

Draft LEP Amendment No. **16**

Planning Proposal
Water Extraction & Bottling Facilities

Version 4 (Gateway redetermination)
February 2016

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Introduction

In July 2015, Tweed Shire Council received an enquiry from Mount Warning Springwater seeking approval for expansion and relocation of their bottling facility onto a more suitable site within their land holding at Kyogle Road, Kunghur. Review of provisions of the Tweed Local Environmental Plan (LEP) 2014 indicated that whilst this land use was permissible under provisions of the previous LEP 2000, it is prohibited by default under the LEP 2014 as the set of definitions provided under the Standard Instrument template does not recognise water extraction and bottling facility as a standalone land use. This determination resulted in Mount Warning Springwater lodging a planning proposal seeking changes to the LEP to facilitate their development proposal.

Initially, Council staff expected that a site specific amendment might be the more expedient response however, it soon became apparent there were several landowners in a similar situation and that to progress an indeterminate number of individual proposals would be inefficient and unnecessarily costly. The scope of the planning proposal was broadened and sought to revert the new LEP to the previous status under the former LEP 2000 and enable this use with development consent in the RU1 and RU2, where it had once before existed without any apparent issue.

In accordance with the Gateway determination, issued on 23 September 2015, the planning proposal was exhibited for 28 days. In response to the public exhibition Council received two (2) public submissions and responses from NSW Department of Primary Industries – Water and from NSW Rural Fire Services.

Following the public exhibition, the planning proposal was on the agenda of Council Meeting of 10 December 2015. Whilst officers' recommendation was to forward the Planning Proposal to the NSW Planning & Environment to make the plan in accordance with Part 1 of the exhibited version of the document, Council amended this intended outcome by resolving that:

- 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 Planning Proposal PP15/0004 (version 3) be amended to exclude it from State and Regionally Significant and biophysically strategic agricultural land areas.**

Further review of the State and Regionally Significant farmland and biophysically strategic agricultural areas mapping, and the impacts of this resolution on this planning proposal resulted in further report prepared by Council staff and considered at the Council meeting of 18 February 2016. In that report, Council officers concluded that:

'the application of the BSAL mapping will result in a significant area of Tweed's rural lands, including the Mount Warning Springwater site, being unnecessarily alienated from a merit assessment as to their suitability for a commercial 'rural-industry' water bottling use, which might otherwise show, in this and other cases, that the land is in fact suitable. The officers are concerned by such an approach as it is seen to subvert good planning practice, which is to increase access to a broad range of permissible rural industries, especially as the economic strength of rural areas is seen as one of the major contributors for addressing social disadvantage within rural communities and is a dominant factor in the argument against increased land fragmentation, and urbanisation. Rural industries of this type, particularly smaller operations, often provide a secondary income from land that is used for other rural pursuits, such as farming. They are also generally recognised for their employment generation and their contribution for branding and marketing of the region.'

The report of 18 February 2016 recommended the following course of action:

- 1. Planning Proposal PP15/0004 be amended to apply to land zoned RU2 Rural Landscape and to exclude its operation from the RU1 Primary Production zone, and**
- 2. Remove all references to Biophysical Strategic Agricultural Land and State and Regionally Significant Farmland as a prohibition to water extraction and bottling, and in its place amend the Planning Proposal to include a new LEP provision incorporating the following heads of consideration for any development application for this land-use:**
 - a. Development consent must not be granted to development for the purposes of water extraction and bottling unless the consent authority is satisfied that the development of the land:**
 - i. Will not have a significant or irreversible adverse impact on natural water systems, and**
 - ii. Productive farmland capability will not be significantly eroded or sterilised from use in the future, whether in isolation or by aggregation of lands.**
- 3. Planning Proposal PP15/0004 be referred to the NSW Department of Planning & Environment for alteration to the Gateway determination and if required the re-exhibition of the Planning Proposal in accordance with the conditions of any new determination.**

The recommended resolution was supported on 18 February 2016 and the planning proposal has been revised and prepared for submission to the NSW Planning & Environment seeking Gateway redetermination and guidelines for further community consultation.

