

# **Planning Proposal To Prohibit Water Extraction & Bottling Facilities**

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<b>INTRODUCTION .....</b>	<b>2</b>
<b>PART 1 OBJECTIVES AND INTENDED OUTCOMES .....</b>	<b>3</b>
<b>PART 2 EXPLANATION OF PROVISIONS.....</b>	<b>3</b>
<b>PART 3 JUSTIFICATION.....</b>	<b>3</b>
<b>Section A Need for the planning proposal .....</b>	<b>3</b>
1 Is the planning proposal a result of any strategic study or report? .....	3
2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way? .....	3
<b>Section B - Relationship to strategic planning framework .....</b>	<b>4</b>
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)? .....	4
2 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan? .....	4
3 Is the planning proposal consistent with the applicable State Environmental Planning Policies (SEPPs)? .....	5
4 Is the planning proposal consistent with applicable Ministerial Directions (s117 Directions)? .....	6
<b>Section C - Environmental, Social and economic impact .....</b>	<b>8</b>
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? .....	8
2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed? .....	8
3 How has the planning proposal adequately addressed any social and economic effects? .....	8
<b>Section D - State and Commonwealth interests .....</b>	<b>8</b>
1 Is there adequate public infrastructure for the planning proposal? .....	8
2 What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination? .....	8
<b>PART 4 MAPPING .....</b>	<b>9</b>
<b>PART 5 COMMUNITY CONSULTATION .....</b>	<b>9</b>
<b>PART 6 TIMEFRAME .....</b>	<b>9</b>

## Introduction

In May 2016, Tweed Shire Council finalised its planning proposal process seeking to facilitate water extraction and bottling on rural land zoned under the Tweed Local Environmental Plan (LEP) 2014 with a RU2 Rural Landscape zone. The planning proposal and resulting LEP Amendment were initiated by Mount Warning Springwater, a local business seeking to augment their operations through redevelopment of existing approved bottling and extraction facilities located in Kunghur. Communication between Mount Warning Springwater and Council at the early stage of their expansion pursuits indicated that the water extraction land use, whilst being permitted with consent under the Tweed LEP 2000 became prohibited following the transition to the Tweed LEP 2014. This change occurred by way of implementing a new set of definitions provided under the Standard Instrument template on which the Tweed LEP 2014 is based. These definitions do not recognise water extraction and bottling facility as a standalone land use. Given the circumstances, Mount Warning Springwater lodged a planning proposal seeking changes to the LEP to facilitate their development proposal. The scope of the planning proposal was subsequently broadened to (rather than focusing on site-specific amendment) revert the Tweed LEP 2014 to the previous status and enable water extraction and bottling land use with development consent initially in the RU1 and RU2 zones, which was further narrowed down to the RU2 zone only. Following completion of the planning proposal process in May 2016, the LEP amendment was made in August 2016.

The LEP amendment process and subsequent 2 (two) development applications lodged for water extraction have caused concern among the local community with members of the public approaching Council either individually or by way of organised petitions expressing their reservations about long-term impacts of water extraction. Among these concerns, there was a perception that water belongs to the community and should not be used for private profit, as well as concerns about the impacts that heavy vehicles transporting extracted water will have on the safety of the local road network.

In response to these concerns, at their Planning Committee Meeting of 7 December 2017, Council resolved to initiate a planning proposal reverting water extraction and bottling facilities land use to its original LEP 2014 status, by way of prohibiting it in the Tweed Shire. This planning proposal has been prepared in response to Council resolution, for consideration by the NSW Department of Planning & Environment. The planning proposal has been prepared in accordance with guidelines published by the NSW Government and is comprised of five (5) parts: Part 1 outlines intended outcomes of the proposed amendments, Part 2 explains the provisions through which the amendment will take place. Part 3 seeks to justify the need to amend the Tweed LEP 2014 and is followed by an outline of community consultation proposed for the process and indicative timeline.

## **Part 1 Objectives and intended outcomes**

The objective of the planning proposal is to give effect to Council resolution of 7 December 2017 by way of amending the Tweed LEP 2014 to the effect that water extraction and bottling facilities land use becomes prohibited across the Shire.

## **Part 2 Explanation of provisions**

This section of the planning proposal serves to describe in details the extent of proposed changes to the LEP and best means to achieve them.

The intended outcome of this planning proposal is sought to be achieved by way of removal of clause 7.15 ‘Water bottling facilities in Zone RU2 Rural Landscape’ from the Tweed LEP 2014. At present, the wording of this clause is as follows:

### **7.15 Water bottling facilities in Zone RU2 Rural Landscape**

*(1) Despite any other provision of this Plan, development may be carried out with development consent for the purposes of a water bottling facility on land in Zone RU2 Rural Landscape if the consent authority is satisfied that development will not have an adverse impact on natural water systems or the potential agricultural use of the land.*

*(2) Despite any other provision of this Plan, development may be carried out with development consent for the construction of a pipe or similar structure on any land for the purposes of conveying groundwater to a water bottling facility.*

*(3) In this clause:*

*water bottling facility means a building or place at which groundwater from land in Zone RU2 Rural Landscape is extracted, handled, treated, processed, stored or packed for commercial purposes.*

## **Part 3 Justification**

### **Section A Need for the planning proposal**

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

This planning proposal has been prepared in response to Council resolution of 7 December 2017. There is no strategic study or report informing this direction.

