

# Planning Committee Meeting

Thursday, 5 March 2020 at 5:30 PM

Harvard Room,  
Tweed Heads Administration Building, Brett Street,  
Tweed Heads

## UNCONFIRMED MINUTES

### 1. IN ATTENDANCE

The meeting commenced at 05:26 PM

Cr Katie Milne (Mayor), Cr Chris Cherry (Deputy Mayor), Cr Ron Cooper, Cr Pryce Allsop, Cr Warren Polglase, Cr James Owen

Also present were General Manager Troy Green, Director of Planning and Regulation Vince Connell, Director of Engineering David Oxenham, Director of Sustainable Communities and Environment Tracey Stinson, Manager Financial Services Michael Chorlton (for Director Corporate Services), Executive Officer Shane Davidson, Manager Corporate Governance Stephanie Papadopoulos, Administrative Officer Janet Twohill, Executive Assistant - Director Planning & Regulation Ann Mesic.

### 2. ABORIGINAL STATEMENT

The Mayor acknowledged the Bundjalung Aboriginal Nation with the following statement:

*"We wish to recognise the generations of the local Aboriginal people of the Bundjalung Nation who have lived in and derived their physical and spiritual needs from the forests, rivers, lakes and streams of this beautiful valley over many thousands of years as the traditional owners and custodians of these lands."*

### 3. PRAYER

The meeting opened with a Prayer read by Pastor Daniel Christie

*"Heavenly Father, we come to you today asking for your guidance and support as we begin this meeting."*

*I pray for each member here tonight to receive wisdom, so that they will make decisions for the betterment of this community. I also pray a blessing not only over this meeting, but also over each one of their families and lives as they continue to*

*serve in their position. We ask this in your name Lord, AMEN."*

**4. APOLOGIES**

Cr Reece Byrnes has informed the General Manager that their absence is caused by being outside the Shire

**Cr Chris Cherry (Deputy Mayor)**  
**Cr Ron Cooper**

**RESOLVED that** the apology of Cr Reece Byrnes be accepted and the necessary leave of absence be granted.

The Motion was **Carried**

**VOTE FOR** - Cr Katie Milne (Mayor), Cr Chris Cherry (Deputy Mayor), Cr Pryce Allsop, Cr Ron Cooper, Cr James Owen, Cr Warren Polglase

**VOTE AGAINST** - None

**ABSENT. DID NOT VOTE** - Cr Reece Byrnes

**5. DISCLOSURE OF INTERESTS**

Nil.

**6. ITEMS BY EXCEPTION**

Nil.

**7. REPORTS THROUGH THE GENERAL MANAGER**

**8. REPORTS FROM THE DIRECTOR PLANNING AND REGULATION**

**10.1 Planning Proposal PP18/0004 to Remove Enabling Clause 7.1 Water Bottling Facilities from the Tweed Local Environmental Plan 2014**

**ALTERNATE MOTION**

**Cr Katie Milne (Mayor)**  
**Cr Chris Cherry (Deputy Mayor)**

**PROPOSED that:**

1. Planning Proposal PP18/0004 (Version 3) to remove the enabling Clause 7.15 Water Bottling Facilities from the Tweed Local Environmental Plan 2014, as attached, be approved and be made under Section 3.36 of the *Environmental Planning and Assessment Act 1979*.

2. Council notes the correspondence from the Office of the Chief Scientist & Engineer dated 5 March 2020 received at 5.05pm and clarifies the planning proposal where required to take account of the issues raised in the correspondence. Council acknowledges the clarifications sought to be made by the Office of the Chief Scientist & Engineer to the Agenda Report and any decision made by Council tonight takes this information into account.

## **SUSPENSION OF STANDING ORDERS**

**Cr Katie Milne (Mayor)**

**Cr Chris Cherry (Deputy Mayor)**

**RECOMMENDED** that Standing Orders be suspended to discuss the letter received from the Office of the Chief Scientist & Engineer.

