

TITLE: [PR-CM] Camphor Laurel Harvesting - Premises No. 536 Smiths Creek Road, Stokers Siding

SUBMITTED BY: Development Assessment



Caring for the Environment

SUMMARY OF REPORT:

This report has been prepared to both update Council on the broader changing regulatory and management aspects of camphor laurel harvesting in the Tweed Shire, as well as to inform Council on the compliance actions taken in respect of a complaint received relating to the recent camphor laurel removal activity on premises No. 536 Smiths Creek Road, Stokers Siding.

Camphor Laurel (*Cinnamomum camphora*) is a serious environmental weed on the North Coast of NSW. It was declared a Class 4 Noxious Weed in Tweed Shire in March 2009.

The need to effectively control weeds such as Camphor Laurel is recognised within Council's adopted Vegetation Management Strategy, however, the Strategy also acknowledges that large-scale removal needs to be carefully managed to avoid adverse impacts on the environment.

The advent of electricity co-generation plants at Condong and Broadwater sugar mills has generated substantial interest in the supply of Camphor Laurel as a biofuel. The joint venture between Delta Electricity Australia Pty Ltd and Sunshine Renewable Energy Pty Ltd which administers the co-generation plants has appointed contractors to source significant quantities of Camphor Laurel.

Camphor Laurel harvesting for the Condong mill co generation plant has been underway for the last few years. A procedure for the conduct of the harvest was put in place by the stakeholders however a review of the procedures is required given the position of Far North Coast Weeds ending their involvement with site management plans. A review is also necessary given the performance of the management plans, the impact on the environment and the long term control of camphor as a noxious weed.

Further uncertainty has been created by the fact that the draft Tweed Local Environmental Plan 2012 and draft Development Control Plan Tree and Vegetation Preservation Order significantly change the development control provisions for camphor removal in the Tweed.

Whilst it is acknowledged that the extensive rainfall over the last several months has adversely affected the camphor laurel removal operation at No. 536 Smiths Creek Road, it is the officers' opinion that this was an example of a poorly managed operation. Nonetheless, given that it is questionable as to whether or not a development application was required for this operation, it is recommended that Council take no further enforcement action on this matter.

The NSW Environment Protection Authority (EPA) is conducting its own investigation of the above operation in accordance with its legislation in respect of a complaint received from an adjoining owner. The results of this investigation have yet to be received by Council.

In light of this changing regulatory environment, at the time of finalising this report, a meeting had been scheduled to take place on 16 April 2013 between Council officers and representatives of the EPA, Far North Coast Weeds and NSW Sugar, to seek to formulate a new approach to the assessment and monitoring of camphor laurel harvesting. The outcomes of this meeting will be reported to a further Council Meeting.

RECOMMENDATION:

That:

- 1. Council works with the industry representatives and State Agencies regarding a future process for approvals and environmental management for camphor laurel removal; and**
- 2. No legal action be undertaken regarding the camphor laurel harvesting operation at Lot 4 DP 585624, No. 536 Smiths Creek Road, Stokers Siding for the reasons outlined in the report.**

REPORT:

Indigenous to parts of Asia, Camphor Laurel (*Cinnamomum camphora*) was introduced to Australia as a shade tree in 1854. It is now a serious weed throughout northern NSW, invading large tracts of agricultural land and native vegetation. In 2009, Camphor Laurel was listed as a Class 4 weed under the Noxious Weeds Act 1993 within Tweed Shire.

The Condong Mill co generation plant uses camphor laurel woodchip for fuel. The camphor trees are sourced from private land by contractors engaged by the Mill. Camphor Laurel is an exotic species and is a noxious weed under the Noxious Weed Act.

The Mill contracts out the supply of the woodchip, the contractors source the camphor from private landowners who have the camphor removed for free. Objectives are fulfilled with the Mill sourcing biofuel and the landowners complying with the Noxious Weed Act for weed removal. Camphor Laurel often grows in sensitive locations such as gullies, creek lines, steep slopes and mixed in with native vegetation and threatened flora. Removal with heavy machinery needs careful planning and management. Cutting the camphor trees at stump level does not control camphor as cutting needs to be combined with poisoning and an ongoing removal program of germinating seeds in the location of the removed trees.