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

Division 3.4 (Environmental planning instruments – LEPs) of the Environmental Planning & Assessment Act 1979 provides that amendments to local environmental plans can only occur by way of a planning proposal process undertaken by a *planning proposal authority* which, in this instance, is Tweed Shire Council.

## 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 located within the North Coast region, subject to the *NSW North Coast Regional Plan 2036* (referred to herein as ‘the Plan’). The overall vision statement for the North Coast region prescribed under this Plan is “*the best region in Australia to live, work and play thanks to its spectacular environment and vibrant communities.*”

As far as groundwater resources are concerned, Direction 2 of the Plan (pages 18-23) provides actions and directives related with biodiversity, coastal and aquatic habitats and water catchments. More specifically, Action 2.2 provided within Direction 2 aims to *ensure local plans manage marine environments, water catchment areas and groundwater sources to avoid potential development impacts*. The intended objective of this planning proposal appears to be consistent with this Action. The Plan’s directive *to manage groundwater sources* can be interpreted as *to control the use or exploitation of groundwater resources*. The ultimate objective of this planning proposal can in this context be described as *control the use or exploitation of groundwater resources* by way of prohibition.

Further, Direction 2 of the Plan makes a reference to the role of Water Quality Objectives in Strategic Planning. One of those Objectives refers to the role of local governments in development planning process preventing impacts on water quality and improvements to catchment health. The Local Planning for Healthy Waterways: The NSW Water Quality Objectives document provides that management of water quality through local planning “can be more effective by way of recognising the community’s values for waterways in local environmental plans”<sup>1</sup>. Again, this planning proposal appears to be consistent with matters described above as it responds to those members of the local community who expressed concerns about groundwater resources in the Tweed.

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

The principal local strategic plan in the Tweed Shire is the Tweed Community Strategic Plan (TSCP) 2017/2027. The TSCP 2017/2027 does not define actions or directives targeting matters related with groundwater resources and/or extraction of water. In the absence of relevant provisions, consistency of this planning proposal has been assessed against the vision statement of the TSCP 2017/2027 which states as follows: *The Tweed will be recognised for its desirable lifestyle, strong community, unique character and environment and the opportunities its residents enjoy*. It is considered that this planning proposal is not inconsistent with this vision statement as it will not have any adverse impacts on community, lifestyle choices, unique character and environment.

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<sup>1</sup> Source: <http://www.environment.nsw.gov.au/resources/water/usingsnwwqos06167.pdf>

In the previous planning proposal prepared to permit water extraction with development consent, Council demonstrated compliance of that outcome with the Tweed Economic Development Strategy, where one of key directives is to create a 'Diverse Business Base' (Action 10.3.2). In considering the consistency between the previous and this planning proposal, the proposal to prohibit water extraction may not support business diversification postulated under the Tweed Economic Development Strategy 2014.

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

This planning proposal is of relevance to the following SEPPs:

1. **SEPP (Rural Lands) 2008.** This SEPP provides for Rural Planning Principles and Rural Subdivision Principles for consideration at strategic planning. There are two (2) Rural Planning Principles of relevance to this planning proposal: *to promote and protect opportunities for current and potential productive and sustainable economic activities in rural areas. And to identify and protect natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land.*

The current management of groundwater resources remains a responsibility of the NSW Government Office of Water through their water licensing based on the Adaptive Management Framework. Adaptive management refers to the process of ongoing data collection, monitoring, evaluation and review during the life of the water sharing plan that enables either plan amendment or remaking of a plan after 10 years. The relevant policy framework (The NSW State Groundwater Policy Framework Document) encourages ecologically sustainable management of State's groundwater resources. The 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*). In 2012, The NSW 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).

The previous planning proposal prepared to facilitate water extraction was based on available data indicating that in Tweed Shire sustainable extraction of groundwater can occur, as long as monitored and licensed by public authorities. In the absence of data supporting concerns that water extraction is unsustainable, this planning proposal is could be considered inconsistent with these provisions of the SEPP Rural Lands that seek to advance sustainable economic activities on rural land.

2. **SEPP 14 Coastal Wetlands** - this planning proposal gives effect to the aim of SEPP 14 which is *'to ensure that the coastal wetlands are protected in the environmental and economic interest of the State'*.

Wetlands and groundwater constitute parts of a dynamic water cycle as one of the avenues for the groundwater to reappear at the surface is through wetlands formations. This planning proposal is considered as consistent with SEPP 14.