The Motion was **Carried**

**VOTE FOR** - *Cr Katie Milne (Mayor), Cr Chris Cherry (Deputy Mayor), Cr Pryce Allsop, Cr Ron Cooper, Cr James Owen, Cr Warren Polglase*

**VOTE AGAINST** - *None*

**ABSENT. DID NOT VOTE** - *Cr Reece Byrnes*

## **RESUMPTION OF STANDING ORDERS**

**Cr Katie Milne**

**Cr Chris Cherry**

that Standing Orders be resumed.

The Motion was **Carried**

**VOTE FOR** - *Cr Katie Milne (Mayor), Cr Chris Cherry (Deputy Mayor), Cr Pryce Allsop, Cr Ron Cooper, Cr James Owen, Cr Warren Polglase*

**VOTE AGAINST** - *None*

**ABSENT. DID NOT VOTE** - *Cr Reece Byrnes*

## **AMENDMENT 1**

**Cr Warren Polglase**

**Cr James Owen**

**RECOMMENDED** that:

1. Council supports in principle the Planning Proposal PP18/0004 (Version 3) to remove the enabling Clause 7.15 Water Bottling Facilities from the Tweed Local Environmental Plan 2014, as attached, under Section 3.36 of the *Environmental Planning and Assessment Act 1979*.
2. Council notes the correspondence from the Office of the Chief Scientist & Engineer dated 5 March 2020 received at 5.05pm and clarifies the planning proposal where required to take account of the issues raised in the correspondence. Council acknowledges the clarifications sought to be made by the Office of the Chief Scientist & Engineer to the Agenda Report and the decision made by Council tonight takes this information into account.
3. Consultation with DPI Water regarding the Gateway Determination is undertaken as a matter of priority.
4. Council attaches the letter from the Office of the Chief Scientist & Engineer dated 5 March 2020 to the Minutes.

*Amendment 1 was **Carried***

**VOTE FOR** - *Cr Katie Milne (Mayor), Cr Chris Cherry (Deputy Mayor), Cr Pryce Allsop, Cr Ron Cooper, Cr James Owen, Cr Warren Polglase*

**VOTE AGAINST** - *None*

**ABSENT. DID NOT VOTE** - *Cr Reece Byrnes*

Amendment 1 on becoming the Motion was **Carried**

**VOTE FOR** - *Cr Katie Milne (Mayor), Cr Chris Cherry (Deputy Mayor), Cr Pryce Allsop, Cr Ron Cooper, Cr James Owen, Cr Warren Polglase*

**VOTE AGAINST** - *None*

**ABSENT. DID NOT VOTE** - *Cr Reece Byrnes*

## **10.2 Variations to Development Standards under State Environmental Planning Policy No.**

### **1 - Development Standards**

**Cr Chris Cherry (Deputy Mayor)**

**Cr Katie Milne (Mayor)**

**RECOMMENDED** that Council notes the January 2020 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

The Motion was **Carried**

**VOTE FOR** - *Cr Katie Milne (Mayor), Cr Chris Cherry (Deputy Mayor), Cr Pryce Allsop, Cr*

*Ron Cooper, Cr James Owen, Cr Warren Polglase*

**VOTE AGAINST** - None

**ABSENT. DID NOT VOTE** - Cr Reece Byrnes

**9. ADDENDUM ITEMS**

Nil.

**10. LATE REPORTS**

Nil.

There being no further business the meeting closed at 6.11pm



OUT 20/2568

Mr Troy Green  
General Manager  
Tweed Shire Council  
PO Box 816  
MURWILLUMBAH NSW 2484  
Email: [tsc@tweed.nsw.gov.au](mailto:tsc@tweed.nsw.gov.au)

Dear Mr Green

**Re: Planning Proposal PP18/0004 to Remove Enabling Clause 7.1 Water Bottling Facilities from the Tweed Local Environmental Plan 2014**

I refer to Planning Proposal PP18/0004 which I understand is being considered by the Tweed Shire Council Planning Committee scheduled for 5.30 pm today (5 March 2020).