The legislation for camphor removal in the Tweed is not straight forward. The majority of the rural zoned land in the Tweed does not have a Tree Preservation Order and Tweed Local Environmental Plan 2000 does not require consent for tree removal on rural land and the Native Vegetation Act does not include exotic species. Council's Exempt and Complying Development Control Plan exempts noxious weed control from requiring development consent.

Harvesting could be defined as forestry or as "works". Forestry is permissible without consent in rural zones and works require consent.

Development under the Environmental Planning and Assessment Act is defined as:

- (a) The use of land, and
- (b) The subdivision of land, and
- (c) The erection of a building, and
- (d) **The carrying out of a work**, and
- (e) The demolition of a building or work, and
- (f) Any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument, but does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

Forestry under the TLEP 2000 is permissible **without consent** and is defined as:

***Forestry-** includes arboriculture, silviculture, forest protection, the cutting, dressing and preparation, other than in a sawmill, of wood and other forest products and the establishment of roads required for the removal of wood and forest products and for forest protection.*

Tree removal, road construction, chipping could fall under a broad heading of works which generally require consent under the Environmental Planning and Assessment Act however given the above definition it is considered that the more precise existing definition of forestry covers the camphor removal activity at the Smith Creek site. A threshold of less than twenty trees for small scale camphor removal not necessarily associated with the harvesting

operations was instigated given the desire of landowners to control camphor on their properties.

Despite in some instances it could be argued that camphor harvesting may require development consent depending on the nature of the “works” a process was put in place whether development consent was required or not during 2009/10 following agreement between Far North Coast weeds, the Mill, contractors and Council and the objective was to manage the removal in a responsible manner. A voluntary code of practice for noxious weed removal has been established and it was agreed that a management plan for each site would be produced and signed off by Far North Coast Weeds. It was also argued that there were limited resources to prepare development applications and the associated specialists reports such as threatened species assessments.

This process has worked in some instances and not in others. The recent activity at No. 536 Smiths Creek Road is an example where the Management Plan process has not been optimum.

Council received complaints regarding the operation particularly regarding noise, operation hours and regulation of the activity.

Council Officers enquired with the Environment Protection Authority (EPA) the following questions regarding regulation of the harvesting operations and the responses are provided below each question.

1. ***What is the status of 'Selective Harvesting of Camphor Laurel and other Non-Native Environmental Weeds - Voluntary Code of Practice (SEJV, 2010)'? Council is in receipt of a draft copy of the document, or a draft copy of a similar document (as enclosed).***

The use of camphor at the Condong Cogen plant is conditional on it having been harvested in accordance with the draft Code of Practice. The contracts in place to supply this material should be conditional on compliance with the code.

2. ***Who is the Appropriate Regulatory Authority (ARA) responsible for investigating environmental complaints relating to the harvesting and chipping of camphor laurel by contractors for use as fuel at the cogeneration plant?***

If there are issues of non compliance and the EPA is notified then we are in a position to require the licensee (the Sugar Milling Cooperative) to ensure its contractors comply with the code or refuse to accept the material.

3. ***What is the recommended procedure for the ARA to follow when environmental complaints are received, and which stakeholders should be notified?***
4. ***What is the recommended procedure for the ARA to follow if it is revealed that the Code has not been complied with, and which stakeholders should be notified?***

3 and 4. In the event of an environmental complaint this is likely to also be a failure to comply with the code. I would suggest that this be referred to the EPA and/or the milling cooperative. If there is an alleged environmental breach, that is

not a breach of the code, then I would welcome the opportunity to discuss this as it may represent a need to revise the code.

Issues that have had an undesirable outcome include, the management plan itself, hours of operation, noise, erosion and sedimentation control, riparian and waterway management and long term camphor laurel control and ongoing landowner land management costs. It is recognised that that the prolonged rainfall throughout January, February and March has impacted on the operation.

The property has been inspected by Council's Development Assessment, Natural Resource Management, Environmental Health staff and Officers from The Environment Protection Authority.

The contractor has been provided with advice regarding rehabilitation of the site and is working with the owner in this regard. The EPA has not provided Council with their assessment of the Smiths Creek Road site.

Enforcement action is not considered an appropriate response in this instance as it is unlikely that any planning laws have been breached and any punitive action under the POEO Act if an offence could be proved will reduce the opportunity for the elderly landowner to rehabilitate and manage the site.