Background

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 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 is prohibited. This is considered to be an unintended consequence resulting from the change in definition of “rural industry” under the standard instrument.

In addition to the provisions contained in the Tweed LEP 2014, the extraction of groundwater in Tweed Shire is also controlled by the following legislation:

Water Act 1912 (NSW)

The Water Act controls the extraction of water, the use of water, the construction of works such as dams and weirs and the carrying out of activities in or near water sources in New South Wales where no water sharing plan is in place. This Act will be fully repealed when the Water Management Act is operational in its entirety.

Water Management Act 2000 (NSW)

The Water Management Act governs the issuance of new water licences, trading of licences and allocation of water resources in NSW where the water sources are ‘regulated’; that is, where a water sharing plan is in place.

Environmental Planning and Assessment Act 1979 (NSW)

Under this Act, proposed developments require the submission and approval of a Development Application (DA) by the relevant approval authority before commencement. Consideration of the impacts of a proposal on groundwater is required as part of the assessment of a DA. As part of the integrated development approval scheme, the consideration of contamination, protection of groundwater systems and other environmental health requirements can be incorporated into the conditions of consent.

Contaminated Land Management Act 1997 (NSW)

This Act regulates the management of currently contaminated sites, including groundwater that has been impacted by point source pollution.

Protection of the Environment Operations Act 1997 (NSW)

This Act regulates the pollution of all water, including groundwater, in New South Wales. It empowers regulatory authorities to issue pollution licences which authorise pollution to certain capped levels and pollution notices which notify breaches of licences.

Local Government Act 1993 (NSW)

Councils have responsibilities under this Act to manage groundwater resources by the regulation of waste management and disposal practices, protection of environmentally sensitive areas, application of standards to the construction, operation and maintenance of various facilities and prevention of contamination and environmental degradation.

Threatened Species Conservation Act 1995 (NSW), National Parks and Wildlife Act 1974 (NSW) and Fisheries Management Act 1995 (NSW)

These Acts require that native species, particularly threatened species, communities and populations are protected unless otherwise authorised. Groundwater dependent ecosystems may be listed under these Acts.

Environment Protection and Biodiversity Conservation Act 1999

This Act applies 'controlled actions'. Controlled actions are actions that are proposed to take place in Commonwealth owned regions, activities that are to be carried out by the Commonwealth and activities that are likely to have a significant impact on a 'matter of national environmental significance'. Matters of national environmental significance include Ramsar wetlands as well as migratory and threatened species and communities, all of which could potentially be dependent on groundwater. Where a proposed activity relates to a controlled action, the activity must be referred to the Commonwealth Government for assessment by the Environment Minister. In this way, the Commonwealth Government can oversee certain developments that will impact of groundwater.

This planning proposal evaluates the strategic justification for an amendment to the Tweed LEP 2014 to enable water extraction and bottling facilities within the RU1 and RU2 zones, with Council's consent.

Part 1 Objectives and intended outcomes

The objectives and of the planning proposal is to evaluate an amendment to the Tweed LEP 2014 enabling, with Council's consent, water extraction and bottling facilities on land zoned RU2 Rural Landscape through inclusion of an additional item within Schedule 1 Additional Permitted Uses.

