

s.64:Submission of copy of draft local environmental plan to Department of Planning: Supporting Documentation

Statement specifying the names of the public authorities, bodies and other persons the council has consulted with pursuant to section 62.

Authorities, Bodies and other persons consulted:

11 December 2006

Roads and Traffic Authority NSW
Tweed Byron Aboriginal Land Council;
Department of Planning;
Department of Natural Resources;
Department of Environment and Climate Change;
NSW Rail Corporation;
NSW Rural Fire Services;
County Energy;
NSW Heritage Office;
Department of Primary Industries;
Kyogle Council
Ballina Shire

17 April 2007

Department of Planning
NSW Department of Primary Industries
NSW Environment Protection Authority
Roads and Traffic Authority NSW
Telstra
NSW Rural Fire Service
Department of Environment and Climate Change
Country Energy
Tweed Byron Local Aboriginal Land Council

Summary of Consultation Responses

Received in relation to consultation of Tweed Shire in relation to Stage1 of LEP
Correspondence dated 11 December 2006 & 17 April 2007

Authority/Body/Other Persons (issues)	Response
Kyogle Council (received 9 January 2007) No comments raised.	
NSW Rural Fire Service (received 22 January 2007) (secondary response received 22 May 2007) <i>Council should be aware that Model LEP</i>	Standard Instrument prepared in accordance with State Government Guidance in relation to controls. No major rezoning of land for residential purposes, therefore requirements noted,

<p><i>Template does not include any specific provisions relating to bushfire protection, but Rural Fires Act 1997, Rural Fires Regulation 2002 and EP & A Act 1979 contain bushfire provision.</i></p> <p><i>RFS suggests Council prepare a local policy/guideline in respect to bushfire measures that takes a strategic approach to protection by considering land zoning to reflect the hazard/risk posed to proposed land use(for eg zoning land for Special Fire Protection Purpose developments in areas at lower risk of bushfire). Exclusion of development in certain areas is an option where the risk from bushfire is high and environmental and access constraints cannot be easily overcome.</i></p>	<p>yet deferred for consideration as part of stage 2.</p>
<p>NSW Department of Primary Industries (received 13 February 2007) (secondary response received 16 May 2007)</p> <p>The response from the NSW DPI provides information on the Departments vision and a number of attachments detailing requirements prescribed by each sector; Mineral Resource Division; Aquatic Habitat Protection and Threatened Species; Agriculture & Forests; Aquaculture.</p>	<p>Given that Stage 1 does not alter landuse allocations within the rural areas (locations of known mineral and resource deposits), the resources are safeguarded in stage 1. The only zone amendments relate to the audit of environmental areas which known mineral deposits fall outside of. Further, mining and extractive industries remain permissible within the Agricultural zones.</p> <p>Similarly, aquatic areas (habitats) are protected by virtue of zoning and landuse restrictions.</p>
<p>RTA (received 21 March 2007) (secondary response received 02 July 2007)</p> <ul style="list-style-type: none"> - Recommendations for protection of Roads (Pacific Highway, Minjungbul Drive, Tweed Valley Way and Tweed Coast Way); - recommendations for inclusion of localised clause to protect future Pacific Highway upgrades; - No rezonings unless safe and efficient access is gained; - Industrial, retail, commercial development should be consolidated to minimise travel 	<p>There is no rezoning of land proposed as part of this LEP, therefore many of the RTA comments are noted, and will be revisited as part of stage 2 of the LEP.</p> <p>-Local clause 5.12H is to be included to ensure protection of the use and functionality of arterial roads and the Pacific Highway.</p> <p>Comments noted and deferred for consideration as part of stage 2.</p>

<p>demand and maximise use of infrastructure</p> <ul style="list-style-type: none"> - Further comments regarding planning for new residential development. 	
<p>Department of Environment and Conservation (received 12 April 2007)</p> <ul style="list-style-type: none"> - DEC notes 2 stage process and notes that stage 1 is a transposition of controls from LEP 2000 into Standard Instrument format. - DEC looks forward to greater involvement in stage 2. 	

All communications to be addressed to
The General Manager
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Scott Turner
CONTACT
FOR FURTHER INFORMATION
Strategic Planning
PLEASE QUOTE THIS REFERENCE

5 January 2007

Co-ordinator – Planning Reforms
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Attention: Eba Butron

Dear Sir,

Tweed Shire Council LEP 2006

I refer to your letter received by Council on December 1st, 2006 concerning the development of Tweed Shire Council's LEP 2006. Please be advised that Kyogle Council does not raise any issues of significance to be considered as part of the planning process for the LEP.

Should you have any further enquiries regarding the above matter, please do not hesitate to contact Scott Turner of Council's Planning and Environmental Services Department.

Yours faithfully

Scott Turner
DIRECTOR PLANNING AND ENVIRONMENTAL SERVICES

LEP REVIEW EPA-GTI/LEP/2006
LEP 2000
TWEED SHIRE COUNCIL
FILE NO. GTI/LEP/2006 Pt 1
Doc No. ...
REC'D - 9 JAN 2007
ASSIGNED TO BUTRON, E
HARD COPY ...



LEP - REVIEW ENVIRONMENTAL PLANNING & ASSESSMENT ACT
Our Ref:

The General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Attention Mr Eber Butron

LEP	
TWEED SHIRE COUNCIL	
FILE No	GM/LEP 2006
Doc No	
REC'D	13 FEB 2007
ASSIGNED TO	BUTRON E
HARD COPY	<input checked="" type="checkbox"/>
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Dear Mr Butron

Section 62 Consultation regarding the preparation of an LEP for Tweed Shire Council

Thankyou for your letter to the Department of Primary Industries dated 13 December 2006 notifying DPI of Council's intention to draft a new Local Environmental Plan for the Tweed LGA. The Department welcomes the opportunity to comment at this stage and would like to continue to work with Council over coming months to ensure the best plan for the LGA is endorsed and gazetted.

The Department's vision is:

Profitable and sustainable primary industries supporting vibrant communities.

We encourage Tweed Shire Council and the community to develop strategies, actions and planning provisions that assist in achieving this vision.

The retention of opportunities for sustainable primary industries (agriculture, forestry, minerals and fisheries) requires commitment to a clear and consistent vision for primary industries and rural areas and the spatial identification of core resources within the LEP. The Department therefore wishes to ensure that the LEP:

- Plans for and secures access to primary industry resources;
- Allows for land to be developed in a manner consistent with its inherent capability;
- Protects the productive capacity of land to support primary industries;
- Protects and improves water quality in adjacent and downstream waterways including the estuaries for the benefit of the commercial and recreational fishing industries, aquaculture, agriculture and rural communities and industries;
- Protects and enhances the natural aquatic environment and the ability of ecological processes to operate in a natural way to help maintain fish populations and recover threatened fish species;
- Reduces the risk of land use conflicts.

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The Department notes that the Minister for Planning has recently gazetted a standard LEP template for use across NSW. This template is supported by DPI and our input and advice is based on the assumption that Tweed Shire Council will be using it as the basis for this new LEP. We expect that zones will be used according to their stated objectives in the LEP template.

The Department has 4 main areas of interest with respect to Land Use Planning:

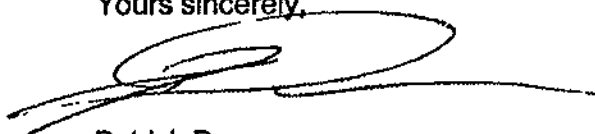
1. Fisheries and aquaculture including aquatic habitat protection and threatened aquatic species
2. Agriculture
3. Mineral resources
4. Forestry

DPI has responsibility for the management of threatened species, populations and communities of fish and aquatic invertebrates under the provisions of the *Fisheries Management Act 1994*. As a result of recent amendments to the Act, LEP's, or parts of LEPs, can now be "biodiversity certified" by the Minister for Primary Industries (in addition to certification under the Threatened Species Conservation Act). The Department is currently developing guidelines for Councils that wish to seek biodiversity certification for their LGA or parts of the LGA zoned for substantial land use change in the near future such as urban expansion areas. These guidelines should be available later this year and Council will be notified once they are available.

