

## Planning Services

IRF19/1472

### Gateway determination report

<b>LGA</b>	Tweed
<b>PPA</b>	Tweed Shire Council
<b>NAME</b>	Remove enabling clause 7.15 for water bottling facilities
<b>NUMBER</b>	PP_2019_TWEED_002_00
<b>LEP TO BE AMENDED</b>	Tweed Local Environmental Plan 2014
<b>ADDRESS</b>	Shire-wide – RU2-zoned land
<b>DESCRIPTION</b>	Prohibiting water bottling
<b>RECEIVED</b>	20 February 2019
<b>FILE NO.</b>	IRF19/1472
<b>POLITICAL DONATIONS</b>	There are no donations or gifts to disclose and a political donation disclosure is not required.
<b>LOBBYIST CODE OF CONDUCT</b>	There have been no meetings or communications with registered lobbyists with respect to this proposal

## 1. INTRODUCTION

### 1.1 Description of planning proposal

The planning proposal seeks to amend the Tweed Local Environmental Plan (LEP) 2014 by removing the enabling Clause 7.15 (Water bottling facilities in Zone RU2 Rural Landscape). This will prohibit further water extraction for bottling purposes in the RU2 zone.

### 1.2 Site description

The proposal will apply to all land in the Tweed local government area (LGA) zoned RU2 Rural Landscape.

### 1.3 Historical and existing planning controls

Water bottling facilities were permissible as a rural industry under the Tweed LEP 2000. The comprehensive Tweed LEP 2014 did not define 'water bottling facility' as a separate land use, and water bottling no longer fit under the definition of rural industry. Tweed Shire Council determined that without the definition, water bottling sits under the parent definition of commercial use. Commercial uses are prohibited in rural zones.

An amendment (No 16) to the Tweed LEP 2014 was made on 30 June 2016 introducing Clause 7.15 (Water bottling facilities in Zone RU2 Rural Landscape) and enabling water bottling facilities with development consent.

Since water extraction and bottling became a permissible land use, there have been several development applications for new extraction sites and expansions to existing operations. The objections to these applications have demonstrated there is opposition to groundwater extraction for bottling purposes in the wider Tweed

community. The concerns raised in response to these applications include: the impact on amenity and public safety, specifically relating to the large volume of truck movements on rural roads; the impacts on local water supplies and infrastructure; and a lack of evidence on the long-term effects of groundwater extraction for the bottled water industry on the environment. It was on this basis that Council considered a new decision on water extraction was warranted.

#### **1.4 Summary of recommendation**

It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- an objective of the *Environmental Planning and Assessment Act 1979* is to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment; the prohibition of this development type in the face of scientific uncertainty meets this objective;
- the regulation and location of local development is a matter for Council as the planning proposal authority; and
- the potential industrialisation of the Tweed rural areas could lead to increased pressure on infrastructure, which Council has not budgeted to maintain.

## **2. PROPOSAL**

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### **2.1 Objectives or intended outcomes**

The statement of objectives describes the objective of the planning proposal. The proposal seeks to remove the enabling clause that permits water extraction for bottling purposes in rural zones.

### **2.2 Explanation of provisions**

It is recommended that Council provide a plain English explanation describing the intent to prohibit this land use in the RU2 zone because Ballina Shire Council is processing a development application for water bottling using the definition of 'water supply works'. Water supply works are permissible with consent in the Tweed LGA RU2 zone.

### **2.3 Mapping**

The planning proposal will not amend any LEP maps. The amendment proposes changes to the written instrument only.

## **3. NEED FOR THE PLANNING PROPOSAL**

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The proposal is not a result of any strategic study or report. The planning proposal was initiated by a Council resolution on 15 November 2018 seeking to prohibit water bottling facilities.

Council has decided to remove clause 7.15 to prohibit groundwater extraction and bottling in response to stated community opposition and due to the level of uncertainty surrounding the impacts of water extraction on the environment.

Council justifies the planning proposal in four ways:

- The first premise of the planning proposal is that in the absence of scientific certainty of the impacts of groundwater extraction, a precautionary approach should be taken. The lack of data regarding the recharge rates of Tweed's

aquifers, the volume of these aquifers, or aquifer-wide hydrological studies demonstrating the connection between ground and surface water results in scientific uncertainty about the impacts of water extraction in this region.

- The second premise is the sustainability of water bottling on the north coast. Council's evidence includes the NSW Government's announcement in November 2018 that the Chief Scientist & Engineer will undertake an independent review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW. The Chief Scientist commented that councils should not determine any extraction proposals until the review is complete. The final report is expected in late 2019. If the subject planning proposal is supported, it is recommended that a condition be included that Council consider any findings from the Chief Scientist's review before finalising the plan.
- The third theme Council raised relates to the ideologies of the community, as evidenced by Council's commitment to banning single-use plastic bags and water bottles.
- Finally, Council states that its intention at the time of the 2016 LEP amendment was to enable only already established water extraction and bottling operations to continue through an additional permitted use provision. During the processing of that planning proposal, an agreement was reached with the Department that it was a Shire-wide issue rather than a site-specific one and subsequently broadened the proposal to permit with consent water extraction and bottling across the RU2 zone. Council states it did not foresee the rate of uptake and the related implications across the rural parts of the shire, such as increased truck movements, and landscape and other amenity impacts.

