in the zone table. In contrast, 'open' zones, such as the urban zones, describe those uses which are expressly prohibited and with respect to those uses that are neither expressly prohibited or described as permitted within the zone schedule are by default deemed to be permissible with consent.

Guidelines prepared by the Department of Planning and Environment prevented councils from listing the definition of 'filming' within the zones schedules with the effect that in the closed zones this use is automatically prohibited, whereas in the open zones it is automatically permitted with development consent.

There are some limited exceptions to this rule, such as defined in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the Code SEPP). It appears that the Department was confident that the provision of this SEPP would streamline approval process and support the filming industry in NSW, and for those productions in the open zones or of a limited duration it is effective. However, this approach has had a prohibitive effect for longer-term productions, and this was clearly an oversight.

This report seeks to address this situation through a relatively minor interim amendment to Tweed LEP 2014, requiring the definition of 'filming' to be included under clause 2.8(4). Clause 2.8 permits temporary development of any kind, and overrides the land use tables. It does however limit the duration of development for a period of 52 days within any 12 month period.

Under this clause, minor exceptions to a small class of described development can be approved for a longer period having regard to the nature of the development as a whole. For example, a 'sales (real-estate)-house' within a newly constructed housing estate can be approved for a longer period, at the end of which the use must cease. The proposal is to include 'filming' within these exception uses, to enable filming productions to be approved for defined time period and following which must be decommissioned.

Due to the stunning contrasts from cane covered alluvial flats to rugged ranges covered in world heritage rainforest surrounding Mount Warning/Wollumbin, the Tweed is recognised as an idyllic setting for TV and film production of varying length.

Notwithstanding any vagaries in the Tweed's climate, production times can be well in excess of those currently permissible, and while the demand for film production is low by contrast to other industry/uses the potential benefits of filming for promoting the Tweed as a destination, and boosting widespread economic benefits are likely to be significant.

The *Local Government Filming Protocol 2009* points out that the film industry has a long and distinguished history in Australia, with more than 1,400 film and television related businesses located in New South Wales, employing more than 6,800 people and generating income in the vicinity of \$1.3 billion per annum. The multiplier effects of this industry are very large and provide substantial economic benefits to the State.

SUMMARY OF POLICY FRAMEWORK

Tweed LEP 2014

Under Tweed LEP 2014 clause 2.8, Temporary use of land, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days in any 12 month period.

While filming was not a prohibited landuse under Tweed LEP 2000, with conversion of the LEP into the format mandated under the Standard Instrument Template filming became a prohibited landuse with the Department of Planning and Environment's LEP Practice Note PN 11-0003 specifically identifying 'filming' as a term not to be used in the Land Use Table. The reason for the prohibition brought about by the 'open' and 'closed' construction of the zones was discussed above.

Code SEPP

In addition, further limitations currently apply under Part 2 Exempt Development Codes Division 3 Subdivision 4 Filming of the Code SEPP, which states that if filming is carried out on private land, the filming must not be carried out for more than 30 days within a 12 month period.

Filming Related Legislation Amendment Act 2008

The Filming Related Legislation Amendment Act 2008 was passed to make NSW more Film Friendly, with a range of other related regulatory and administrative changes made to enhance location based screen production, and to attract and maintain domestic and international film, television and TV commercial production.

While the intention of this legislation supports the notion of filming, the practicalities of filming have not been fully addressed in the legislation, making it difficult or impossible to acquire consent to undertake filming over extended periods, as may be required for major filming and television projects.

Local Government Filming Protocol 2009

The *Local Government Filming Protocol 2009* prepared by the Department of Local Government to reflect the significant changes arising from film reform notes that there is a presumption that councils will grant approvals relating to filming projects, and to ensure that film productions are to occur, unless there are exceptional circumstances or legislation requires the council to refuse to grant the approval.

The Protocol goes on to state that the NSW Government is committed to ensuring that the environment in New South Wales is one that encourages the screen industry by, in part, strengthening support for location filming and removing unnecessary red tape affecting the New South Wales film and television industry.

Notwithstanding the intention of the NSW Government to support the film and television industry, the limitations imposed under the Code SEPP and mandated through the Standard Instrument Template fly contrary to this stated intention; a matter that has been raised directly with the DP&E, and one that they have committed to assist Council to resolve expeditiously.

Response from the Department of Planning and Environment

Advice has been received from the Department of Planning and Environment dated 6 June 2016 which acknowledges the current limitations of the Code SEPP, which while consistent with the NSW Local Government Filming Protocol of 2009 has provided an option to resolve this matter permanently.

The Department has proposed that Council consider the preparation of a planning proposal to amend clause 2.8 of the LEP to extend the timeframe for which temporary uses of land can be undertaken or to remove any specific maximum time limit for filming activities.

Support from the Department's Northern Region office has been offered as a means of facilitating this change as quickly as possible.

While the Department is proposing that Council amend its LEP, it has also advised that it will also need to consider the issue further to determine whether an amendment to the SEPP is warranted, which if it was to progress, would be part of a future review and may not occur for some time.

OPTIONS:

1. That a planning proposal be prepared amending Tweed LEP 2014 to facilitate filming for periods in excess of those specified; the officer's recommendation, or
2. That current LEP provisions be retained.

CONCLUSION:

The potential benefits of filming in the Tweed are significant, both from the point of promoting the tweed as a destination and flow-on economic benefits.

Translation of Tweed LEP 2000 under the Standard Instrument Template has resulted in unexpected changes to the permissibility of some filming activities within the LEP's closed zones. With support of the Department, preparation of a planning proposal will rectify this anomaly.

Preparation of a planning proposal will require its addition to the work program of the Strategic Planning and Urban Design Unit, but would be treated as a priority.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

No major impact on current Strategic Planning and Urban Design Unit work program

c. Legal:

Not Applicable.

d. Communication/Engagement:

Empower-We will give the community greater opportunity to participate in a transparent flow of information and feedback to Councillors who have been empowered as the Community representatives to make decisions in accordance with the Local Government Act 1993.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.
