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TWEED
SHIRE COUNCIL

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Dear Sir/Madam

Primary Production and Rural Development SEPP - Explanation of Intended Effect - Tweed Shire Council Submission

Tweed Shire Council welcomes the opportunity to respond to the public exhibition of the Explanation of Intended Effect (EIE) for the proposed Primary Production and Rural Development SEPP and highlight some recent initiatives of Council which are consistent with the intent of the legislative review being undertaken by the Department of Planning and Environment.

Rural Tweed in Context

Tweed Shire is recognised as a state-level significant agricultural producer particularly of sugarcane on the floodplains of the Tweed valley, bananas, grazing cattle, and horticulture on the highly productive red soil of the Cudgen Plateau.

Agricultural land in Tweed Shire plays a number of significant roles due to its favourable climate reflecting its coastal location adjoining the large population centre of South East Queensland.

Due to its locational advantages and in-migration of landowners with limited or no rural or agricultural background, but with a desire to use the land for productive purposes, have come both new ideas and financial resources which have led the Tweed to be recognised for the diversity of its agricultural produce.

While agriculture plays an important economic role in the Tweed, it is also integral to the scenic amenity of the Tweed with sugarcane covered floodplains surrounded by undulating mixed farming properties and the rugged escarpment which forms the rim of the Mount Warning/Wollumbin caldera covered in world heritage native vegetation.

However, with this diversity and proximity to SE Queensland has come increased pressure for change and a transition away from traditional agriculture for more of a lifestyle experience, increasing the potential for conflict between landuses, placing pressure on legitimate agricultural activities with rural farmers feeling 'squeezed out' and forced to modify farming activities.

In recognition of the issues confronting the 'cutting up of the farm', and state policy on subdivision of rural land, Tweed Shire Council in 1976 incorporated the 40 hectare minimum subdivision requirement for rural land into its local planning instrument;

however, by this time, more than 87% of all RU2 Rural Landscape zoned land had been subdivided to less than the 40 hectare standard for this zone.

Tweed Shire Council has implemented a number of strategies which support innovation, value-adding and diversification of rural-based enterprises and including:

- Sustainable Agriculture Strategy 2016;
- Economic Development Strategy 2014, and
- Rural Villages Strategy 2016.

Each of these strategies supports the use of agricultural land for agricultural purposes within a framework established to facilitate desirable landuse and development outcomes alongside protection and enhancement of the natural assets of the Tweed.

Draft Tweed Rural Land Strategy

In addition to these endorsed strategies, Council at its 2 November 2017 meeting resolved to place the Draft Rural Land Strategy on public exhibition until 28 February 2018.

The draft strategy lists 142 actions which support the nine policy directions previously endorsed by Council for a balanced and progressive approach to the planning and management of rural land.

The nine policy directions include:

1. Encourage sustainable agricultural production and protect agricultural land;
2. Protect and improve environmental values and respond to natural hazards;
3. Support economic development;
4. Grow rural tourism;
5. Greater rural housing opportunities;
6. Council requirements are transparent and planning procedures streamlined where possible;
7. An informed, connected and resilient community;
8. Promote more sustainable landuse practices, and
9. Extractive industries are protected and landuse conflict minimised.

Policy Direction 1: Encourage sustainable agricultural production and protect agricultural land seeks to ensure that existing and future agricultural production on rural land is facilitated and encouraged through the planning framework, and that land capable of agricultural use is protected; and is complemented by the other policy directions which can be viewed on Council's website at <http://www.tweed.nsw.gov.au/NewForwardPlanning>

Specific response to the exhibited EIE

While the proposed legislative reforms are predominantly consistent with the approach presented in Council's Draft Rural Land Strategy now on exhibition, the following more specific response to the EIE is provided below:

SEPP (Integration and Repeals) 2016 – Schedule 1 Rural land sharing communities

With the repeal of State Environmental Planning Policy No 15 – Rural Landsharing Communities (SEPP 15), certain provisions were relocated into Schedule 1 of SEPP (Integration and Repeals) 2016 for communities that had been approved under SEPP 15.