The proposal responds to the objective of the *Environmental Planning and Assessment Act 1979* to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment.

The amendment to the instrument is the most appropriate mechanism to achieve the objectives and intent of the proposal.

## **4. STRATEGIC ASSESSMENT**

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### **4.1 Regional**

The planning proposal is consistent with the North Coast Regional Plan 2036. It aligns with Direction 2 of the plan to enhance biodiversity, coastal and aquatic habitats and water catchments. In the absence of reliable studies into groundwater extraction for bottling purposes, the proposal's intent to prohibit further groundwater extraction operations will help safeguard water catchment areas in rural zones across the Tweed shire. The proposal supports Action 2.2 of the plan to manage groundwater sources by restricting further extraction of water for commercial purposes in rural zones.

### **4.2 Local**

The planning proposal is not inconsistent with Council's Community Strategic Plan 2017-2027. Although the plan does not reference groundwater resources or water extraction, protecting water sources in the absence of data is consistent with the plan's vision of appropriate environmental protection and the guiding principles addressing natural resource management.

#### **4.3 Section 9.1 Ministerial Directions**

The following section 9.1 Directions are applicable to the proposal: 1.2 Rural Zones; 1.5 Rural Lands; 2.1 Environment Protection Zones; 2.2 Coastal Management; 2.3 Heritage Conservation; 3.2 Caravan Parks and Manufactured Home Estates; 3.3 Home Occupations; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; 5.3 Farmland of State and Regional Significance on the NSW Far North Coast; 5.10 Implementation of Regional Plans; 6.1 Approval and Referral Requirements; 6.2 Reserving Land for Public Purposes; and 6.3 Site Specific Provisions.

Of these, the proposal is inconsistent with Directions 2.1 Environment Protection Zones, 2.3 Heritage Conservation and 4.4 Planning for Bushfire Protection.

##### 4.31 Direction 1.5 Rural Lands

This Direction is relevant to the planning proposal as water extraction for bottling purposes is permissible on rural land in the Tweed LGA. The Direction provides that a planning proposal must consider the management, development and protection of rural lands while ensuring the ongoing viability of agriculture and sustainable land-use practices.

While the water extraction industry will be impacted, it is not considered to be a rural industry. It is more closely aligned with a light industry, and in a rural zone it may lead to land-use conflict and affect the property owner's right to farm.

The proposal is considered to be consistent with this Direction as it seeks to protect the environmental value of rural land in the Tweed area, including access to water resources and water availability, and balance the social and environmental interests of the community.

Council will be required to update the planning proposal's section 9.1 Directions in line with the revised Directions based on the repeal of SEPP (Rural Lands).

##### 4.32 Direction 2.1 Environment Protection Zones

This Direction is relevant to the planning proposal. It provides that a planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas. This proposal does not detract from the environmental protections that exist in the Tweed LEP. As adequate provisions exist, the inconsistency with this Direction is considered to be justified as being of minor significance.

##### 4.33 Direction 2.3 Heritage Conservation

This Direction is relevant to the planning proposal. It provides that a planning proposal must contain provisions that facilitate the conservation of matters of environmental and Aboriginal cultural heritage significance. This proposal does not detract from the heritage protection provisions that exist in the Tweed LEP. As adequate provisions exist, the inconsistency with this Direction is considered to be justified as being of minor significance.

##### 4.34 Direction 4.4 Planning for Bushfire Protection

This Direction is relevant to the planning proposal as part of the land to which the proposal applies is mapped as being bushfire-prone. The Direction provides that the planning proposal authority must consult with the NSW Rural Fire Service (RFS). Consultation with RFS is required after a Gateway determination is issued. Until this consultation has occurred, the inconsistency of the proposal with this Direction remains unresolved.

#### **4.4 State environmental planning policies (SEPPs)**

##### **4.41 SEPP (Primary Production and Rural Development) 2019**

The planning proposal references the SEPP (Rural Lands) 2008. This SEPP has been repealed and replaced with SEPP (Primary Production and Rural Development) 2019.

Council's approach with this planning proposal is consistent with the aims of the new SEPP and the protection of watercourses. The proposal is considered to be consistent with this SEPP.

##### **4.42 SEPP (Coastal Management) 2018**

The planning proposal references SEPP No 14 – Coastal Wetlands. This SEPP has been repealed and replaced with SEPP (Coastal Management) 2018.

The proposal is considered to be consistent with the new SEPP. The prohibition of this land use will not impact on mapped coastal areas.