Attachments A to E provide advice on relevant legislation, policies and information sources in relation to each of these main areas of interest.

For general enquiries please contact Patrick Dwyer on (02) 6626 1397. For specific enquiries related to the main areas of interest, please contact the person nominated in the relevant section.

Yours sincerely,



Patrick Dwyer
Fisheries Conservation Manager (North)

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Attachment A MINERAL RESOURCES DIVISION

MINERAL RESOURCES DIVISION

The Department of Primary Industries – Mineral Resources Division has stewardship of the mineral resources of NSW on behalf of the community. Some mineral resources such as construction materials (eg, construction sand and coarse aggregate) are not minerals under the Mining Act (1992) or Petroleum (Onshore) Act (1991), but are included in the Division's accepted role of assessing mineral resources and providing advice as to their sustainable development and management.

Council should give appropriate attention to the importance of mineral and energy resources to the community, state and nation and the planning actions needed to ensure that the community gets optimum benefits from mineral exploration and development. Council should be aware of the benefits to regional and local communities from exploration expenditure, and of the potential boost to local economies should exploration be successful and mining ensue.

Council should also be aware of the need to ensure that adequate supplies of construction materials are available locally to meet foreseeable future needs. Although these resources are low unit cost materials, they are nonetheless essential for the development and maintenance of roads, buildings and other infrastructure. If construction materials have to be obtained from further afield, the additional transport costs incurred will inevitably be borne by the community.

Local Mineral Resources Profile

Tweed Shire is located in the New England Fold Belt of eastern Australia which extends along the coast from Newcastle in New South Wales to Townsville in Queensland. The Fold Belt is dominated by marine sediments, volcanics and granites and is elsewhere in northern New South Wales associated with deposits of gold, copper, tin, tungsten, arsenic in antimony. The western and south western portions of the Shire are covered by sandstones and related sediments of the Clarence-Moreton Basin. The Basin contains deposits of coal, and more recently, coal seam methane has been discovered in the Lismore-Casino region. Tertiary age volcanism resulted in the development of the Mount Warning Central Complex and associated volcanics of the Tweed Shield Volcanic. Quaternary age coastal sediments have been mined for mineral sands in the past.

The western and south western portion of the Shire is currently covered by a Petroleum Exploration Licence (PEL 445). There are no current other exploration or mining titles in the Shire. Important construction material, clay and industrial resources (silica) resources are present within the Shire.

Recommended Strategies

The most significant aspect of mineral resource evaluation and development from a land use planning viewpoint is that **the locations of minable deposits cannot always be predicted.** This makes it imperative that known resources should be protected from sterilisation by inappropriate zoning or development, and that access to land for mineral exploration should be maintained over as much of the planning area as possible. Another important aspect is that although mining is a temporary land use, it is inherently incompatible with some other land uses such as residential or rural residential development (unless these activities postdate mining and rehabilitation), but is not necessarily

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incompatible with a wide range of other land uses such as agriculture or industrial development.

It is recommended that Council adopt the following strategies regarding mineral resources in its planning.

1. **Operating mines and quarries should be protected from sterilisation or hindrance by encroachment of incompatible adjacent development.**
2. **Known resources and areas of identified high mineral potential should not be unnecessarily sterilised by inappropriate zoning or development.**
3. **Access to land for mineral exploration and possible development should be maintained over as much of the planning area as possible.**

Inappropriate land zoning at surface may also affect resources at depth. Nothing in the proposed LEP should prevent underground coal mining with development consent in non national park areas. Council also needs to be mindful of the need to maintain sub-surface access to petroleum and coal seam methane (CSM) resources in all zones other than those covered by national parks. Petroleum production with development consent should be permissible in all zones.

These strategies require the Department of Primary Industries - Mineral Resources to provide Council with adequate information on the location of known and potential mineral resources. The Department has previously informed Tweed Council in 2004 of the locations of known operating mines and quarries under Section 117 of the Environmental Planning & Assessment Act 1979. This work was undertaken as part of the Comprehensive Coastal Assessment Project. The Mineral Resources Division intends to review these notifications in the coming years.

Additional Information

The Mineral Resources Division can supply Council with GIS data showing geology, the location of mineral deposits, quarry sites and Section 117 notifications, and the locations of current exploration and mining titles. The Division also has available on DVD the "NSW Coastal Quaternary Geology" data package which contains seamless geology coverage of bedrock and Quaternary cover (i.e. recent sediments, alluvial and beach deposits).

The Division also has a range of data available on line through our primary website address at: <http://www.dpi.nsw.gov.au/minerals>

This site hosts a range of data to enable research into exploration, land use and general geoscience topics. Three useful applications are also available online. **MinView** allows users to interactively display and query current and historical exploration tenement information. **TAS Map** permits the search, display and download of up to date NSW mineral, coal and petroleum titles maps and related information. **DIGS[®]** is an interactive searchable database of exploration and geoscience information that is in the public domain. These applications may be found respectively at:

http://www.minerals.nsw.gov.au/online_services/min_view

<http://www.dpi.nsw.gov.au/minerals/titles/online-services/tasmap>

http://www.minerals.nsw.gov.au/online_services/digs

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Key Contacts:

The Mineral Resources Division welcomes the opportunity to work with Council on land use issues within the Shire. Should you wish to discuss any of the general matters mentioned above please contact Phillip Blevin on (02) 4931 6585 or at phil.blevin@dpi.nsw.gov.au, or at the following address:

Dr Phillip Blevin
Minerals and Land Use Assessment Branch
Department of Primary Industries
PO Box 344
Hunter Region Mail Centre, NSW, 2310

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Attachment B Guidelines for Aquatic Habitat Protection and Threatened Aquatic Species in LEPs

General

Aquatic habitats (eg creeks, rivers, streams, lakes, lagoons, billabongs, estuaries, bays, inlets etc) are assets to the local community. Not only do they contribute to the cultural and environmental well being of regions, they also contribute to the regional economy through industry (eg fishing, aquaculture) and fishing tourism. Their conservation helps ensure the region's economy is sustained into the future

Aquatic habitats are often subject to development pressure for water access, recreational use, residential, agricultural and industrial development. However, very few are recognised and incorporated into LEPs to ensure that consistent environmental assessment and development controls apply in these areas.

LEPs play a major role in managing new and expanded developments. Developments can affect aquatic habitats.

- **Directly** and/or
- **Indirectly** and
- During the **construction** phase and/or
- During the **operational** phase.

Indirect impacts upon aquatic habitats caused by water quality decline (eg from soil exposure and stormwater discharge from upstream developments) are of equal or greater threat as direct impacts due to the footprint of the development impinging upon aquatic habitats.

Zoning restrictions can largely eliminate **direct** impacts, but other mechanisms (such as conditions placed upon development consents to prepare, implement and audit Water Quality Management Plans) will be required to deal with **indirect** impacts.

The Department recommends the inclusion of provisions that contribute to the conservation of aquatic ecosystems by addressing **both** these pathways (direct / Indirect) and phases (construction/operation)

The planning approach outlined below is based on the concept of zoning expansive waterbodies (bays, lakes, estuaries etc) as well as identifying all significant waterbodies including rivers and creeks as "sensitive environments" with an overlay or hatching over the top of the underlying zone including those that may already be zoned "Waterway".

Waterway zones will determine the types of developments that are permitted/not permitted within waterways whereas the purpose of the sensitive waterway overlay is not to specify which developments are permitted/not permitted, but to highlight the fact that there is some additional sensitivity associated with the environment in that area and higher performance standards in relation to water quality and aquatic habitats are required for developments which are permitted.

Protection and Management of Key Fish Habitats

- 1 DPI is currently preparing maps of "key fish habitats" to assist Council with the preparation of their LEP. The aim of the maps is to highlight those habitats that are of most importance for protection and conservation to sustain fish populations. To

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arrange access to Key Fish Habitat maps for the Tweed LGA please contact Patrick Dwyer on (02) 6626 1397.