Department of Planning and Environment (DPE) *Planning Circular PS 16-002 Simplifying and improving the planning system – SEPP review Stage 1*, advised that Schedule 1 of the new SEPP will be repealed two years after commencement, during which time councils were to include a local provision for rural landsharing communities in their LEPs or, where this has not occurred, for the clause to be transferred to another planning instrument.

Previous advice from the DPE was that Schedule 1 would be rolled into another SEPP; however, there is no mention of this schedule in the Explanation of Intended Effect (EIE) for the proposed Primary Production and Rural Development SEPP.

Action proposed

It is proposed that advice be provided on the future of Schedule 1 Rural land sharing communities in SEPP (Integration and Repeals) 2016 and potential implications for councils that have not included a local provision in their Local Environmental Plan.

One size fits all

The ability of state-level legislation to address the diversity of issues confronting agriculture in its myriad forms from the plains of the far west to the slopes and tablelands where monoculture farming dominates, to the coastal fringe where landuse diversity is a characteristic recognised and valued, requires acknowledgement.

Due to the highly fragmented nature of rural holdings and their size, it is essential that any legislative reform acknowledges the potential adverse cumulative impact of allowing thresholds to be set on a state-wide basis. What may seem insignificant of a western slope sheep/wheat property could be highly significant in a small highly diverse coastal catchment such as the Tweed.

Policies which may be designed more for broadacre farming without due consideration for implications for small acreage farming enterprises should be further considered in consultation with coastal and peri-urban councils.

Action proposed

It is proposed that further consideration be given to the implications of legislative changes on small area landholdings.

Status of agricultural land

In 2005 the Northern Rivers Farmland Protection Project made recommendations that led to the classification of highly productive agricultural land in the Tweed being identified as State and Regionally Significant Farmland.

This classification has made it possible to implement landuse planning policies and strategies and provide assessments for development applications which ensured the protection of this highly significant agricultural land.

It is noted that in the North Coast Regional Plan 2036, State and Regionally Significant Farmland has been replaced with the term “important farmland”. It is also noted that the Department of Primary Industry will be conducting workshops in the near future to consider revised mapping of this farmland.

Any change in terminology which diminished the recognition of the significance of agricultural land and results in increased opportunities for this land to be used for non-agricultural purposes should be avoided.

Action proposed

It is proposed that clarification be provided on the rationale behind the change of terminology defining State and Regionally Significant Farmland and confirmation the status of this farmland will be retained.

The EIE points out that no State Significant Agricultural Land has been identified under the provisions of the Rural Lands SEPP.

While it is true that Schedule 2 of the Rural Lands SEPP is blank, State and Regionally Significant Farmland has previously been identified and incorporated into local planning instruments in the Tweed and other councils around the State.

The EIE also refers to identifying land of state significance that will occur following the outcomes of regional and local planning processes.

Given that this mapping has been completed and the outcomes applied consistently for many years, it would now appear that the government is preparing to undertake a new mapping process which may impact the protection of agricultural land.

Action proposed

It is proposed that clarification be provided on the status of existing mapped State and Regionally Significant Farmland and the process for further identification and inclusion of land of state significance in a schedule to the new SEPP.

Agriculture as part of a rural mosaic of landuses

While the focus of the proposed SEPP is agricultural, agriculture as a landuse and lifestyle does not occur in isolation from other linked and separate landuses.

Notwithstanding Council's support for ongoing use of agricultural land, the ability of development to occur within the framework established by the nine policy directions endorsed by Council for preparation of the Draft Tweed Rural Land Strategy is seen as an important aspect of facilitating a balanced approach to the future development and management of rural land. As such the proposed SEPP should provide a greater emphasis on allowing agricultural activities to occur, but within an overall mosaic of rural landuses which includes environment, tourism, extractive industries, housing and other.