#### 4 Is the planning proposal consistent with applicable Ministerial Directions (s9.1 Directions)?

The consistency of this planning proposal with relevant Ministerial Directions under section 9.1 of the EP&A Act is provided in table below.

<b>Table No.2 – Consistency with s117(2) Directions</b>			
<b>S.117 direction</b>	<b>Application</b>	<b>Relevance to this planning proposal</b>	<b>Consistency with direction</b>
<b>1. Employment &amp; Resources</b>			
<b>1.2 Rural Zones</b>	A planning proposal must not: a) rezone land from a rural zone to a residential, business, industrial, village or tourist zone, or b) contain provisions that will increase the permissible density of land within a rural zone (other than land within an existing town or village).	This planning proposal applies to rural zone RU2 Rural Landscape. It does not seek amendments to the Land Zoning Map and will not lead to an increase in permissible density of land within a rural zone	Consistent
<b>1.5 Rural Lands</b>	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.	Consistency of this planning proposal with SEPP (Rural Lands) 2008 was addressed under Part 3 Section 3 of this planning proposal. In short, this planning proposal is considered as contrary to the Rural Planning Principle seeking to advance sustainable economic activities on rural land. In absence of evidence demonstrating that water extraction in Tweed Shire is unsustainable, this planning proposal is deemed as partially inconsistent and of minor significance with Direction 1.5.	Variations are of minor significance (d)
<b>2. Environment and Heritage</b>			
<b>2.1 Environment Protection Zones</b>	A planning proposal must consider protection and conservation of environmentally sensitive areas. A planning proposal that applies to land within an environment protection zone or land otherwise	This planning proposal responds to concerns that commercial water extraction may have adverse environmental impacts and seeks to prohibit that use on a Shire-wide basis. This outcome is considered as consistent with Direction 2.1	Consistent

<b>Table No.2 – Consistency with s117(2) Directions</b>			
<b>S.117 direction</b>	<b>Application</b>	<b>Relevance to this planning proposal</b>	<b>Consistency with direction</b>
	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).		
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.	This planning proposal responds to concerns that commercial water extraction may have adverse environmental impacts and seeks to prohibit that use on a Shire-wide basis. This outcome is considered as consistent with Direction 2.2	Consistent
<b>5. Regional Planning</b>			
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Applies (to Tweed) when a relevant planning authority prepares a planning proposal for land mapped as: (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 land use conflicts.	Whilst this planning proposal applies to rural land, it does not seek zoning amendments to land identified as State or Regionally Significant Farmland.	Consistent
5.10 Implementation of Regional Plans	Planning proposals must be consistent with a Regional Plan released by the Minister for Planning	Consistency of this planning proposal with the North Coast Regional Growth Plan has been provided within Part 3 Section B of the document	Generally consistent

## **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?**

No adverse social or environmental impacts are anticipated in result of finalisation of this planning proposal. Whilst there is a strong belief amongst certain community groups that prohibiting commercial water extraction and bottling will protect the environment, no evidence is available to support claims that commercial extraction of water, at its current levels, is more damaging to the environment than, for example, extraction of water for intensive livestock agriculture, which is a frequent occurrence in rural Tweed and will remain a permissible use.

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

No other environmental impacts have been identified at this point.

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

Prohibiting commercial water extraction in the rural areas of the Shire will lead to overall reduction of heavy tank trucks on the local road network which is considered a good social outcome. This impact will be limited given a small number of active water extraction businesses in the Tweed.

Legal advice is being sought with respect of economic implications of this planning proposal on water extraction businesses operating legally with development consent in the Tweed. Outcomes of this legal advice will be used to inform this planning proposal prior to the public exhibition.

## **Section D - State and Commonwealth interests**

### **1 Is there adequate public infrastructure for the planning proposal?**

This planning proposal will not result in increased demand for public infrastructure.

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

No consultation has been carried out yet. Should this planning proposal receives a Gateway Determination to proceed, this section will be updated to provide for a summary of consultation with relevant public authorities.

## Part 4 Mapping

This planning proposal does not include mapping.

## Part 5 Community consultation

No consultation has been carried out yet. Should this planning proposal receive a Gateway Determination to proceed, this section will be updated to provide for a summary of community consultation.

## Part 6 Timeframe

Task	Timeframe	Completed
Referral of the Planning Proposal for Gateway determination	March 2018	
Gateway Determination	April 2018	
Undertake requirements of the Gateway Determination and prepare V2 Planning Proposal	April 2018	
Public exhibition	May 2018	
Agency consultation	May 2018	
Review submissions, respond and prepare V3 Planning Proposal for Council's consideration	June 2018	
Council report recommending referral of the planning proposal to the DPE to make the LEP amendment	July 2018	
Revisions to the planning proposal	July 2018	
Referral of the planning proposal to the DPE for Gateway alteration	August 2018	
Plan Made	September 2018	



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