2. Broad expanses of "key fish habitats" (such as the tidal reaches of the Tweed estuary and its broadwaters, estuarine reaches of Cudgen, Cudgera and Mooball Creeks) should be included in either zone W1 Natural Waterways or zone W2 Recreational Waterways. DPI is available to work with Council to help determine the most appropriate zoning category.
 - a. The edge of the zone should extend to Highest Astronomical Tide Mark for tidal areas and to the top-of-bank for non-tidal creeks, streams, rivers, lagoons, billabongs etc.
 - b. Different zones could apply to different parts of a large waterway. For example, zone W3 Working Waterways should only be applied to those parts of the waterway where existing shipping and maritime related services are already established or to enable a small increase in extent or consolidation to satisfy predicted demand. The remainder of the waterway should be zoned W1 or W2.
 - c. Waterway zones will determine the types of developments that are permitted/not permitted over waterways. Developments that do not have some clear requirement to be associated with the waterway should be included in the "Prohibited" category. Future developments that have no alternatives for being sited elsewhere (eg roads and other public utilities inevitably have to cross streams sooner or later) or are consistent with the zoning (eg environmental restoration works) can be included in the "development with consent" category.
 - d. Waterfront structures such as jetties, seawalls, pontoons, boat ramps and moorings should be designated "Prohibited development" within zone W1 but designated "Development with Consent" in zones W2 and W3.
 - e. "Removal or relocation of large woody debris (desnagging)" should be designated "Development with Consent" in zones W1 and W2 in recognition of the fact that it is listed as a key threatening process.
3. Linear "key fish habitats" such as rivers and creeks may not be zoned "Waterway" as such (although large river channels such as the Oxley, Rous, Tweed above Bray Park could be) but should be included within an "Environmentally Sensitive Waterway" (ESW) overlay (ie hatching) applied over the top of the underlying zone.
 - a. The ESW overlay should also be applied over the top of waterbodies that have been zoned "Waterway". The purpose of the ESW Overlay is not to specify which developments are permitted/not permitted, but to highlight the fact that there is some additional sensitivity associated with the area and higher performance standards in relation to water quality and aquatic habitats are required for developments which are permitted without consent or permitted with consent.
 - b. The ESW overlay should be mapped and defined as extending beyond the high water mark for at least 40 metres to encompass the riparian zone. This is to acknowledge the existing provisions of the *Rivers and Foreshores Improvement Act* as well as the listing of "degradation of riparian vegetation" as a Key Threatening Process under the provisions of the *Fisheries Management Act*.

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4. DPI recommends that the objectives of the ESW Overlay should include:
- Ensure that development maintains and enhances bank stability, fish passage, instream habitat (including snags, gravel beds and aquatic vegetation), riparian vegetation, water quality, ecosystem health and biodiversity within or adjacent to key fish habitats.
 - Ensure that opportunities for public access and use of aquatic resources for commercial and recreational fishing, oyster farming and aquaculture activities are maintained and enhanced.
5. DPI recommends that the plan include performance criteria and standards to be applied by the consent authority when assessing applications for development in or adjacent to Environmentally Sensitive Waterway (ESW) areas. These performance criteria and standards would relate to:
- a. Bank stability
 - b. Water quality (sediment, salinity, nutrients, acid sulfate, gross pollutants etc)
 - c. riparian vegetation
 - d. instream habitat including snags (large woody debris), gravel beds and aquatic macrophytes
 - e. longitudinal and lateral connectivity (ie fish passage). An appropriate performance criteria/standard for this is the Department's "Why do fish need to cross the road? Fish Passage Requirements for waterway Crossings" (publication available at http://www.fisheries.nsw.gov.au/data/assets/pdf_file/5054/booklet-fish-passage.pdf)
 - f. introduction or spread of aquatic pests and weeds
 - g. listed threatened species, populations or communities or the exacerbation of key threatening processes listed under the *Fisheries Management Act 1994*, the *Environmental Protection and Biodiversity Conservation Act 1999* or their habitat
 - h. public access to fisheries resources.
6. To help avoid inadvertent breaches of legislation, and facilitate the Integrated Development provisions of the EP&A Act, the LEP should also include two "notes" (ie non legal clauses) to remind Council staff, developers and their advisors, that works within streams and waterbodies may require a permit or concurrence from the NSW DPI even though the works may or may not require development consent from Council and/or require more detailed environmental assessment. DPI recommends that such notes be included on the map that shows the "Environmentally Sensitive Waterway" overlay as well as the relevant section of the written document.

Suggested wording for such notes is:

Note: (1) Excavation of material from the bed or banks of a waterbody, (2) depositing any sand, soil, rock, rubble or other material on the bed of a waterbody, (3) constructing a structure (weir, dam, causeway, floodgates etc) within a waterbody such that the free passage of fish may be obstructed, or (4) harming any marine or estuarine plants including seagrass, seaweed and mangroves, may require a permit from the Department of Primary Industries in accordance with the provisions of the Fisheries Management Act 1994. Please check with the Department.

Note:- (2) "Decline of Riparian Vegetation", "Removal of large woody debris (snags)" and "Installation of instream structures that modify flow regimes" are listed as Key Threatening Processes under the provisions of the Fisheries Management Act 1994.

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Careful consideration of the appropriateness of a development proposal that will contribute to a loss or decline in riparian vegetation, involve the removal of snags or involve the installation of an instream structure is required. If the area is habitat for a threatened species, population or community of fish, then a "significant impact" is likely to be the conclusion of the 7 part test and a Species Impact Statement will be required.

Environmentally Sensitive Areas

1. Due to the sensitive nature and connectivity of aquatic habitats it is recommended that all key fish habitats and adjacent riparian buffers or setbacks (ie all that land identified as "Environmentally Sensitive Waterway") regardless of whether it has been developed and regardless of its zoning should be identified as "environmentally sensitive areas" (as per Clause 18 of LEP template). This will ensure that no exempt or complying development is allowed to occur in these areas and that there is adequate environmental assessment of potential impacts of development on these habitats.

Development within the Coastal Zone

1. The extent of the coastal zone should be clearly defined on relevant LEP maps (as per Clause 30 of the LEP template).
2. In coastal areas, setbacks should be considered adjacent to estuaries and coastal wetlands (eg saltmarsh, mangroves) to allow for their landward migration as they adapt to predicted sea level rises associated with climate change. A useful reference for calculating setbacks is Haines, P.E (2005) Determining appropriate setbacks for future development around ICOLLs. 14th NSW Coastal Conference, Narooma, 8-11 Nov 2005.
3. As per Clause 31 of the LEP template, Mean High Water Mark (MHW) should be clearly indicated on LEP maps. As a precautionary approach DPI recommends that Highest Astronomical Tide Mark be used in preference to MHW as MHW is only an average and does not adequately define the area subject to tidal inundation and therefore heavily constrained in terms of the types of developments that are appropriate.
4. In coastal areas DPI can provide up-to-date GIS mapping and data for marine vegetation (namely saltmarsh, mangroves and seagrass). This mapping was recently completed as part of the NSW Comprehensive Coastal Assessment. DPI recommends that this overlay support Clauses 18, 30(2)(e) and 31 in the LEP template in identifying environmentally sensitive areas and native marine vegetation within the coastal zone.

Protection of Seagrasses

1. Seagrasses play a major role in maintaining sediment stability and water quality, and in providing food and shelter for the survival of a wide variety of aquatic biota, including recreationally and commercially targeted fish species. DPI's Fish Habitat Protection Plan No.2 – Seagrasses (gazetted under the *Fisheries Management Act 1994*) (HPP No.2) outlines management strategies for protecting seagrasses important to the sustainability of commercial and recreational fisheries in NSW. HPP No.2 includes guidelines for assessing a range of activities which may directly or indirectly damage seagrasses including dredging and reclamation, the construction of groynes, jetties, wharves, road crossings, ramps, pontoons, moorings and aquaculture facilities.