Action proposed

It is proposed that the new SEPP acknowledge the diverse interactions that occur in rural areas, and the need for all landuses to occur without creating conflict between uses and disharmony in rural communities. This might be achieved through the inclusion of an appendix which demonstrates the linkages between the SEPP and other legislation, planning provisions and guidelines.

Routine maintenance of farm dams and works

While the EIE makes reference to routine maintenance of artificial water supply and drainage channels in irrigation areas and districts, which does not include Tweed Shire, local provisions are in place to allow works to be undertaken on drainage channels in sugarcane land.

Clause 7.1 Acid Sulfate Soil in Tweed LEP 2014 makes provision for works to be undertaken in certain circumstances without consent where a drainage management plan has been prepared in accordance with the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005), and is endorsed by the Sugar Milling Co-operative as being appropriate for the land.

While such local provisions have been developed and apply in the Tweed, similar arrangements may well exist elsewhere in New South Wales. In addition, no mention is made of drainage systems managed by Drainage Unions, of which several still exist in coastal NSW.

It is considered important to ensure that the new SEPP does not create unintended outcomes affecting the maintenance and management of small coastal drainage networks and the current planning processes adopted by councils in consultation with relevant local agricultural industries.

Action proposed

It is proposed that confirmation be provided that the new SEPP will not impact on the ongoing operation of existing local land use planning arrangements for the management of coastal drainage systems in agricultural land.

Rural subdivision for agricultural purposes

Clause 4.2 of Tweed LEP 2014 makes provision for the subdivision of land creating an allotment less than the Minimum Lot Size (MLS) so long as the undersized agricultural lot does not contain a dwelling and a dwelling cannot be erected on such a lot.

Clause 4.1 of Tweed LEP 2014 ensures that any lot created is not less than the minimum size shown on the Lot Size Map in relation to that land.

However, in Tweed Shire where nearly 90% of RU1 Primary Production and RU2 Rural Landscape zoned allotments are less than the MLS, the ability to create small agricultural land parcels which can be consolidated with adjoining farming land or utilised for productive agricultural purposes without the added land value which occurs with overcapitalisation of lifestyle properties should not be unintentionally impacted by the proposed SEPP.

The size, orientation and location of the remnant allotment created will be significant in determining the impact of implementation of this provision.

The Draft Tweed Rural Land Strategy proposes an amendment to Tweed LEP 2014 to ensure that where subdivision for the purpose of primary production results in an undersized allotment containing an existing lawfully constructed dwelling being located on the remnant (non-agricultural) land, that the dwelling entitlement is retained.

The effect of this amendment being that an original undersized allotment may be subdivided into two allotments, both undersized, one for agricultural purposes, without a dwelling or entitlement and the other, where it contains an existing legal dwelling, the entitlement is retained. In essence, subdivision for agricultural purposes should not result in additional dwelling entitlements.

However, this approach would not prevent the agricultural lot being consolidated into an adjoining allotment resulting in a new allotment larger than the MLS and a dwelling entitlement being inferred.

Page 14 of the EIE states that a lot created as part of a subdivision for primary production purposes, and which contains an existing dwelling, does not need to meet the MLS requirements.

This note appears to propose that the dwelling is located on the agricultural portion; however, further comment suggests that the intent is, by example, to allow retiring landowners to stay in the farm house and sell or make other arrangements for the use of the agricultural lot created. Clarification of the intent of this proposed amendment would assist in responding.

For small coastal catchments such as in the Tweed valley where lot sizes are already on average well below the MLS, the potential for implementation of a state provision which permitted an additional dwelling on an undersized allotment created for agricultural purposes would have significant impact on the number of additional houses in the rural area and accelerate fragmentation and loss of production of rural land.

