

Amend Tweed LEP 2014 to permit water extraction and bottling in certain rural zones

Proposal Title : **Amend Tweed LEP 2014 to permit water extraction and bottling in certain rural zones**

Proposal Summary : **The planning proposal seeks to amend the Tweed LEP 2014 Schedule 1 - Additional Permitted Uses by:**

- defining the term 'water extraction and bottling facilities'; and
- allowing water extraction and bottling facilities to be permitted with development consent in the RU1 Primary Production and RU2 Rural Landscape zones.

PP Number : **PP_2015_TWEED_005_00** Dop File No : **15/13546**

Proposal Details

Date Planning Proposal Received :	09-Sep-2015	LGA covered :	Tweed
Region :	Northern	RPA :	Tweed Shire Council
State Electorate :	TWEED	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street : _____

Suburb : _____ City : _____ Postcode : _____

Land Parcel : **Tweed Local Government Area - RU1 Primary Production and Zone and RU2 Rural Landscape Zone**

DoP Planning Officer Contact Details

Contact Name : **Jenny Johnson**

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RPA Contact Details

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DoP Project Manager Contact Details

Contact Name : **Jim Clark**

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Land Release Data

Growth Centre :	N/A	Release Area Name :	N/A
Regional / Sub Regional Strategy :	Far North Coast Regional Strategy	Consistent with Strategy :	Yes
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	N/A
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with : **Yes**

If No, comment : **The Department of Planning and Environment Code of Practice in relation to communication and meetings with Lobbyists has been complied with to the best of the Region's knowledge.**

Have there been meetings or communications with registered lobbyists? : **No**

If Yes, comment : **Northern Region has not met any lobbyists in relation to this proposal, nor has Northern Region been advised of any meeting between other departmental officers and lobbyists concerning this proposal.**

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **Water Extraction and Bottling facilities are not a defined use in the Standard Instrument (SI) LEP.**

An amendment to Schedule 1 - Additional Permitted Uses is proposed which will allow water extraction and bottling (as a form of "light industry") to be permitted with consent in RU1 and RU2 zones. 'Light industry' was deemed the most suitable definition for the proposed works under the SI LEP.

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The statement of objectives (in dot point 2) adequately describes the intention of the planning proposal. The planning proposal seeks to amend the Tweed LEP 2014 by permitting water extraction and bottling facilities in rural zones.**

However :

- the title of the proposal is misleading in that it refers only to a proposal at Kunghur; and
- dot point 1 of the objectives refers to the largely superseded Tweed LEP 2000 and is not an appropriate objective for this planning proposal.

These statements should be amended by Gateway condition.

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? No

Comment :

The Explanation of Provisions will need to be amended to address advice provided from the Department's Legal Services Branch. The proposal by Council to permit water extraction and bottling as a function of "extractive industry" is unable to be implemented in Part 7 - Local Provisions. Legal advice is that water extraction / bottling is not an "extractive industry" as it does not involve "extractive material" as defined in the LEP Dictionary.

Legal Services Branch advised that water extraction and bottling could be considered a form of "light industry". However as "light industry" is prohibited in the RU1 and RU2 zones an amendment to Schedule 1 - Additional Permitted Uses is proposed. This will allow light industry constituting water extraction and bottling to be permitted with consent in those zones.

This solution has been discussed with Council officers and is acceptable to them.

The planning proposal currently contains proposed drafting amendments. This material will need to be removed prior to community consultation. Parliamentary Council will be responsible for drafting the amendment with appropriate provisions, if the planning proposal is considered suitable to be made by the Minister (or his delegate).

The "Background" section of the Planning proposal also needs to be augmented to refer to the above solution.

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? Yes

b) S.117 directions identified by RPA :

* May need the Director General's agreement

1.2 Rural Zones

1.3 Mining, Petroleum Production and Extractive Industries

1.5 Rural Lands

2.1 Environment Protection Zones

2.2 Coastal Protection

2.3 Heritage Conservation

3.5 Development Near Licensed Aerodromes

4.1 Acid Sulfate Soils

4.3 Flood Prone Land

4.4 Planning for Bushfire Protection

5.1 Implementation of Regional Strategies

6.1 Approval and Referral Requirements

6.3 Site Specific Provisions

Is the Director General's agreement required? Yes

c) Consistent with Standard Instrument (LEPs) Order 2006 : Yes

d) Which SEPPs have the RPA identified?