The advice provided below is based on the following (publicly available) documentation that references the *Independent review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW Final Report* (the Review). I would appreciate your advice if I have missed other relevant material.

- *Planning Proposal PP18/0004 to Remove Enabling Clause 7.1 Water Bottling Facilities from the Tweed Local Environmental Plan 2014* submitted by Strategic Planning and Urban Design, undated (Agenda paper)
- *Appendix A PP18/0004 Submission Review*, undated
- *Planning Proposal PP18/0004 to Remove Enabling Clause 7.15 for Water Bottling Facilities in the RU2 Zone Version 3 Exhibition*, March 2020 (Proposal)

Having reviewed the material, I am concerned that the documentation contains inaccuracies and reflects a misunderstanding of key concepts. Further, the documentation does not provide an adequate representation of the Review including findings and recommendations made, and attributes statements not contained in the Review report. This is important, as although a determination about the bottled water industry was not within the Review Terms of Reference, Review findings were intended to inform decision-makers.

A range of issues relevant to the Proposal were addressed by the Review. Over the course of 12 months, the Review was supported by independent experts in hydrology, surface water, groundwater, surface and groundwater interactions, modelling, monitoring, statistics and uncertainty analysis. A one-day multidisciplinary workshop was convened, drawing on experts from three states in these fields, as well as climate modelling, geology, groundwater ecology and planning. Representatives from state and local government, community and industry were consulted.

I request that this letter and the final Review report be provided in full to the Planning Committee and Council and draw the following matters to your attention.

### **Reasonably conservative risk management approach**

More than once the Agenda paper includes a reference quote 'reasonably conservative risk management approach', for example:

*It did, however, provide opinion on the matter to the effect that greater levels of analysis of local hydrogeology and groundwater system dynamics, monitoring and data collection, along with more stringent requirements to mitigate ancillary impacts of the industry, should allow the continuation of the industry at what it terms to be a 'reasonably conservative risk management approach". (p. 2, p. 10)*

*Accepts the NSW Chief Scientist and Engineer's opinion of the 'reasonably conservative risk management approach' within the current Water Sharing Plan and agree that the application of regulatory measures is sufficient to allow the water bottling industry to continue to expand to the point of saturation of the allowable extraction limits identified within the Water Sharing Plan. (p. 10)*

The Review report did not contain this statement and did not comment on the allowability of the industry. In relation to the second quote and comments on the potential industry saturation, a relevant section in the Report which I refer you to is Section 2.1, which discusses the potential scale of the industry.

Scenarios of potential future industry growth were developed and tested, having regard to factors influencing production and consumption volumes. This analysis concluded the industry (nationally) is likely to grow at a rate of less than 2% per annum to 2024 and that the Northern Rivers is likely to follow this trend. At the time of the Review, four applications on foot (totalling 168 ML/year) would be capable of this projected growth. As at October 2019, the New England Fold Belt had 37,227 ML of unassigned water; and for the Clarence Morton Basin the figure is 294,847 ML of unassigned water.

### **Uncertainty and the precautionary principle**

The Agenda paper makes several references to uncertainty and precaution, including, for example:

*"Backed by acknowledgement now, through independent review by the NSW Chief Scientist and Engineer, that there is uncertainty within the current information on which extraction volumes are based, and no evidence to support any definitive conclusion about environmental impacts, it is seen to be consistent with NSW Policy to err on the side of caution until such time as the exactness of the impact is known and upon which alternate informed decisions can be made." (p. 10)*

This and other statements in the Agenda paper indicate a confusion about the discussion of uncertainty in the Review report. Importantly, it appears discussion about uncertainty relating to the Water Sharing Plan has been extrapolated to conclusions about the bottled water industry not made by the Review.

I am also unclear what 'NSW Policy' is being referred to in the above quote. However, it is important to recognise that 'exactness' of impacts is a misnomer. All decisions are made in the context of some degree of uncertainty. Appendix 8 of the Review report was included to explain how different types of uncertainty are conceptualised and to discuss approaches to their management.