Part 2 Explanation of 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 type of *light industry* land use. Considering that this land use is currently prohibited in rural zones, amendment to Schedule 1 Additional Permitted Uses appears to be the preferred way of enabling this use on land zoned RU2 Rural Landscape, with development consent. For the purposes of the future community consultation process, the proposed enabling clause has been drafted in a following way:

Use of land zoned RU2 Rural Landscape for water extraction & bottling facilities

- (1) This clause applies to any land zoned 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.
 - (4) Despite subclause(2), development consent must not be granted to development for the purposes of water extraction and bottling unless the consent authority is satisfied that the development of the land:
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- i. Will not have a significant or irreversible adverse impact on natural water systems, and
 - ii. Productive farmland capability will not be significantly eroded or sterilised from use in the future, whether in isolation or by aggregation of lands.
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Explanatory notes:

- The earlier version of this planning proposal, exhibited in November 2015, intended to apply the use to both RU1 Primary Production and RU2 Rural Landscape zones. This approach was not supported by Tweed Council at their meeting of 10 December 2015 due to the uncertainty of the impacts this land use may have on agriculture production. In response, a revised version of the planning proposal has been prepared, excluding the RU1 Primary Production zone which applies to land identified as State and Regionally Significant farmland.
- The definition of water extraction and bottling facility, and classification of this land use as a form of light industry (subclause (3) above), has been recommended by NSW Department of Planning & Environment.
- Additional heads of consideration provided in subclause (4) have been recommended by Council officers to ensure that potential impacts of groundwater extraction on natural water systems and farmland capability will be adequately evaluated during development assessment stage.

Part 3 Justification

Section A -Need for the planning proposal

1 Is the planning proposal a result of any strategic study or report?

No. The planning proposal is the result of a request by Mount Warning Springwater, as previously discussed.

2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal is considered to be the best way of ensuring that there is no question over the interpretation of whether water extraction and botting facilities are a land use that is permitted with consent in the RU2 Rural Landscape zone.

Section B - Relationship to strategic planning framework

1 Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Tweed local government area is subject to the provisions of the *NSW Far North Coast Regional Strategy (FNCRS) 2006-2031*. The FNCRS contains 'A vision for the future' which

is for ‘*A healthy, prosperous and sustainable future for the diverse communities of the Far North Coast Region*’. Development for water extraction and bottling facilities in the form proposed under Part 2 of this planning proposal is consistent with his vision statement as the outcome will facilitate a land use that is beneficial for rural communities, where it can be demonstrated through the development application process, that the use is sustainable.

The planning proposal is also consistent with the relevant outcomes and actions contained within the FNCRS, particularly, the actions related to Environment and Natural Resources, Cultural Heritage, Natural Hazards, and Water & Energy Resources:

Environment and natural resources: on the ‘Natural Resources Map’ the majority of land in Tweed Shire is mapped as “Environmental Assets and Rural Land, and National Parks”, with biodiversity areas ranging from local to regional and state significance. The proposal is consistent with the relevant actions as:

- There will be no change to the degree of protection given to the rural and environmental protection areas by way of the existing local environmental plan.
- The proposal does not affect areas identified as environmental protection areas.
- The proposal does not involve the urban development of rural land.
- The proposal does not alter subdivision or rural housing provisions.
- Impacts on groundwater will be assessed with each individual development application through licencing requirements of NSW Department of Primary Industries – Water and through the DA process.

Cultural heritage: This part of the FNCRS includes an action aiming to ensure that Aboriginal cultural and community values are considered in the future planning and management of the local government area. As the planning proposal applies to all land zoned RU2 Rural Landscape, detailed assessment of the impact of specific water extraction proposals can be appropriately addressed at the development application stage.

Natural hazards: The planning proposal does not compromise existing natural hazard policies and actions contained in this Strategy.

Water and energy resources: the desired outcome of the FNCRS in this regard primarily relates to the maintenance and improvement of existing ground and surface water quality levels, especially within town water supply catchments. The planning proposal does not conflict with any action from this section of the FNCRS.

The allocation of groundwater resources would be considered on a case-by-case basis as part of the development application process, with extraction rates controlled by the licensing requirements of NSW Department of Primary Industries -Water.

2 Is the planning proposal consistent with the local Council’s Community Strategic Plan, or other local strategic plan?

Council has adopted the Tweed Community Strategic Plan (TSCP) 2013/2023. The plan is based on four key themes being Civic Leadership, Supporting Community Life,

Strengthening the Economy, and Caring for the Environment. The planning proposal is generally consistent with the relevant Objectives identified in Table 1:

Table 1. Consistency with objectives of the Tweed Community Strategic Plan 2013-2023.