Broader Camphor issues

Council has been advised at a meeting with FNCW on 6 February 2013 that they will no longer assess management plans due to a lack of resources to carry out this function.

The mill is a 'scheduled premises' under the *Protection of the Environment Operations Act 1997*, and is therefore licensed by the EPA. The EPA licence for the mill (no. 170) includes the following condition:

'The licensee must not accept camphor laurel biomaterial onto the premises which has not been harvested in accordance with the document "Selective Harvesting of Camphor Laurel and other Non-Native Environmental Weeds - Voluntary Code of Practice (SEJV, 2010)">'.

If Harvest Plans aren't being reviewed (as per advice from FNCW), the Voluntary Code of Practice can't be complied with, and the EPA licence can't be complied with.

At the time of finalising this report, a meeting had been scheduled to take place on 16 April 2013 between Council officers and representatives of the EPA, Far North Coast Weeds and NSW Sugar, to seek to formulate a new approach to the assessment and monitoring of camphor laurel harvesting. The outcomes of this meeting will be reported to a further Council Meeting.

Draft Tweed Local Environmental Plan 2012 and Draft Development Control Plan Tree and Vegetation Preservation Code.

The draft LEP defines *Forestry* as:

*Forestry has the same meaning as **forestry operations** in the *Forestry and National Park Estate Act 1998*.*

Forestry operations means:

- (a) *Logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or*
- (b) *Forest products operations, namely, the harvesting of products of trees, shrubs and other vegetation (other than timber) that are of economic value, or*
- (c) *On-going forest management operations, namely, activities relating to the management of land for timber production such as thinning, bush fire hazard reduction, bee-keeping, grazing and other silvicultural activities, or*
- (d) *Ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations.*

Forestry is permitted with consent in the Rural and Environmental Management zones.

The draft DCP exempts noxious weed control from requiring approval provided the removal is in accordance with the following:

- *Does not include large scale harvesting, processing or transport of noxious weeds such as Camphor Laurel exceeding 20 trees (> 3m high) on a single property over a 12 month period. Large scale harvesting is a form of “forestry” and is subject to development consent under the Tweed LEP 2012.*
- *Vegetation clearing for noxious weed control must be carried out to a minimum extent necessary to allow for the removal or destruction of noxious weeds.*
- *Does not include vegetation identified in sub clause 1.2(c) (ie. very large trees) or sub-clause 1.2(e) (listed significant trees)*

Very large trees (locally indigenous or otherwise) that have a trunk diameter of greater than or equal to 0.8m at 1.4m above the ground.

Camphor harvesting for the co-generation plant will require development consent when the draft plans are adopted. The development applications will be required to be funded including fees, plans, assessment reports for threatened species, noise, erosion and sedimentation control plans and operation and ongoing management plans. Approvals from other agencies may also be required such as for work within 40 metres of a waterway (Office of Water). The cost of applications may make the harvesting operations unviable.

OPTIONS:

1. Council works with the industry representatives and State Agencies regarding a future process for approvals and environmental management for camphor laurel removal, and no legal action be undertaken regarding the camphor laurel harvesting operation at Lot 4 DP 585624, No. 536 Smiths Creek Road, Stokers Siding; or
2. Seek legal advice regarding prosecution options regarding the camphor laurel operation at Lot 4 DP 585624, No. 536 Smiths Creek Road, Stokers Siding and report back to a future Council meeting.

Option 1 is recommended.

CONCLUSION:

Camphor laurel removal for the cogeneration plant operations needs to a new regime of assessment and all stakeholders need to play role with developing a new system that satisfies the various objectives for the Mill, landowners, noxious weed removal and environmental management.

COUNCIL IMPLICATIONS:**a. Policy:**

Corporate Policy Not Applicable.

b. Budget/Long Term Financial Plan:

Not applicable.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Meeting to be held with stakeholders.

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 4 Caring for the Environment
- 4.2 Conserve native flora and fauna and their habitats
- 4.2.3 Recognise the social and economic impacts of managing vegetation
- 4.2.3.1 Noxious weed management

UNDER SEPARATE COVER/FURTHER INFORMATION:

- Attachment 1 Photos from Council officers' site inspection of works undertaken at No. 536 Smiths Creek Road Stokers Siding (ECM 65732180)
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