The precautionary principle recognises the inherent uncertainty in all scientific endeavours and its application in regulatory practice, and, where appropriate, not using the absence of complete scientific certainty regarding environmental harms to avoid or delay action. Although there is no precise definition, recognised elements in applying the principle include (but are not confined to) the following:

- a threat of serious or irreversible damage exists
- assessment of the scale (spatial and temporal dimensions) of the threat
- manageability and reversibility of possible impacts
- level of public concern and its basis (scientific evidence underpins concerns)
- the assessed level of uncertainty is scientifically plausible
- use of adaptive management approaches and proportionate interventions.

Work undertaken by the Review relevant to regional and local scales should assist Council in this regard.

An analysis of the North Coast Fractured and Porous Rock Water Sharing Plan (WSP) was undertaken, finding that the WSP incorporates a reasonable level of conservatism for the extraction limits when the groundwater sources are not fully allocated and where they are fully allocated at Alstonville, monitoring is applied.

Under the WSP, environmental water and basic landholder rights are given priority over licensed water extraction and utilities are prioritised over commercial licensed purposes. The WSP assumes that all allocations are used to a maximum level. Elements of conservatism in the WSP identified include:

- reservation of 100% of estimated aquifer storage for the environment (i.e. 0% is available for allocation)
- reservation of 100% of recharge (rainfall) in areas of high environmental value (i.e. 0% is available for allocation)
- inclusion of a sustainability index which factors in area-specific socio-economic and environmental risk (thereby further reducing the quantum of potential allocations)
- an interim review of the WSP every five years, with a full review every 10 years.

Recommendations included strengthening planning by incorporating climate change into the development of recharge estimates and incorporating geological heterogeneity and soil and vegetation types into recharge estimates where practicable.

Localised elements of conservatism through the licensing process include:

- acceptable drawdown limits (relating to the water table and groundwater pressure)
- setback distances outlined in the Rules Summary Sheet: Groundwater Source New England Fold Belt (e.g. distance from other bores, from groundwater dependent ecosystems, streams etc.)
- an adaptive management approach through the annual determination process (volume/ licence share).

The Review noted that in response to the Millennium drought in a highly allocated area (Alstonville) an embargo was placed on issuing new licences and additional monitoring bores were added to the Network. The monitoring network in the Northern Rivers includes 13 sites with 31 bores, of which there are 12 sites of nested bores in the Alstonville Groundwater source. Data from these bores was analysed for the period 2006-2019. The Review found observations from deep piezometers showed a greater stability and a steady upward trend over time of groundwater levels and/or pressures. In contrast, readings from shallower piezometers showed greater variability and appear to be recharged regularly with rainfall.

Looking forward, a recommendation was made for the Northern Rivers that additional monitoring of piezometric water levels/pressures should be considered in locations with a perceived risk and/or lack of knowledge of groundwater responses and flow directions.

The Review recognised lack of data on actual extraction is clearly an issue at local and regional scale. The state-wide metering policy being rolled out by 2023 is significant in this regard. More immediately, in 2018 the Natural Resource Access Regulator required four of the operators in the Northern Rivers region to install meters.

The Review identified seven operators in the Northern Rivers region actively extracting for water bottling purposes with total allocations of 240.5 ML/y, representing 0.55% of total water licences and basic landholder rights across four groundwater sources. Five active operators in the Tweed Shire were identified, with licence allocations of 213 ML/year across two groundwater sources: the New England Fold Belt (163 ML/year) and the Clarence Moreton Basin (50 ML/year).

To place this in context, the New England Fold Belt has an estimated total storage of 24,000,000 ML, with total requirements of 22,773 ML/year as at October 2019, comprised of basic landholder rights of 9,605 ML/year, local water utility licences of 240 ML/year and all other licences of 12,928 ML/year.