Objective	Comments
Objective 1.1 - Ensure actions taken and decisions reached are based on the principles of sustainability.	The impact of individual proposals for water extraction would be assessed at the development application stage to ensure that the impact on the groundwater is acceptable and meets the requirements of New South Wales Department of Primary Industries - Water.
Objective 3.1 - Expand employment, tourism and education opportunities	The proposal has the potential to increase employment opportunities through the use of natural resources.
Objective 3.2 - Retain prime agricultural land, farm viability, manage rural subdivision and associated landscaping impacts.	The proposal to use rural land for water extraction and bottling represents an alternative agricultural/ natural resource land use which, subject to assessment of impacts on water supply, should have minimal impact on prime agricultural land or farm viability. This would be assessed for individual properties at development application stage. The proposal does not alter existing rural subdivision controls.
Objective 4.1 - Protect the environment and natural beauty of the Tweed	The impact of individual proposals, future on the environment and scenic quality of the locality would be assessed with each individual development application.
Objective 4.3 - Maintain and enhance Tweeds waterways and its catchments.	The impact of individual proposals on waterways and catchments would be assessed with individual development applications.

Council has also adopted the Tweed Shire Economic Development Strategy. This Strategy provides the following vision statement:

Council will plan for the future growth and prosperity of the Shire, with consideration to climate change, workforce participation, digital technology and continued diversification of the business base.

A Key Project identified in the Strategy includes creating a 'Diverse Business Base' (Action 10.3.2). The planning proposal contributes towards this diversification strategy.

In summary, the planning proposal is generally consistent with Council's strategies.

3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)?

The following SEPPs apply to the planning proposal:

SEPP 14 Coastal Wetlands and **SEPP 26 Littoral Rainforests** – Some areas within the Shire zoned RU2 Rural Landscape are within buffers to land mapped under these SEPP's. Individual development applications for water extraction and bottling facilities will need to address the provisions of this policy. Overall, this planning proposal is consistent with the relevant provisions of these SEPPs.

SEPP No. 44 - Koala Habitat Protection

This SEPP aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. It requires the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat. Individual development applications for water extraction and bottling facilities will need to address provisions of this policy.

SEPP No. 55 – Remediation of Land

SEPP 55 (Remediation of Land) recognises that land which is known to be contaminated by past land uses can still be zoned for development as long as:

- “(a) the planning authority has considered whether the land is contaminated, and
- (b) if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and
- (c) if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.”

No land is proposed to be rezoned. No sensitive land uses over and above agricultural uses which are already permitted in the zone, would occur. Notwithstanding, this issue would need to be addressed for individual properties as part of future development applications.

SEPP No. 71 - Coastal Protection

Some areas zoned RU2 Rural Landscape are within the coastal zone identified in this SEPP. Individual development applications for water extraction and bottling facilities will need to address provisions of this policy.

SEPP (Mining, Petroleum Production and Extractive Industries) 2007

Nothing in this planning proposal will alter the permissibility of mining or extractive industries on the subject land. The planning proposal is consistent with the SEPP.

SEPP (Rural Lands) 2008

This SEPP identifies rural planning principles that must be taken into account when preparing a planning proposal. These principles are discussed in the following section. The proposal is considered to be consistent with this SEPP.

4 Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)?

The consistency of the Planning Proposal with the s117 Directions is assessed in Table 2, below.