Fish Passage

1. Fish need to move within waterways and overland to wetlands and floodplains during flood events in order to breed, recruit to new areas and to access habitat for different life cycle stages. LEPs should ensure that lateral and longitudinal connectivity within

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and between aquatic habitats is maintained to sustain aquatic biodiversity and ecosystem function.

2. **Lateral** connectivity refers to maintaining the links between in-stream habitats and adjacent floodplain and wetland habitats during flooding events. Barriers such as flood levees, roads across floodplains and block banks can restrict the ability of fish to move between these habitat areas. Floodplains and wetlands are also important spawning habitats for several native fish species during flood conditions
- 3 **Longitudinal** connectivity refers to the movement of fish upstream and downstream and between freshwater and saltwater areas. Barriers such as poorly designed road crossings, weirs, dams, floodgates and other man-made structures can limit the ability for fish to move within and between habitats to access food, shelter to breed and to avoid/escape poor habitat conditions. Connectivity is also important to maintain natural flow conditions and to improve water quality.
4. DPI is willing to assist Council with the mapping of "fish migration routes" that are important for the movement and migration of native fish. DPI recommends that this be included as an overlay in the LEP and performance standards in relation to maintaining the opportunities for fish passage should be placed upon developments within this "zone". Such performance standards should explicitly apply to developments that may obstruct the free passage of fish such as dams, weirs, causeways, floodgates and culverts
5. Waterway structures including weirs, dams, causeways, road crossings, floodgates etc should not be included in the "Exempt Development" or "Complying Development" Schedules or "Development without Consent" Categories for any waterway zoning or any zoning that includes significant waterways. All such structures should require development consent.

Protection of Aquatic Vegetation

1. Riparian and in-stream aquatic vegetation are important components of healthy fish habitats. They play a key role in regulating water quality (e.g. water temperature, nutrient absorption, trapping silt from entering waterways etc.) and provide sources of food and shelter for a range of aquatic fauna, including native fish.
2. DPI recommends that Clause 32 of the LEP Template - Preservation of Trees or Vegetation be included and the Development Control Plan (DCP) which prescribes the "species or kinds of trees or other vegetation" that the Clause applies to, should specifically include emergent and submerged aquatic vegetation in freshwater, estuarine & marine waterways and riparian vegetation (other than recognised weeds).

Acid Sulfate Soils

1. In coastal floodplains, areas with high to moderate probability of Acid Sulfate Soil occurrence should be clearly indicated as an overlay on LEP maps.
2. Controls over the excavation of soil including the construction of drains within the mapped ASS Risk Area should be specified to ensure no generation of acidic runoff to waterways are included within the plan.

Land Subdivision and Basic Landholder Rights

1. Subdivision of land fronting freshwater waterways creates additional Basic Landholder Rights under the provisions of the *Water Management Act*. This contributes to greater water extraction from streams. The LEP should avoid establishing zones where subdivision is permissible over land that includes major waterways, in particular those

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delineated as "key fish habitats". If that is not possible, the subdivision layout should avoid creating a multitude of lots with stream frontage

The contact person for matters relating to aquatic habitat protection and threatened species is Patrick Dwyer, Fisheries Conservation Manager (North) available on (02) 6626 1397

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Attachment C. Agriculture & Forests

Overview of Agriculture in the LGA

Agriculture is an important industry in Tweed LGA and with an annual gross value of farm production in the order of \$37 million - \$51 million at least plus multiplier effects.

Agriculture is a dynamic and changing business with the potential for ongoing sustained development and growth which also provides opportunity for other forms of rural development such as tourism and energy development.

The two core issues for the sustainable development of forestry and agriculture are the protection of the land resource base and the minimisation of conflict. In undertaking a land use strategy the following should be examined:

- The value and total area of industry in the LGA,
- Employment by the sector;
- Snapshot of the major farming and forestry enterprises in the area; and
- Distribution and size of holdings across the LGA

Planning for Agriculture & Forests

There are significant benefits to the community if agricultural industries, including forestry, are effectively planned for. These include:

- equitable access to finite resources in line with the principles for Ecologically Sustainable Development;
- sustainable development opportunities and the ability to adjust to future changes;
- a clear stable operating environment which encourages investment in agriculture and forestry and fosters more sustainable development;
- reduced potential for land use conflict; and
- retention of a critical mass of land and agricultural and forestry businesses to sustain key support industries, infrastructure and rural communities;

The following land use planning principles will assist in delivering the above benefits:

Resource recognition

- Resources of particular value for primary industries need to be identified and protected from urban and other non-rural based dependent land uses
- LEPs should contain zones based on areas where primary industries are best suited such as Primary Production and Forestry zones. Within these zones the relevant primary industries should be identified as a priority land use.
- Under the Forestry Act, 1916, Forests NSW has statutory responsibilities for the management of State forests and Timber Reserves. While there are no longer any State forests within the LGA, Forests NSW also has a statutory responsibility for the protection of the State's interest in timber resources on other Crown-timber lands, which include vacant Crown land, and many categories of leases and reserves. Councils should apply the appropriate zoning to these lands so that forestry is permitted and activities authorised under the Forestry Act, 1916, are permitted without consent. There are a number of plantations established under the Plantations and Reafforestation Act within the Tweed LGA where Forests NSW has an interest as a joint venture partner

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- The broader values of resource lands in providing environmental services should also be recognised and reflected in planning strategies and instruments.

Encouraging sustainable development

- Within areas of importance for agriculture and forestry, priority should be given to maintaining allotments in sizes that can support profitable and efficient enterprises that are typical and sustainable for each locality and which retain future development options and diversity.
- Intensive forms of agriculture should be catered for in the planning process if justified in a strategic analysis. Determining allotment sizes for sustainable development of these industries requires careful consideration of potential environmental impacts as well as return on capital invested. Large buffer zones are usually required.
- The fragmentation of lands within primary industry zones should only occur where fully justified including demonstration of a net benefit to sustainable, profitable agriculture and forestry industries. House construction should only be approved on a staged basis following demonstration of substantial completion of agricultural or forestry infrastructure or development.
- Rural subdivision adjacent to waterways should be avoided to ensure there is no net increase in basic riparian water rights and the level of extraction of surface water from natural watercourses.
- Provisions for the subdivision of agricultural land should be separate from those for housing entitlements (breaking the nexus between rural subdivision and residential development). Minor boundary changes that do not increase the potential for future dwellings or result in lots significantly smaller than the minimum lot size should occur through a deregulated, streamlined low-cost process which achieves an efficient size, layout and production of farms.
- Agriculture and forestry operations and access to resources should not be adversely affected or limited by land use conflict resulting from poorly planned urban encroachment.
- Concessional lot provisions are not supported in primary industry zones
- Planning and development provisions should not include criteria that lead to the inappropriate use of agricultural suitability mapping for property specific assessment and development control.
- The strategic process should identify whether there is a need for ancillary dwelling opportunities to support agricultural and forestry industries in the area. This should clearly be linked to productive capacity and aimed at minimising the potential for future subdivision and conflict. Dwellings on the same title, with shared access points and with reasonable proximity to the primary dwelling are encouraged. Temporary residences and detached duplexes can also be considered.
- In more closely settled areas providing for a resident manager and visiting land owner is not related to agricultural needs and should be provided for by Dual Occupancy provisions or other residential strategies as outlined above. Where rural workers dwelling provisions are deemed necessary, the enterprise must be profitable and the potential for future subdivision and conflict minimised. Clear guidelines should be developed to prevent the referral of routine proposals and applications to agencies such as NSW DPI

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Additional Information

The importance of land use planning for profitable and sustainable agriculture is recognised in key state government policies and guidelines. Policies of particular relevance include:

- Policy for Sustainable Agriculture in NSW 1998 (NSW Government, 1998)
- Policy for the Protection of Agricultural Land (NSW DPI, 2004)

These policies highlight issues which are critical for protecting and promoting agriculture and the natural resource base on which it depends

The Department's Policy for Protection of Agricultural Land (2004) identifies strategies which deliver the Policy for Sustainable Agriculture through maintaining the availability of land for agriculture, avoiding unnecessary limitations on the use of that land, and promoting sustainable agricultural enterprises

The NSW Premier endorsed report prepared by the NSW Sustainable Agriculture Review Group on the implementation of the Policy for Sustainable Agriculture in NSW also has recommendations on major LEP provisions for sustainable agriculture. These policies and associated guidelines are available at <http://www.agric.nsw.gov.au/reader/landuseplanning>

Additional related policies and best practice guidelines which should be considered during the development of local environmental studies and planning strategies are listed in Attachment E.