SEPP No 14—Coastal Wetlands

SEPP No 26—Littoral Rainforests

SEPP No 44—Koala Habitat Protection

SEPP No 55—Remediation of Land

SEPP No 71—Coastal Protection

SEPP (Mining, Petroleum Production and Extractive Industries)
2007

SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

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Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **An assessment of the applicable SEPPs and s117 Directions is provided within the Assessment section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **The planning amendment does not require modification of any map under Tweed LEP 2014.**

Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : **Council has indicated a 28 day community consultation period. This level of consultation is appropriate in this instance.**

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment : **The planning proposal satisfies the adequacy criteria by:**

- 1) Providing appropriate objectives and intended outcomes;
- 2) Providing an adequate justification for the proposal;
- 3) Outlining a proposed community consultation period;
- 4) Providing a project timeline for the proposal. The proposal is for a minor amendment to the LEP and the matter is urgent as a number of applications are pending. A time frame of six (6) months is considered appropriate.

Note: Although the 'Explanation of Provisions' is not suitable to satisfy the adequacy criteria, it will be conditioned by the Gateway and be amended prior to community consultation as discussed above.

Tweed Council has not accepted delegation for making LEPs. Council is not seeking an Authorisation to exercise delegation for this proposal. An Evaluation Criteria For the Delegation of Plan Making Functions has not been provided.

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

The Tweed Local Environmental Plan (LEP) 2014 was made on 4 April 2014 and is now in force. The proposal will amend Tweed LEP 2014.

Assessment Criteria

Need for planning proposal :

Although the planning proposal is not a result of any strategic study, the proposed amendment will allow for a land use which has not previously been identified in the LEP, to be undertaken in rural areas. Council has on hand a number of applications for water extraction and bottling.

Amending the LEP to allow for development consent satisfies a Department of Primary

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Industries - Water requirement for obtaining development consent to issue a license to extract water from a private bore for commercial purposes.

Permissibility of water extraction in the rural zones would support rural/agricultural based activities being balanced with alternative practices. Where opportunities for water extraction are available, this may then supplement and support agricultural farming income during significant seasonal fluctuations.

A planning proposal is the appropriate method of enabling this initiative through the local planning process.

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Consistency with strategic planning framework :

Far North Coast Regional Strategy (FNCRS)

The FNCRS was released in 2007 and identifies the Governments key strategic directions for the Far North Coast. The proposal is considered to be consistent with the strategy.

SEPP's

Council has indicated the following SEPP's to be applicable to the planning proposal but are generally consistent:

- SEPP 14 Coastal Wetland
- SEPP 26 Littoral Rainforest
- SEPP 55 Remediation of Land
- SEPP 71 Coastal Protection
- SEPP (Mining, Petroleum Production and Extractive Industries) - It should be noted that this SEPP may no longer apply as following legal advice, as Extractive Industry is no longer a consideration for this planning proposal.

The planning proposal identifies SEPP (Rural Lands) 2008 as being relevant as it contains provisions that affect rural zoned land. The proposal is not inconsistent with the Rural Subdivision Principles or the Rural Planning Principles of the SEPP as the provisions recognise the important of rural lands and the changing nature of agriculture. They also provide opportunities for rural land to be used for the proposed land uses which with existing facilities have proven to contribute to the social and economic welfare of rural communities.

S117 Directions

The following s117 Directions are applicable to this planning proposal, 1.5 Rural Lands, 2.2 Coastal Protection, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies and 5.3 Farmland of State and Regional Significance on the NSW Far North Coast. Of the above s117 Directions the proposal is inconsistent with the following:

4.1 Acid Sulfate Soils

The proposal may enable development on land (all RU1 & RU2 zones) which may contain acid sulfate soils. The proposal is inconsistent with this direction as it potentially permits an intensification of development on land that contains acid sulfate soils without a study assessing the appropriateness of the land. Any development would be subject to Council's acid sulfate provisions under the LEP and any potential impact would be addressed at development application stage. The proposal's inconsistency with this direction can be justified as of minor significance.