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
1. Employment & Resources			
1.1 Business and Industrial Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).	This planning proposal will not affect business or industrial zones.	N/A
1.2 Rural Zones	Applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone (including the alteration of any existing rural zone boundary).	This planning proposal will not alter the zone of any rural land or impact on rural housing provisions. The planning proposal is consistent with this Direction.	Consistent
1.3 Mining, Petroleum Production and Extractive Industries	Applies when a relevant planning authority prepares a planning proposal that would have the effect of: (a) prohibiting the mining of coal or other minerals, production of petroleum, or winning or obtaining of extractive materials, or (b) restricting the potential development of resources of coal, other minerals, petroleum or extractive materials which are of State or regional significance by permitting a land use that is likely to be incompatible with such development.	Nothing in this planning proposal will prohibit or restrict exploration or mining. It will however facilitate the extraction of water from rural land for bottling or bulk supply.	Consistent
1.4 Oyster Aquaculture	Applies when a relevant planning authority prepares any planning proposal that proposes a change in land use which could result in impacts on a Priority	This planning proposal does not impact on a Priority Oyster Aquaculture area.	N/A

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
	Oyster Aquaculture Area.		
1.5 Rural Lands	Applies when: (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary), or (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone. The planning proposal is to be consistent with the relevant sections of SEPP (Rural Lands) 2008.	This planning proposal will affect land zoned RU2 Rural Landscape. It is consistent with the Rural Planning Principles listed in <i>State Environmental Planning Policy (Rural Lands) 2008</i> as follows: (a) <i>the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas</i> – the proposed amendment is not intended to undermine or create conflict with agriculture or other rural land uses, but rather facilitate other economic activity in rural areas. (b) <i>recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State</i> – water extraction and bottling facilities have traditionally been undertaken in rural areas as rural industries. The proposal does not alter the nature and issues associated with agriculture but rather clarifies that this is an acceptable land use on land in the RU2 Rural Landscape. (c) <i>social and economic benefits of rural land use and development</i> – review of some examples of already operating water extraction/bottling facilities indicate that this land use can have beneficial social and economic impacts for the rural communities. (d) <i>in planning for rural lands, to balance the social, economic and environmental interests of the community</i> – the nature of rural land use is	Consistent

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
		changing and the socio-economic interests of the Tweed Shire community will be best served by permitting both a variety of rural-related land uses. (e) <i>the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land</i> – These matters will be considered at the DA stage of each application. (f) <i>the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities</i> - the planning proposal does not involve rural housing however does have the potential to contribute to the welfare of rural communities by providing employment opportunities associated with the development of rural land. (g) <i>the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing</i> – the proposal does not provide for rural housing. (h) <i>ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General</i> – the Far North Coast Regional Strategy applies to Tweed Shire. This planning proposal is consistent with the Strategy, as previously discussed.	
2. Environment and Heritage			
2.1 Environment	A planning proposal must consider protection and	The planning proposal does not alter or remove any	Consistent

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
Protection Zones	conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land (including by modifying development standards that apply to the land). This requirement does not apply to a change to a development standard for minimum lot size for a dwelling in accordance with clause (5) of Direction 1.5 “Rural Lands”.	environment protection zone.	
2.2 Coastal Protection	The objective of this direction is to implement the principles in the NSW Coastal Policy and applies to the coastal zone, as defined in the Coastal Protection Act 1979.	Some of the land subject to this planning proposal is located within the coastal zone, therefore this direction is applicable. The planning proposal is considered as consistent with the NSW Coastal Policy as each DA facilitated by this planning proposal on land within the coastal zone will be assessed on a case by case basis ensuring that environmental impacts will be acceptable.	Consistent
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance and applies to all relevant planning authorities.	Tweed LEP 2014 currently contains provisions that are consistent with this Direction. This planning proposal will not alter those provisions and they will be considered for each future application for water extraction and bottling facilities.	Consistent
2.4 Recreation Vehicle Areas	The objective of this direction is to protect sensitive land or land with significant conservation values from adverse impacts from recreation vehicles. This direction applies to all relevant planning authorities.	The proposal does not enable land to be developed for the purpose of a recreation vehicle area.	N/A
3.Housing, Infrastructure and Urban Development			