Agricultural Land Suitability Mapping

Agricultural Land Suitability mapping was developed as a strategic planning tool specifically to help local councils identify important resources for soil based agriculture and determine appropriate zones for sustainable, soil based agricultural development.

Agricultural mapping of the Tweed Shire was undertaken in 1998 by NSW Agriculture. NSW DPI holds this data set and the data has previously been provided to Council. Further information on the role and constraints of agricultural suitability mapping and principles to consider when identifying agricultural zones is provided in 'Agfact AC.25 Agricultural Land Classification' on <http://www.agric.nsw.gov.au/reader/agfact-ac>

Information on Agricultural Production

The Australian Bureau of Statistics (ABS) figures provide the best official indication of the value and overview of agricultural and forestry industries in a region or local area. The ABS should be contacted if Council wishes to obtain this type of data. The 2006 Farm Census is the latest farm data captured by the ABS. The data may be available from the ABS. The Rural Lands Protection Board may also be able to provide data on the number of landholders and livestock held within the sub region and recent trends.

Other data sources include the Australian Bureau of Agriculture and Resource Economics (ABARE) and the Bureau of Rural Sciences (BRS) studies of trends in rural and regional areas. Regional development bodies and the University of New England or CSIRO may also have additional regionally specific studies or reports about emerging trends in primary industries

Settlement Issues in rural areas

Housing density needs to be managed, particularly in primary industry zones to maintain access to finite resources and to allow for efficient production and sustainable agricultural and forestry development.

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Attachment D. Aquaculture

The NSW Department of Primary Industries (DPI) is responsible for the promotion of a viable and environmentally sustainable aquaculture industry. An aquaculture permit issued under section 144 of the *Fisheries Management Act 1994* is required by DPI to authorise commercial aquaculture.

The NSW government has prepared Sustainable Aquaculture Strategies for landbased and edible oyster aquaculture. The strategies include identification of appropriate aquaculture sites and a simplified approvals process. They are gazetted under *State Environmental Planning Policy (SEPP) – 62 Sustainable Aquaculture*.

Sustainable Aquaculture Strategies also include best practice guidelines based on ESD principals. These are gazetted as Aquaculture Industry Development Plan's under the *Fisheries Management Act 1994*. The strategies address issues such as business planning, species selection, site selection, planning and design and water quality guidelines.

Landbased Aquaculture

There are currently two regions covered by Sustainable Aquaculture Strategies; the North Coast and Hunter and Central Coast. A whole of state landbased strategy will replace these regional strategies by mid-2007. This state-wide strategy will also address intensive and extensive aquaculture (intensive, feeding eg. silver perch farm - extensive, non feeding eg. yabbies in an irrigation storage).

In combination with performance provisions in the Aquaculture Industry Development Plan, SEPP-62 clarifies that aquaculture is permissible in certain areas and identifies the level of environmental assessment required for landbased proposals. Landbased aquaculture proponents utilise the Project Profile Analysis matrix in the strategy to determine whether an SEE or EIS is required to accompany a Development Application.

Oyster Aquaculture

The NSW Oyster Industry Sustainable Aquaculture Strategy (OISAS) covers all oyster growing estuaries in NSW. It identifies priority oyster aquaculture areas for oyster farming in estuaries and incorporates the agreed water quality needs of the oyster industry in formal environmental planning legislation.

In the case of OISAS, oyster aquaculture that is consistent with the best management practice standards may be undertaken without development consent in priority oyster aquaculture areas. Oyster aquaculture outside these areas may only be undertaken with development consent. Under OISAS Councils must:

- publish maps of priority oyster aquaculture areas in their Local Environment Plans,
- identify and justify any proposed changes in land use zoning which could result in a deleterious effects on a priority oyster aquaculture area,
- when considering development applications identify and take into consideration issues likely to lead to land use conflict between oyster aquaculture and identify and evaluate measure to avoid or minimize such land use conflicts, and
- refer to DPI draft Local Environmental Plans and development applications that may potentially result in deleterious impacts on priority oyster aquaculture areas

For further information please contact Aquaculture Management at Port Stephens Fisheries Centre on (02) 49821232, or visit the website on www.dpi.nsw.gov.au

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A minimum lot size to attract a dwelling entitlement is an easy planning tool to implement and is effective in achieving the protection of the land resource for agriculture and forests if determined appropriately. If different minimum lot sizes are required for different areas and industries, separate zones should be considered. The minimum lot size selected should retain the capacity for efficient production, minimise the risk of conflict, retain future development options and ensure that typical enterprises suitable for that location are profitable over the longer term. This requires analysis of:

- past and current production and profitability performance of dominant industries,
- existing holding size and lot patterns,
- typical productive potential of the shire,
- the dominant most suitable and foreseeable industries, and
- the minimum area required for sustainable, efficient profitable production.

The Department of Planning and NSW DPI have developed a draft guideline on determining Minimum Lot Size in Rural Areas. Further advice on this should be sought from the Department of Planning or NSW DPI.

Management of Land Use Conflicts

Conflicts between land uses and with natural resources in rural areas can be a significant issue. The Northern Rivers Catchment Action Plan has identified land use conflict as a priority natural resource issue and has set a target of a 90% reduction in rural land use conflicts by 2016. New planning and development provisions should aim to contribute to the achieving this target. NSW DPI in partnership with Southern Cross University is undertaking a CMA funded land use conflict and interface management project. This project is aimed at developing a regional package of measures to better avoid, reduce and manage land use conflict and interface issues in rural areas. Strategic planning and development control are considered key mechanisms with a role in avoid future conflict situations.

Variation to Standards

The capacity for minor boundary changes and farm subdivision to adjust to changing circumstances is appropriate. A 10% variation to minimum lot size standard for new lots created by way of a boundary adjustment and application for dwellings is supported

Contacts

Agricultural issues: Rik Whitehead, Resource Management Officer, Wollongbar
(02) 6626 1349 or rik.whitehead@dpi.nsw.gov.au
Forestry matters: John Murray, Planning and Resources Manager, North East Region,
Forests NSW on (02) 6652 0111 or 0427 937 680.

