

Planning Services

Gateway Determination Report

| | |
|---------------------------------|--|
| LGA | Inverell |
| RPA | Inverell Shire Council |
| NAME | Permitting water extraction and bottling facilities in RU1 Primary Production zone |
| NUMBER | PP_2018_INVER_001_00 |
| LEP TO BE AMENDED | Inverell Local Environmental Plan 2012 |
| ADDRESS | RU1 Primary Production zoned land |
| DESCRIPTION | N/A |
| RECEIVED | 9 February 2018 |
| FILE NO. | IRF18/2309 |
| POLITICAL DONATIONS | There are no donations or gifts to disclose and a political donation disclosure is not required. |
| LOBBYIST CODE OF CONDUCT | There have been no meetings or communications with registered lobbyists with respect to this proposal. |

INTRODUCTION

Description of Planning Proposal

The planning proposal seeks to amend the Inverell Local Environmental Plan (LEP) 2012 to permit with consent water extraction and bottling facilities in the RU1 Primary Production zone.

The proposal requires amendments to the written instrument only. No map amendments are required.

Existing planning controls

The Inverell LEP 2012 currently does not define *water bottling facility* as a separate land use. As such it fits within the broader definition of '*commercial premises*', which is a prohibited use in the RU1 zone.

Prior to commencement of the Inverell LEP 2012 *water bottling facilities* were permissible as a rural industry under the Inverell LEP 1988.

Summary of Recommendation

It is recommended the planning proposal be supported as submitted. Water bottling facilities have been a feature of the Inverell area for many years under previous

planning instruments and provide a broader economic base for the community to draw on.

PROPOSAL

Objectives or Intended Outcomes

The planning proposal seeks to amend the Inverell LEP 2012 to permit with consent water extraction and bottling facilities in the RU1 Primary Production zone. The statement of objectives adequately describes the intention of the planning proposal.

Explanation of Provisions

The explanation of provisions adequately addresses the intended changes to Inverell LEP 2012. The planning proposal seeks to:

- incorporate a local provision to allow development of water bottling facilities and ancillary development to be carried out with consent, in the RU1 Primary Production zone;
- define the term '*water bottling facility*'.

The proposal will amend Part 6 – Additional local provisions of Inverell LEP 2012.

Mapping

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

NEED FOR THE PLANNING PROPOSAL

Council received an application in May 2017 seeking an amendment to the LEP to allow commercial water extraction for bottling at a specific property. However, Council thought it practical to seek a general amendment to allow commercial water extraction in the RU1 Primary Production zone across the entire LGA.

Although the planning proposal is not the result of any strategic study it reinstates a development right which was unintentionally removed during the standard instrument process.

Permitting water extraction in the rural zone supports rural/agricultural based activities being balanced with alternative practices. Where opportunities for water extraction and bottling are available, this may then supplement and support agricultural income during significant seasonal fluctuations.

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

STRATEGIC ASSESSMENT

Regional

The proposal is consistent with the New England North West Regional Plan (NENWRP) goal to build agricultural productively and protect and enhance productive agricultural land. Water extraction has traditionally been considered a

rural industry necessarily located in the rural zone. The requirement for integrated approvals under the Water Management Act will ensure impacts on hydrology and resource sharing are adequately considered and the extraction will not impact traditional farming enterprises.

Local

The proposal is not inconsistent with Council's Community Strategic Plan 2009-2029.

Section 9.1 Ministerial Directions

The planning proposal is consistent with all applicable s9.1 Directions except in relation to the following.

The planning proposal is inconsistent with the following:

4.3 Flood Prone Land

This Direction is applicable as water bottling facilities will become permissible on rural land, some of which could be flood prone. 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 impacts would be addressed at Development Application (DA) stage. The proposal's inconsistency with this direction is justified as being of minor significance.

4.4 Planning for Bushfire Protection

This Direction is applicable as water bottling facilities will become permissible on rural land, some of which could be bushfire prone. Consultation with the NSW RFS can be required as a condition of the Gateway Determination. Until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

State Environmental Planning Policies

SEPP (Rural Lands) 2008 is relevant to the planning proposal 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 importance of rural lands and the changing nature of agriculture. They also provide opportunities for rural land to be used for the proposed land use where existing facilities have proven to contribute to the social and economic welfare of rural communities.

The proposal is not inconsistent with any other SEPP.

SITE-SPECIFIC ASSESSMENT

Social/ Economic

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

The extraction of water and bottling is a rural activity however is more intensive than traditional extensive practices. As such it will result in additional truck movements, and potentially amenity impacts. As discussed previously where opportunities for water extraction are available the option to implement this type of development could help to supplement and support farming income during significant seasonal fluctuations, reducing economic stress throughout the shire. It is considered that the potential amenity impacts are in keeping with those associated with intensive agriculture and, as a contributor to employment and the economy, will be suitably addressed at development application stage.

Environmental

As water extraction and bottling facilities will require consent any impacts will be assessed at Development Application (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 – Office of 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 approval that ensures due consideration of environmental impacts from this type of development.

CONSULTATION

Community

The planning proposal has indicated a 14 day community consultation period. This is considered acceptable in accordance with the Guide to Preparing Local Environmental Plans.

Agencies

Department of Primary Industries – Office of Water

The Department of Primary Industry (DPI) are responsible for issuing water extraction licenses.

Consultation with DPI is recommended after a Gateway Determination is issued.

NSW Rural Fire Services

As the land has the potential to be bushfire prone and to satisfy Section 9.1 Direction regarding bushfire, referral to the NSW Rural Fire Service (RFS) will be required as part of the consultation process.

Consultation with NSW RFS is required after a Gateway Determination is issued.

TIME FRAME

The planning proposal includes a project time line which suggest a completion time of nine (9) months as the proposal is of a minor nature. It is considered that this period is reasonable.

LOCAL PLAN-MAKING AUTHORITY

Inverell Shire Council has 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 should be authorised to be the local plan-making authority in regard to this matter.

CONCLUSION

The preparation of the planning proposal is supported as it:

- will give certainty for the permissibility of water extraction and bottling facilitates in the Inverell Shire;
- will identify a land use that has previously been available in the Inverell LEP prior to the implementation of the Standard Instrument LEP.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree any inconsistency with Section 9.1 Direction 4.3 Flood Prone Land is 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 for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 14 days.
2. Consultation is required with the following public authorities:
 - Department of Primary Industries – Office of Water;
 - NSW Rural Fire Service.
3. The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority to make this plan.



8/3/18

Tamara Prentice
Team Leader, Northern



12-3-2018

Jeremy Gray
Director Regions, Northern
Planning Services

Contact Officer: Jenny Johnson
Planning Officer, Northern
Phone: (02) 6641 6614