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
3.1 Residential Zones	This direction applies when a relevant planning authority prepares a planning proposal that will affect land within: (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary), (b) any other zone in which significant residential development is permitted or proposed to be permitted. The objective is to encourage a variety and choice of housing types, to make efficient use of existing infrastructure and services and to minimize the impact of residential development on the environment and resource lands.	The planning proposal does not affect residential zoned land or a zone that permits significant residential uses.	N/A
3.2 Caravan Parks and Manufactured Home Estates	The objective of this direction is to provide for a variety of housing types, and to provide opportunities for caravan parks and manufactured home estates. This direction applies to all relevant planning authorities.	This proposal does not seek development for the purposes of a caravan park or manufactured homes estate. Caravan parks are permissible in the RU2 zone and the proposal does not alter this.	N/A
3.3 Home Occupations	Planning proposals must permit home occupations to be carried out in dwelling-houses without the need for development consent.	This proposal does not alter home occupation provisions in Tweed LEP 2014.	N/A
3.4 Integrating Land Use and Transport	Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to urban land, including land zoned for residential, business, industrial, village or tourist purposes.	The planning proposal does not affect urban land.	N/A
3.5 Development Near Licensed Aerodrome	Applies when a relevant planning authority prepares a planning proposal that will create, alter or remove a zone or a provision relating to land in the vicinity of	The planning proposal does not create, alter or remove a zone or provision relating to a licensed aerodrome. There are however rural areas in the vicinity of the Murwillumbah Airfield. The planning	Consistent

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
	a licensed aerodrome.	proposal will not result in development inconsistent with AS 2021:2015. Further, it does not set controls for the development of land in the vicinity of a licensed aerodrome. Therefore, the requirement to carry out consultation referred to under Section (4) of this Direction does not apply.	
4.Hazard and Risk			
4.1 Acid Sulfate Soils	Applies when a relevant planning authority prepares a planning proposal that will apply to land having a probability of containing acid sulfate soils as shown on the Acid Sulfate Soils Planning Maps.	There are significant areas of land zoned RU2 Rural Landscape that are potentially affected by acid sulfate soils. Council will consider acid sulfate soils if it receives an application in these locations in accordance with Tweed LEP 2015 Clause 7.1 Acid Sulfate Soils.	Consistent
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life,property and the environment on land identified as unstable or potentially subject to mine subsidence. This direction applies to land that: is within a Mine Subsidence District proclaimed pursuant to section 15 of the Mine Subsidence Compensation Act 1961, or has been identified as unstable land.	This proposal does not impact on any mine subsidence area.	N/A
4.3 Flood Prone Land	Applies when a relevant planning authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the <i>Floodplain Development Manual 2005</i> (including the <i>Guideline on Development Controls on Low Flood Risk Areas</i>).	The planning proposal will not rezone any land. Tweed LEP 2014 contains a flood planning clause that will apply to any water extraction and bottling facilities if proposed on land that is flood prone.	Consistent

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
	A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environment Protection Zones to a Residential, Business, Industrial, Special Use or Special Purpose Zone.		
4.4 Planning for Bushfire Protection	Applies when a relevant planning authority prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. In the preparation of a planning proposal the relevant planning authority must consult with the Commissioner of the NSW Rural Fire Service following receipt of a gateway determination under section 56 of the Act, and prior to undertaking community consultation in satisfaction of section 57 of the Act, and take into account any comments so made.	Large parts of the land zoned RU2 in Tweed Shire are identified as bushfire prone land. This will be a consideration in the assessment of any development application for a water extraction and bottling facility. NSW RFS was consulted during the first public exhibition of this proposal, no objections were raised.	Consistent
5. Regional Planning			
5.1 Implementation of Regional Strategies	Planning proposals must be consistent with a regional strategy released by the Minister for Planning.	The planning proposal is consistent with the outcomes and actions contained within the Far North Coast Regional Strategy (FNCRS) as discussed in Part 3 Section B.	Consistent
5.2 Sydney Drinking Water Catchments	Applies when a relevant planning authority prepares a planning proposal that applies to the hydrological catchment.	The proposal is not within this catchment.	N/A
5.3 Farmland of State and Regional Significance on the NSW	Applies (to Tweed) when a relevant planning authority prepares a planning proposal for land mapped as:	Whilst initially this Planning Proposal was intended to apply to all rural land, including areas subject to this direction, Council, at their meeting of 10 December	N/A