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**ATTACHMENT E: PLANNING FOR SUSTAINABLE PRIMARY INDUSTRIES
POLICIES AND GUIDELINES.**

Policies & Guidelines
• <i>SEPP 62 Sustainable Aquaculture</i>
• <i>SEPP 30 Cattle Feedlots</i>
• <i>Policy for Sustainable Agriculture in New South Wales (NSW Government, 1998)</i>
• <i>Protection of Agricultural Land Policy (NSW DPI, 2004)</i>
• <i>Policy and Guidelines for Fish Friendly Waterway Crossings (Fishnote)</i> <i>(www.fisheries.nsw.gov.au/aquatic_habitats/aquatic_habitats/policies_and_plans)</i>
• <i>Policy & Guidelines - Aquatic Habitat Management and Fish Conservation 1999</i> <i>(www.fisheries.nsw.gov.au/aquatic_habitats/aquatic_habitats/policy_and_guidelines)</i>
• <i>NSW Industrial Noise Policy (NSW EPA, 1999)</i>
• <i>NSW DPI and Land Use Planning</i> <i>(www.agric.nsw.gov.au/reader/landuseplanning/nsw-ag-landuse-planning.htm)</i>
• <i>How NSW DPI is involved in Land Use Planning and farm subdivision -</i> <i>(www.agric.nsw.gov.au/reader/landuseplanning/how-nsw-ag-involved-landuse-planning.htm)</i>
• <i>Sustainable Urban Settlement: Guidelines for Regional NSW (planning NSW 2000)</i>
• <i>Guidelines on Rural Settlement on the Nth Coast of NSW (DUAP 1995)</i>
• <i>Can I build a rural worker's dwelling? Local government guidelines for landholders (NSW Ag., 1998)</i>
• <i>Buffers planning for Sustainable Agriculture (NSW DPI - Rik Whitehead, 2004)</i> <i>(www.agric.nsw.gov.au/reader/landuseplanning/buffers-sustainable-agric.htm)</i>

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NSW DEPARTMENT OF
PRIMARY INDUSTRIES

Our Ref 06/5694 QUT07/2947
Council Ref GT1/LEP/2006 P11

LEP-Review EPA Amendments

15 May 2007

The General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484



TWEED SHIRE COUNCIL
FILE No. GT1/LEP/2006 P11
Doc No ..
RECD 16 MAY 2007
ASSIGNED TO <i>Butron, E</i>
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Attention Mr Eber Butron

LINK TO 1582429

Dear Mr Butron

Preliminary Draft Tweed Local Environmental Plan 2007

I refer to your letter of 17 April 2007 accompanied by a copy of the preliminary draft of new shire-wide planning instrument for comment

The NSW Department of Primary Industries (NSW DPI) has been formed by the merger of NSW Fisheries, Department of Mineral Resources, State Forests NSW and NSW Agriculture. This is a coordinated and initial response from NSW DPI given the limited time available to review all aspects of the preliminary draft instrument and the absence of maps and material explaining the proposed application of the new instrument compared to the current instrument

The Department acknowledges that Council is undertaking the LEP review in two stages and that the preliminary draft instrument represents stage 1 and primarily a transfer of the existing LEP into the new standard instrument format. While this is acknowledged, NSW DPI offers the following comments so as to improve on the Stage 1 planning instrument where possible and also to highlight to Council, areas of the LEP that will require further attention at stage 2

As indicated, these comments are limited by the available time to review the instrument and in particular the absence of accompanying maps and material describing the location and extent of the zones within the written instrument. The Department welcomes the opportunity to make additional and more informed comments during the public exhibition of the draft instrument

The exhibited draft LEP document should contain relevant explanatory material and maps setting out how the current zones have been applied and incorporated into the new zones possibly in the form of overlays as well as a description of the more major changes contained in the new draft LEP. The Department would appreciate the draft LEP being provided in electronic format or available on the Council's website and the accompanying maps in the form of shape file or equivalent for GIS purposes as well as a PDF version on the website for persons who do not have access to GIS

Fisheries Issues

While it is appreciated that Stage 1 is intended to simply be a "roll over" of Council's existing LEP into that of the standard template and that Stage 2 will endeavour to be a more comprehensive review, NSW DPI - Fisheries strongly recommends that the following matters receive specific attention by Council during the stage 2 review

2

1 As required by the Department of Planning's Far North Coast Regional Strategy, LEPs will zone waterways to reflect their environmental, recreational or cultural values.

2 It is unclear as to the buffering or set back provisions of the LEP as required by the Far North Coast Regional Strategy

3 It is also recommended that a zone comparison table be developed to assist with assessing which old zones have now been grouped into the standard zones (eg 7a is now in E2). It is also recommended that a spatial representation of the new zone layout be provided to assist the Department in reviewing zone applicability.

A number of specific clauses within the stage 1 LEP are supported (eg Clause 32, 32A, 32B, 33, 33A, 33B, 33C). Reference to NSW Fisheries (clause 34B, (4)) should be changed to NSW Department of Primary Industries

The Fisheries Ecosystem Branch of NSW DPI is available to assist Council and provide information on the above issues on request, and is currently preparing Key Fish Habitat maps that may also assist councils during the Stage 2 review process

Please contact Mr Marcus Richea, Senior Conservation Manager - North Region on (02) 66261269 for further enquiries.

Mineral Resource issues

The Department of Primary Industries - Mineral Resources Division has stewardship of the mineral resources of NSW on behalf of the community. Some mineral resources such as construction materials (eg, construction sand and coarse aggregate) are not minerals under the Mining Act (1992) or Petroleum (Onshore) Act (1991), but are included in the Division's accepted role of assessing mineral resources and providing advice as to their sustainable development and management

The Mineral Resources Division wishes to ensure that the Draft Tweed Local Environmental Plan 2007 does not sterilize any known or potential mineral or extractive resources through inappropriate or inadvertent zonings that have the effect of precluding mining or extraction as permissible land uses

The Department of Primary Industries - Mineral Resources has previously informed Tweed Council in 2004 of the locations of known operating mines and quarries under Section 117 of the Environmental Planning and Assessment Act 1979. This work was undertaken as part of the Comprehensive Coastal Assessment Project. The Mineral Resources Division intends to review these notifications in the coming years. We ask that Council protect these resources from inappropriate zoning or development or from sterilisation or hindrance by the encroachment of incompatible adjacent development

Inappropriate land zoning at surface may also affect resources at depth. Council needs to be mindful of the need to maintain sub-surface access to petroleum and coal seam methane (CSM) resources in all zones other than those covered by national parks. Petroleum production with development consent should be permissible in all zones

Land Use Tables

The terms "extractive industries" and "mining" are listed as permitted activities (with consent) in Zone RU1, however "Extractive industry" and "Mine" are the terms used in Zone RU2. The Mineral Resources Division requests that the terminology and definitions of the new standard LEP Instrument (ie "extractive industry" and "mining") be used both in the Land Use Table and the Dictionary

Key Contacts

The Mineral Resources Division welcomes the opportunity to work with Council on land use issues within the Shire. Should you wish to discuss any of the general matters mentioned above please contact Phillip Blevin on (02) 4931 6585 or at phil.blevin@dpi.nsw.gov.au, or at the following address:

Dr Phillip Blevin
Minerals and Land Use Assessment Branch
Department of Primary Industries
PO Box 344
Hunter Region Mail Centre, NSW, 2310

Forestry issues

Forestry is identified in the preliminary draft LEP as a land use that is **Permitted without consent** and **Permitted with consent** in the land use tables of the RU1 Primary Production zone. It is recommended that this land use be permitted without consent in the RU1 zone as occurs in the RU2 Rural Landscape zone.

Please contact John Murray at Forests NSW on (02) 6652 0111 for further information.

Agricultural Issues

The Department expects that the working document provided to all north coast councils by the Department of Planning entitled "Guidelines and Criteria for Application of Natural Resource Zones" be utilised in the preparation of the new instrument and that any variations to the guideline be explained.

RU1 Primary Production Zone

It is noted that three land uses are permitted without consent namely environmental facility, extensive agriculture and forestry. Turf farming, horticulture, viticulture and farm forestry are uses excluded from the definition of extensive agriculture and therefore will require consent (under agriculture). Given the objectives of the zone and in order to facilitate agricultural and rural development and to reduce unnecessary red tape, it is recommended that these land uses be permitted without consent.

RU2 Rural Landscape Zone

Agriculture (other than intensive livestock industries and large built structures for intensive crop production) should not require consent in this zone as it assumed the zone is to be applied to rural land dominated by agricultural land uses. Requiring consent for all forms of agriculture in this zone could create substantial workload for Council and require development application for a range of rural land uses that are not well suited to a development control process. In addition, extensive agriculture as well as horticulture do not require consent in the R5 Large Lot Residential Zone and the permissibility of horticulture without consent should be extended to the RU1 and RU2 zones subject to clarification as to the lands that these zones apply.