It is recommended that the references to SEPP (Rural Lands) and SEPP 14 – Coastal Wetlands be removed prior to public exhibition and this section of the planning proposal updated to reflect the new relevant SEPPs.

#### **5. SITE-SPECIFIC ASSESSMENT**

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##### **5.1 Social**

Some members of the community have raised concerns about the water extraction industry. Exhibiting this proposal will provide certainty to the community that Council is considering the impacts on groundwater and will enable the community to have a say on the issue.

##### **5.2 Environmental**

In the absence of reliable studies into groundwater extraction for bottling purposes, there is the potential for impacts on groundwater-dependent ecosystems. The NSW Chief Scientist is reviewing the impacts on groundwater quality of extraction by the bottled water industry in NSW. This review will provide advice on the sustainability of the current and potential bottled water industry. Until the results of this study are known, there is scientific uncertainty surrounding the impacts on groundwater of this industry. It is recommended that the results of this review be considered prior to finalisation of this proposal. The final report is due in late 2019.

The extraction of water for bottling purposes also results in the use of plastic water bottles. Single-use water bottles are increasingly being seen as unnecessary waste. Exhibiting this proposal will enable the community to comment on this matter.

##### **5.3 Economic**

There is the potential for adverse economic impacts on landowners who rely on water extraction for their income. The existing-use rights provisions of the *Environmental Planning and Assessment Act 1979* will enable these operators to continue. A savings provision is proposed to be included in the amendment to enable undetermined applications to be considered on their merits. Once the approved locations for water bottling have been determined, it would be up to Council to submit a further planning proposal enabling these approved uses through an additional permitted use provision.

## 5.4 Infrastructure

The movement of heavy vehicles hauling groundwater on rural roads has been raised as a concern by the Tweed community. Council has advised that the maintenance associated with an increase of heavy vehicles carting groundwater on rural roads has not been budgeted for.

While water bottling remains permissible, there is scope for increasing industrialisation in the rural zones. Council has raised concerns due to the rate of the uptake of water bottling-related development in zones mostly used for rural purposes.

## 6. CONSULTATION

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### 6.1 Community

The planning proposal has not indicated a preferred exhibition period. This proposal is not classified as low impact as described in *A guide to preparing local environmental plans* (Department of Planning and Environment, 2016). Considering the complexity of the issues raised and the level of community interest, a 28-day exhibition period is recommended.

### 6.2 Agencies

The Department of Primary Industries (DPI) – Office of Water is responsible for issuing groundwater extraction licenses across NSW. DPI has identified that groundwater in the Tweed area (New England Fold Belt, North Coast Volcanics Groundwater Source, Clarence-Moreton Basin) is under-allocated (**Attachment D**). Consultation with DPI is recommended should a Gateway determination be issued to inform a final decision on this matter. DPI has presented Tweed councillors with information on the aquifer allocation in their region.

## 7. TIME FRAME

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The planning proposal includes a project timeline, which suggests a completion time frame of nine months. It is considered that a 12-month period from the date of the Gateway determination is more appropriate to enable consideration of the findings of the Chief Scientist's report.

## 8. LOCAL PLAN-MAKING AUTHORITY

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Council has not requested to be the local plan-making authority for this plan. As the proposal deals with matters of local significance, it is recommended that Council be authorised as the local plan-making authority.

## 9. CONCLUSION

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It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- an objective of the *Environmental Planning and Assessment Act 1979* is to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment; the prohibition of this development type in the face of scientific uncertainty meets this objective;
- the regulation and location of local development is a matter for Council as the planning proposal authority; and

- the potential industrialisation of the Tweed rural areas could lead to increased pressure on infrastructure, which Council has not budgeted to maintain.

## 10. RECOMMENDATION

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It is recommended that the delegate of the Secretary:

1. agree that any inconsistency with section 9.1 Directions 2.1 Environment Protection Zones and 2.3 Heritage Conservation is justified as being of minor significance; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to agency consultation and public exhibition, Council must amend the planning proposal to:
  - a) provide a plain English explanation of the intent behind removing the enabling clause from the LEP;
  - b) update references to state environmental planning policies;
  - c) update references to the section of the *Environmental Planning and Assessment Act 1979* that relates to Ministerial Directions;
  - d) include savings provisions to allow that development applications for water bottling facilities submitted prior to the proposed amendment to the Tweed LEP 2014 will be determined on their merit; and
  - e) provide an updated Schedule 1 to Tweed LEP 2014 that includes existing approved water bottling facilities as additional permitted uses on the relevant land.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Council should write to all landowners with an approved water bottling facility on their property to advise them of the proposal and public exhibition.
4. Consultation is required with the Department of Primary Industries – Office of Water and NSW Rural Fire Service.
5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
6. The Chief Scientist & Engineer's findings from the independent review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW must be considered by Council prior to plan finalisation.

7. Given the nature of the planning proposal, Council should be authorised to be the local plan-making authority to make this plan.



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