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
Far North Coast	(a) State significant farmland, or (b) regionally significant farmland, or (c) significant non-contiguous farmland. The objective is to ensure that the best agricultural land will be available for current and future generations, to provide more certainty on the status of the best agricultural land, and to reduce landuse conflicts.	2015 amended its scope by excluding it from State and Regionally Significant and biophysically strategic agricultural land areas.	
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Applies when a relevant planning authority prepares a planning proposal for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway.	This planning proposal does not affect commercial or retail uses in proximity to the Pacific Highway.	N/A
5.8 Second Sydney Airport: Badgerys Creek	The objective of this direction is to avoid incompatible development in the vicinity of any future second Sydney Airport at BadgerysCreek.	Not applicable	N/A
5.9 North West Rail Link Corridor Strategy	The objective of this direction is to promote transit-oriented development and manage growth around train stations and to ensure development is consistent with the Corridor Strategy and precinct Structure Plans.	Not applicable	N/A
6. Local Plan Making			
6.1 Approval and Referral Requirements	This direction aims to ensure that LEP provisions encourage the efficient and appropriate assessment of development	The planning proposal will not include provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority.	Consistent
6.2 Reserving Land for Public Purposes	A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Director-General of the Department of Planning and Environment (or an officer of the Department nominated by the Director-General).	The planning proposal does not create, alter or reduce land reserved for a public purpose	N/A

Table No.2 – Consistency with s117(2) Directions			
S.117 direction	Application	Relevance to this planning proposal	Consistency with direction
6.3 Site Specific Provisions	Applies when a relevant planning authority prepares a planning proposal that will allow a particular development to be carried out. The objective is to discourage unnecessarily restrictive site specific planning controls. This direction applies to all relevant planning authorities.	This planning proposal aims to allow the water extraction and bottling facilities land use in the entire zone, rather than on a site-specific basic, therefore is considered consistent with the objective of this direction.	Consistent
7 Metropolitan Planning			
7.1 The Metropolitan Strategy	This direction applies to Sydney metropolitan Councils only	Not Applicable	N/A

Section C - Environmental, Social and economic impact

1 Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats will be adversely affected as a result of the proposal?

It is unlikely that there would be adverse impacts on critical habitat or threatened species, populations or ecological communities, or their habitats as part of this planning proposal. The impacts of specific water extraction proposals will be assessed as part of the development application process.

2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Water extraction and bottling facilities would only be located where there is an adequate water supply and in accordance with licensing requirements from New South Wales Department of Primary Industries – Water.

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 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.

Procedures are therefore in place as part of the existing approval framework to ensure that impacts on groundwater resources are appropriately identified and managed.

In addition, Council seeks the inclusion of a new clause that regulates protection of the Shire's drinking water catchments, and is inclusive of the hydrological functions of riparian land, waterways, and aquifers. A draft clause to that effect was exhibited with the earlier draft TLEP 2012, and formed part of a suite of controls and environmental zones targeting higher levels of environmental management and regulation. These were deferred pending the conclusion of a wider State Government environmental zones review, and will be reintroduced, most likely in an amended form, when it is finalised. This may lead to further or additional mandatory considerations for water extraction development as part of the development approvals process.

3 How has the planning proposal adequately addressed any social and economic effects?

The proposal focused on explaining impacts of water extraction on groundwater resources for the local community. In addition, the first public exhibition highlighted concerns that development associated with water extraction and bottling may negatively impact on the visual amenity of rural land in the Tweed. Response to these concerns was included in the Council report of December 2015. In summary, it is considered that water extraction and processing facilities are a suitable rural land use which in general terms are consistent with the rural amenity. Again, site specific assessment would occur through the development application process, as mandated by the existing and potential, future planning framework for assessing impacts of proposed development on scenic landscape.