Rainwater tanks should not require consent in the rural zones (eg RU1). Farm buildings require consent in the RU1 and RU2 zone including sheds and stock holding yards. Stock holding yards typically used on rural properties should not require consent except where they are part of a large stock handling enterprise or a serious nuisance or pollution risk.

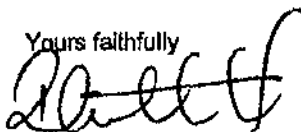
Clause 20 as provided by the LEP template permits the creation of lots less than the subdivision standard in the RU1 and RU2 zones provided no dwelling is situated on the lot or erected subsequently. This provision would appear to be contradictory to objective 1.3 of the RU1 zone and could facilitate the alienation of productive agricultural land, the creation of

sub-economic farm lots and could create subsequent pressure for farm dwellings on these allotments

Rural worker's dwellings have limited application in the more closely settlement areas of the north coast. It is noted that affordable housing for farm worker's is an issue given high property prices, high rental costs and the off-farm interests of many landowners on the north coast. However, rural worker's dwellings are considered a rural settlement issue as they contribute to dispersed rural settlement and urbanisation of rural areas and they can rarely be justified on agricultural grounds alone except in more remote areas and on very large holdings.

Please contact Rik Whitehead on (02) 6626 1349 for further information on agricultural issues

Yours faithfully



Rik Whitehead
Resource Management Officer
NORTH COAST

Your reference GT1/LEP/2006
Our reference DOC06/59883gr 02/05573
Contact Gillian Reffell, 6659 8228
Date 4 April 2007

LEP - LEP REVIEW ENVIR PLAN + ASSESS
ACT.

TWEED SHIRE COUNCIL	
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Mr M Rayner
General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Attention: Mr Eber Butron

Dear Mr Rayner

RE: Section 62 Consultation -- Tweed LEP 2006

I refer to your correspondence dated 13 December 2006 and a conversation with Eber Butron on 3 April 2007 concerning the Department of Environment and Conservation's (DEC) comments on the above proposed draft Local Environmental Plan (LEP)

The DEC notes that the proposed draft LEP represents the first stage of the Tweed comprehensive LEP review process and will be limited to a transposition of the current LEP/s into the format of the Standard Instrument (LEP) Order 2006.

On this basis DEC has no substantive comments to add to those put forward at the meeting held on 6 February at Ballina between councils of the Far North Coast Region and State Government agencies responsible for natural resource management issues and environment protection. A copy of that advice is attached for your information.

As discussed on 3 April 2007, DEC is looking forward to participating in more depth when the council starts its Stage 2 LEP which will constitute a review of policy issues underlying the LEP

Should there be any other matters you wish to discuss concerning this draft LEP, please contact John Allen, Conservation Planning Officer, on 6659 8222 or myself

Yours sincerely



GILLIAN REFFELL
For Manager, Planning and Aboriginal Heritage - North East
Environment Protection and Regulation

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Department of Environment and Conservation NSW

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Preliminary advice on biodiversity conservation, Aboriginal culture and heritage, and environment protection issues (6 February 2007)

What uses should be put in the land use table for the E1 National Parks and Nature Reserves zone?

DEC suggests only uses authorised under the *National Parks and Wildlife Act 1974*, as per the Standard Instrument. If Marine Parks are also included in the E1 zone, then uses authorised by the *Marine Parks Act 1997* would also be appropriate.

How do Councils replace their previous 8(b) zone? What zone do they use? Do they insert an acquisition clause coupled with map overlay?

E1 is recommended for the previous 8(b) zone. An additional objective has been suggested. Clause 25 *Land acquisition within certain zones*, is a compulsory clause in the Standard Instrument. The 8(b) land would need to be added to the land acquisition map with a concurrent amendment to the Table. This alteration can be made under Clause 25. There have been a range of uses in previous 8(b) zone tables, but the principal consideration is that these lands were identified to be added to the DEC estate, and thus their conservation or cultural heritage values should not be degraded. Accordingly, the DEC considers that only uses as discussed above should be inserted. Part 11 lands (ie lands owned but not yet gazetted) are also recommended to be zoned E1. Minor amendments to the Standard Instrument are expected to be made when it is next amended.

What biodiversity data can DEC supply to Councils and how is the data to be used?

A GIS dataset for State and regionally significant land, from a biodiversity conservation perspective, may be supplied as part of DoP's data package. Other data, such as DEC estate layers, are available from the Northern GIS Support Officer on telephone 6659 8243 (details of available data attached). When Councils contact the GIS Officer, a spatial data request form is sent to Councils. This also incorporates a data license agreement. If the Biodiversity Conservation Lands layer is required prior to DoP's distribution, send a request as above. The DEC will then work collaboratively with Council on how best to incorporate this Regional-scale dataset into Councils landuse planning.

If Councils have more detailed or conflicting local data, which data should prevail?

DEC is happy to work with Councils to assess and determine the best dataset to use to ensure consistency with a regional planning approach (ie compatible with Regional Strategies and Regional Conservation Plans). In the first instance, contact with the Planning and Aboriginal Heritage Section of DEC is recommended

How is biobanking and biodiversity certification to be addressed through the Standard LEPs?

Biodiversity certification can be addressed under the existing provisions of the Standard Instrument. Crucial to any consideration of biodiversity certification would be whether environmental protection zones have been placed over the appropriate area to protect biodiversity and how biodiversity is addressed in proposed development areas. It is understood that there is at least one advanced Shire-wide biodiversity certification project, for Albury Shire, and that there are others being contemplated on the South Coast, for more restricted areas (eg substantial areas of a Shire where the major development pressures are being felt). None are currently being negotiated on the North Coast although it is understood there is interest in pursuing biodiversity certification for some Master Planning precincts. The Planning and Aboriginal heritage section of the DEC North East Branch is watching progress of other projects closely and is happy to discuss this initiative further.

With respect to biobanking, there is no need for consideration in the LEP itself other than possibly identifying potential biobanking target areas in, for example, an E3 zone. Biobanking is designed to apply at the DA stage, as an alternative to assessment of significance. Under the Act, a developer has the choice of which process to apply. The biobanking scheme is expected to be ready for implementation about September this year, after the Parliamentary inquiry [what guidelines should be used to implement the scheme; whether biobanking should be applied under the *Native Vegetation Act 2003*] and the Ministerial Reference Group [reviewing the draft Regulations and the biobanking assessment methodology] have finalised their reports. The two-year implementation trial will start from then, with the scheme and its implementation to be reviewed at the end of that period.

Biobanking is voluntary for developers during the trial. If Councils were thinking of introducing their own offsets scheme, they may prefer to trial biobanking instead, and potentially make such a scheme mandatory in their LGA.

How do Councils deal with zoning SEPP14 and SEPP26 areas where ground truthing indicates a different boundary is appropriate?

All lowland rainforest, whether or not mapped SEPP 26 littoral rainforest, has been listed as endangered ecological community, so should be protected in an E2 zone. Similarly freshwater wetlands on coastal floodplains, coastal saltmarsh and swamp sclerophyll forests are listed as endangered ecological communities, whether or not they are mapped as SEPP14. Again E2 is considered the appropriate zone. The DEC has always recommended a buffer between development and environmentally sensitive areas such as those mentioned here, so this may allow for some mapping variations. However, alterations to the SEPP14 and SEPP26 maps are an issue for DoP

How do Councils now deal with Aboriginal cultural heritage (and thereby S.117 direction no.9) in their Standard LEPs?

There are ongoing discussions between the DEC and the DoP concerning Clause 35, the Heritage Conservation Clause, and also the Section 117 Direction No. 9 relevant to Aboriginal culture and heritage. Once these have been finalised and there is a clearer position, a further meeting with Councils will be held.

In the interim, the DEC recommends that Councils initiate discussion with their local Aboriginal communities to develop a mutually agreeable approach to addressing Aboriginal culture and heritage in the LEP. A separate handout is provided to give some preliminary DEC advice to assist Councils in developing the information which would be fundamental to robust Aboriginal culture and heritage provisions.