While the intent of the proposed amendment might be to assist retirees reside on the property for longer, ultimately, the excised homestead lot will be sold and, in locations such as the Tweed, would likely be purchased by landowners with no or limited rural experience for lifestyle purposes, placing more pressure on agricultural land and increasing the likelihood of conflict with adjoining agricultural operations. The long

term implication will most likely be rural lifestyle properties scattered across rural Tweed.

To ameliorate adverse impacts of an increase in isolated rural lifestyle properties guidelines will be required to ensure that the rural character of the location is retained. This might include consideration of buffers, revegetation, control of fencing design (e.g., no white picket fences), and alterations and additions to the existing dwelling, and caveats, notifications and agreements as to acceptance of the rural setting and expectations of future owners who may not be interested in conducting agricultural activities.

The definition of agricultural land is an important aspect in determining where a new property boundary would lie. It is conceivable that this provision could be used to subdivide existing productive or potentially productive agricultural land leading to further fragmentation and loss of rural production.

Assuming that the intent of the proposed change is to remove duplication between the Rural Land SEPP and the Standard Instrument LEP, and allow for the excising of the farm house from the remainder of the property probably on undersized lots, additional controls will be essential to ensure that adverse impacts are responded to prior to the new SEPP coming into force.

Action proposed

It is proposed that any amendment to the Standard Instrument LEP should ensure that no additional dwelling opportunities result from the subdivision of land created for agricultural purposes.

It is proposed that lots created under clause 4.2 for agricultural purposes less than the MLS should not contain or be allocated a dwelling entitlement.

It is proposed that where subdivision for agricultural purposes results in an undersized remnant lot (non-agricultural) which contains a lawfully constructed dwelling, that dwelling entitlement for the existing lawful dwelling be retained.

It is proposed that where subdivision for agricultural purposes results in an undersized remnant lot (non-agricultural) which contains a dwelling which has been constructed without development consent, that no dwelling entitlement be inferred to the lot containing the house.

It is proposed that where an undersized remnant lot (non-agricultural) is created which contains a dwelling constructed without development consent or does not contain a dwelling, it is the landowner's responsibility to provide evidence that a dwelling entitlement existed for the original allotment prior to subdivision. However, should it be proven that a dwelling entitlement had existed; this must not infer any legal status to any development on the remnant lot created.

It is proposed that a suite of supporting development controls be developed to ensure that any dwelling or development on the remnant lot created remains of a character that is consistent with the character of the locality and is not modified in the future to produce a more residential style of development, and that these controls are bound in a caveat, on title for the lot created.

Deferred matters

The intent for addressing deferred matters imposed on Northern Councils through the E Zone Review is very unclear in the EIE. For clarity, the current deferred matters have been formally proposed by Councils as environmental protection zones and are currently in the process of review in accordance with the Northern Councils E Zone Review Final Recommendations Report (2015).

Action proposed

Deferred matter areas should be excluded from the proposed SEPP or alternatively, treated as environmental zones for the purposes of the SEPP.

In conclusion

With the context of agricultural land in the Tweed established as one of small rural properties and lifestyle lots the majority of which are less than the MLS, the ability of the proposed legislative reform to protect agricultural land, provide certainty about future access to productive or potentially productive agricultural land is seen as an important aspect of supporting the local economy, maintaining the rural character, and ensuring consistency throughout the State.

Actions in the Draft Tweed Rural Land Strategy and the EIE for the Primary Production and Rural Development SEPP appear to be well aligned and as such the intent of the legislative review to protect agricultural and potentially productive agricultural land is seen as a positive approach which is consistent with actions proposed in the Draft Tweed Rural Land Strategy.

Council's supports the ongoing use of agricultural land within the framework of non-competitive complementary policy directions established for the Draft Tweed Rural Land Strategy.

It is hoped that these comments are seen as constructive and should you wish to discuss any matters further please do not hesitate to contact Council.

Yours faithfully

Vince Connell
DIRECTOR PLANNING AND REGULATION