The estimated total storage of the Clarence Moreton Basin Groundwater source was not available, but the estimated total annual aquifer recharge is 576,000 ML/year, with total requirements of 5,153 ML/year as at October 2019, comprised of basic landholder rights of 2,341 ML/year, local water utility licences of 31 ML/year and all other licences of 2,781 ML/year.

### **Decision-making and access to expertise**

The Agenda paper makes the following statements:

*The CS&E final report recommends that if local government is to take on hydrogeological assessment as part of the development application process, it needs access to relevant expertise to interpret modelling and technical reports to inform its decision making. How or by whom this support would be provided is not suggested.*

*The literal reading of this recommendation is that Council will be responsible for ensuring it can access relevant expertise, rather than any additional support or access being provided by any external body. Such expertise, in the form of consultants capable of interpreting and providing advice on the more comprehensive and complex level of hydrogeological assessment, testing and mitigation as described by the report as is necessary, would come at cost and could be significant cost, each time a new development application were lodged. (p. 3)*

The first sentence in the first paragraph above is accurate in terms of Review findings (not recommendations). The second sentence is not accurate, nor is the reasoning that starts at the beginning of paragraph two.

During initial site visits undertaken in December 2018 and January 2019, the issue of access to expert advice was subject of discussion in Council-related meetings. Confusion was expressed about which agency was responsible for what and the level of advice and support that Councils could call on when faced with applications. These discussions also included reflections (by Council representatives) about whether or not Councils should be interrogating hydrology issues at all given the roles of state agencies in the assessment process and the expertise they have (WaterNSW and DPIE Water).

The Review did make the finding that *if* Councils are to be involved in hydrology assessments, then they do need access to expertise – it did not (nor should it) draw any conclusions about whether this is a Council responsibility.

The Review made a recommendation to address this (Recommendation 6). I note that the Agenda paper does not reflect fully the recommendations contained in the Review report, referring to this recommendation as

*“Streamlining the assessment and approval process”* (p. 9)

The complete Recommendation contained in the Review report is as follows:

6. State government agencies and local government should work to clarify roles and responsibilities to streamline assessment and approval processes, to avoid duplication of effort, and to address any gaps in the assessment and approvals process. The first step for this would be by February 2020, relevant officers from Water NSW, DPIE Water, NRAR and Tweed Council convene a workshop for Northern Rivers region bottled water to discuss and develop an approach between them.

### **Truck operations, safety and amenity**

The Agenda paper states that:

*“Whilst the CS&E suggests almost sole reliance on mitigation through conditions of development approval, it is evident from the findings of J Pain, along with historical compliance issues that Council has had with truck movements outside approved hours of operation and repeated complaints from the public about the driving behaviour of water truck drivers, that mitigation measures alone are not capable of providing the level of protection to the community that is expected. It is for this reason*

*that removal of the ability for additional water bottling operations to establish in the Tweed remains the recommendation of this report.*

The above fails to recognise the focus of the Review, which was asked for advice on *scientific and technical approaches to examining socio-economic factors and impacts and possible solutions using locally relevant examples* (Terms of Reference 3a).

### **Consultation**

I note that the Gateway Determination required Council to consult with the (then) Department of Primary Industries – Office of Water. The Agenda paper states that the relevant office is now known as Natural Resources Access Regulator or NRAR (p. 4). I recommend discussing this with the planning agency within the Department of Planning, Industry and Environment (DPIE), as DPIE Water may be the relevant water authority to consult with following departmental restructures.

Should you have any questions, please contact Suzanne Pierce, Director Policy, Science and Research who can be reached at [suzanne.pierce@chiefscientist.nsw.gov.au](mailto:suzanne.pierce@chiefscientist.nsw.gov.au).

Yours Sincerely



**Dr Christopher Armstrong PSM**  
**Deputy NSW Chief Scientist & Engineer**

5 March 2020

CC Mr Vince Connell, Director Planning and Regulation, Tweed Shire Council

Mr Jeremy Gray, Director Northern Region, Local and Regional Planning, Department of Planning, Industry and Environment