This land use also results in positive economic impacts through additional rural employment and an alternative land use for property owners.

Section D - State and Commonwealth interests

1 Is there adequate public infrastructure for the planning proposal?

Making an alteration to the Tweed LEP 2014 to facilitate the approval of water extraction and bottling facilities on rural land is unlikely to raise any significant public infrastructure issues. Each proposal would be assessed on its merits at the development application stage to ensure that the development can be adequately serviced. Individual

developments that will generate traffic would be required to pay a contribution in accordance with Section 94 Plan No. 4 – Tweed Road Development Contribution Plan.

2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The Gateway Determination, issued on 23 September 2015, included a requirement to consult this Planning Proposal with the NSW Rural Fire Service and NSW Department of Primary Industries – Office of Water and this was undertaken during the previous public exhibition period.

The response from NSW Rural Fire Service advised that they have no objections to the planning proposal.

NSW Department of Primary Industries, in their response dated 26 October 2015, advised that after reviewing the planning proposal, they are satisfied that no submission is required.

The initial version of the planning proposal has been updated since the first public exhibition, with the key change – as outlined above – being exclusion of zone RU1 Primary Production. This revised planning proposal will be submitted to NSW Planning & Environment seeking alteration to Gateway Determination and further community consultation. If required the agencies will be consulted with again.

Part 4 Mapping

This version of the planning proposal does not include mapping.

Part 5 Community consultation

The Gateway determination issued on 23 September 2015 specified that the Planning Proposal must be made publicly available for a minimum of 28 days. The Planning Proposal was placed on public exhibition from Wednesday 7 October 2015 to Wednesday 4 November 2015.

Two (2) public submissions were received. Key issues were related with concerns about the potential impact on groundwater supplies, ecological impacts, application of the precautionary principle and the lack of baseline data. The submissions were evaluated and responded to in the report to Council dated 3 December 2015.

Part 6 Timeframe

The previously submitted timeframe for the Gateway Determination has been updated to include timeframes for revisions carried out to the initial version of the planning proposal and re-exhibition.

Task	Timeframe	Completed
Referral of the Planning Proposal for Gateway determination	September 2015	September 2015
Gateway Determination	October 2015	September 2015
Undertake requirements of the Gateway Determination and prepare V2 Planning Proposal	October 2015 / November 2015	October 2015
Public exhibition	December 2015	November 2015
Agency consultation	December 2015	November 2015
Review submissions, respond and prepare V3 Planning Proposal for Council's consideration	January 2016	November 2015
Council report recommending referral of the planning proposal to the DPE to make the LEP amendment	January 2016	December 2015
Revisions to the planning proposal	December – February 2016	February 2016
Referral of the planning proposal to the DPE for Gateway alteration	February 2016	February 2016
Second public exhibition and agency consultation if required	March 2016	March 2016
Review submissions, respond and prepare V5 (this one is 4) Planning Proposal for Council's consideration	April 2016	April 2016
Council report recommending referral of the planning proposal to the DPE to make the LEP amendment	May 2016	May 2016
Referral of the Plan to the DPE for making	May 2016	May 2016
Plan to be made within 9 months of Gateway	Yes	

Summary and conclusions

It is intended that the Tweed LEP 2014 be amended to provide that “water extraction and bottling facilities” is a land use that is permissible with consent as a ‘light industry’ on land zoned RU2 Rural Landscape. The preferred method to achieve this is by including an additional entry into the Schedule 1 Additional Permitted Use.

Evaluation of this desired outcome, carried out in this Planning Proposal indicates that the proposed amendment is broadly consistent with the Far North Coast Regional Strategy, applicable State Environmental Planning Policies and Ministerial Directions provided under Section 117 of the Environmental Planning & Assessment Act 1979.



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