4.3 Flood Prone Land

The proposal is inconsistent with this direction as it may enable an intensification of development on flood prone land. Any development however would be subject to Council's flood provisions under the LEP and any potential impact would be addressed at development application stage. The proposal's inconsistency with this direction can be justified as of minor significance.

4.4 Planning for Bushfire Protection

The direction requires Council to consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination has been issued. Until this consultation occurs the consistency of the proposal with this Direction remains unresolved. Council has indicated that it will consult with the NSW Rural Fire Service following Gateway determination.

The planning proposal is otherwise consistent with the s117 Directions.

Environmental social economic impacts :

As water extraction and bottling facilities will require consent any impacts will be assessed at DA stage. Where development is permissible in rural areas, impacts on threatened species and environmental impacts generally can be managed at DA stage.

Department of Primary Industries - Water is responsible for issuing licenses for water extraction and have its own requirements to meet for the license to be granted. This creates a further level of protection for the environment to alleviate impacts from this type of development.

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There are no social implications anticipated as a result of this planning proposal.

The extraction of water and bottling are suitable rural activities so are unlikely to impact on rural amenity in the RU1 and RU2 zones. As discussed previously where opportunities for water extraction are available, the option to implement this type of development could help to supplement and support agricultural farming income during significant seasonal fluctuations, reducing economic stress throughout the shire.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **28 Days**

Timeframe to make LEP : **6 months** Delegation : **DDG**

Public Authority Consultation - 56(2) (d) : **NSW Rural Fire Service**
Other

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
Tweed Shire Council_09-09-2015_LEP 2014 Amendment 16 Water Extraction and Bottling - s56_.pdf	Proposal Covering Letter	Yes
2015-09-09 Planning Proposal.pdf	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions: **1.2 Rural Zones**
1.3 Mining, Petroleum Production and Extractive Industries
1.5 Rural Lands
2.1 Environment Protection Zones
2.2 Coastal Protection

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2.3 Heritage Conservation
3.5 Development Near Licensed Aerodromes
4.1 Acid Sulfate Soils
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.3 Site Specific Provisions

Additional Information : It is recommended that:

- 1) The planning proposal should proceed as a routine planning proposal;
- 2) The Secretary (or an officer nominated by the Secretary) agrees that the inconsistencies with s117 Directions 4.1 Acid Sulfate soils and 4.3 Flood Prone Land are justified as of minor significance;
- 3) The Secretary (or an officer nominated by the Secretary) note the current inconsistency with Direction 4.4 Planning for Bushfire Protection and that consultation with the NSW Rural Fire Service will be required before this inconsistency can be resolved;
- 4) Council be required prior to community consultation to provide an amended planning proposal that :
 - deletes the specific site reference from the title of the Planning Proposal;
 - adds to "Background" of the Planning Proposal to refer to consideration of "water extraction and bottling facilities" as a form of light industry;
 - deletes the existing Explanation of Provisions; and
 - inserts a revised explanation which indicates that an addition to Schedule 1 - Additional Permitted Uses - of Tweed LEP 2014 is to be made which defines "water extraction and bottling facilities" as a form of "light industry" (rather than "extractive industry") and permits such use in the RU1 and RU2 zones.
- 5) Council will be required under section 56(2)(d) of the EP&A Act to consult with the following Departments prior to community consultation:
 - Department of Primary Industries - Office of Water
 - NSW Rural Fire Service;
- 6) The planning proposal have a community consultation period of 28 days;
- 7) The planning proposal be completed in 6 months.

Supporting Reasons : This Planning proposal is necessary because the Standard Instrument LEP does not clearly allow for the land use of water extraction and bottling facilities to be considered.

Such operations have been a feature of Tweed area for many years under previous planning instruments and is appropriate to continue in rural zones with development consent.

Signature:

Printed Name:



JIM CLARK

Date:

23 September 2015

Team Leader - Local Planning