How do councils implement wildlife corridors in their Standard LEPs?

Both the Far North Coast and Mid North Coast Regional Strategies advocate the protection of land with high environmental, vegetation, habitat, corridors, riparian vegetation or coastal values in an Environmental Protection zone. It is recommended that very high quality remnant native vegetation both within a corridor or generally in the landscape be zoned E2. Where remnant vegetation is of moderate quality or, with rehabilitation, could provide connectivity across the landscape, this could be zoned E3. Where a Council has a "landscape connectivity" or "green corridors" strategy, it could alternatively be identified as a separate map or an overlay on the Zone Map and supported by a local provision ensuring its protection. The most effective "corridor" would be developed with regard to the DEC's regional corridor modelling, but taking local information into account. The DEC's "Corridors" modelling can provide a regional indication of the most likely movement linkages for forest fauna, if Council has not developed a local strategy.

How do Councils implement threatened species recovery plans in their Standard LEPs?

Landscape-based *Biodiversity Management Plans* (in preparation) may provide guidance on how to do this. Newsletters on the Border Ranges project have been circulated through external networks, but the DEC is not sure whether these have been sent to Councils (they should have been). A newsletter on the Northern Rivers CMA Biodiversity Management Plan project has only been finalised. (Both attached). The Biodiversity Conservation Section of the DEC would welcome the opportunity to meet with Councils, in a forum such as this, to provide details of these projects and their relevance to strategic planning, and obtain advice from Councils on what they need/how best to present information so it can be incorporated into EPIs. Contact details are on the Newsletters.

What provisions do Councils use for buffering against hazardous and offensive industries, sewerage treatment works, etc in their Standard LEPs?

The DEC supports the use of LEP provisions to prevent land use conflicts between uses with the potential for off-site impacts (noise, odour, dust etc.) and sensitive landuses. Where there is the potential for conflicts between rural uses and sensitive uses the RU6 zone could be used as a buffer. There is no obvious similar zone available for significant secondary industry or utilities (including road and rail routes). However, the IN2 Light Industrial Zone or other business or recreational zones could be used in some circumstances.

The DEC has maps available of all scheduled premises which may assist in identifying premises with the potential for off-site impacts. There may be potential to identify areas around the premises on a map, perhaps by hatching. This could be linked to a local provision requiring that rezonings or development applications be subject to consultation with the premises with the potential impact, as well as the environmental regulator of the potentially impacting premises.

How do councils deal with contaminated land in their Standard LEPs?

It is not appropriate for LEPs to specifically map or list contaminated sites because any list of contaminated sites is not static. Rather, Councils should rely on *SEPP 55 – Planning Guidelines – Remediation of Land* to guide them in planning for land which is suspected of being contaminated. The guidelines provide advice on how to ensure that all issues relevant to identification, assessment, remediation and proposals for new development are adequately assessed.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Preliminary advice to Councils to assist in developing local Aboriginal culture and heritage information fundamental to the application of the Standard Instrument (6 February 2007)

DEC is currently involved in discussions with DoP concerning the content of Cl.35 of the Standard Instrument as it relates to Aboriginal culture and heritage (ACH). Once these discussions are finalised it is proposed to provide further advice to Councils.

DEC recognises however that in the interim many Councils are actively considering how best to approach the development of information and guidelines which will inform the application of the Standard Instrument.

As interim advice DEC recommends that Councils consult with the local Aboriginal community early in the LEP drafting process to determine a mutually acceptable approach to addressing ACH within the LEP. It is important that consultation be undertaken in a culturally appropriate manner. Inappropriate consultation techniques/processes are one of the main barriers that may undermine the ability of Council and the Aboriginal community to engage and to achieve protection of ACH. Councils that have an Aboriginal Liaison Officer appear to have more success with consultation, and are better able to address ACH and planning/development.

Councils need to actively consult with the Aboriginal community to develop an acceptable approach to:

1. Determine areas or sites for consideration and to determine appropriate mechanisms for protection through the LEP

Councils should consult with the Aboriginal community to determine areas or sites of ACH significance that should be considered for being addressed through the LEP. It is important to recognise that Aboriginal people are the primary determinants of their heritage. In addition, Aboriginal heritage has both cultural and archaeological significance, therefore a cultural and archaeological assessment may be required to inform this step.

Councils have asked about the Aboriginal Heritage Information Management System (AHIMS). It is important to understand that the AHIMS is just one of many sources of information that could be considered as part of a thorough cultural and archaeological assessment. It is also important to note that AHIMS is not comprehensive, focuses on areas the subject of survey, and that publication of some sites may be sensitive. The information will only be released to Council with the support of the Aboriginal community. However, provision of the information to Council may reflect a level of trust with respect to the information, and does not necessarily mean that the information is appropriate for public knowledge.

The following mechanisms for addressing ACH could be considered:

a) Zoning – Zones E2 and E3 have objectives for protecting "high" and "special" cultural values. This could be an option for large areas of high significance. It could also be an option for areas that have cultural values in addition to other values (such as ecological, scientific or aesthetic). It may be an appropriate option for areas that cannot be specifically identified due to sensitivity. However, the standard LEP template does provide Councils with the flexibility to permit/prohibit various uses. If zoning is to be used as an option, Councils need to ensure that the uses are

consistent with the objectives of protecting cultural values. The Aboriginal community should understand what uses can be undertaken in the zone. Councils may wish to investigate whether a Heritage Map or Overlays may also be placed over appropriate parts of the zone (provided issues of sensitivity are considered).

b) Heritage Conservation clause (Heritage Map and Schedule 5) - Consent under this clause is only triggered for those areas or sites that identified in a publicly available Heritage map or listed in Schedule 5 (respectively). The DEC recognises that there may be issues related to the sensitivity of areas and sites of significance. In order to address this, as part of the consultation process Councils should ensure that the Aboriginal community fully understands the mechanisms of the clause and the requirement for the Heritage Map and Schedule 5 to be publicly available. If the Aboriginal community is of the opinion that the Heritage Conservation clause is an appropriate option, Councils should determine with the local Aboriginal community which sites or areas are appropriate for inclusion in the Heritage Map or Schedule 5. Due to issues associated with the sensitivity of sites, it is also important that the Aboriginal community be consulted prior to the public exhibition of the LEP. This is only an option for areas and sites that can be publicly known.

c) Overlays – These could be used as a landscape approach and may be an option for areas that cannot be specifically identified. Such an approach could potentially be linked to a provision requiring consultation with specified local Aboriginal communities, or other issues relevant to assessing DAs.

2. Develop supporting guidelines/processes for the LEP

Subsection (3) of the Standard Instrument provides Council with the discretion to determine when consent is not required. Subsection (7) provides Council with the discretion to determine an appropriate way of notifying the community. It is recommended that Council develop an agreed protocol with the Aboriginal community to support these sub-clauses.

3. Develop alternative approaches for those areas/sites that cannot be included in the LEP.

It is recommended that Councils develop an agreed cultural heritage management plan and consultation protocol with the Aboriginal community for LEP and DA matters in general. This can contribute to fewer issues at the subdivision/DA stage, as issues are identified and addressed in the early stages. This recognises that the LEP only provides a level of consideration for ACH for those areas/sites addressed through one of the three options listed under point 1 above. All other areas do not explicitly require any consideration of ACH under the LEP (aside from normal considerations in a rezoning or development application stage). In addition, there are a range of funding sources relating to Aboriginal heritage, which Council may wish to investigate.

NB. It is important for Councils to be aware of Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act). It is recommended that Councils insert references to Part 6 of the NPW Act in the LEP (i.e. even though a use may be permitted in a zone, or even though the Heritage Clause may provide consent – there are still requirements under the NPW Act with respect to disturbing and destroying sites). Ensuring that the LEP is clear on this matter will assist in landowners avoiding breaches of the NPW Act.

LEP - LEP REVIEW ENVIRONMENTAL

File No. 62.5314 06/2381
Your Reference: GT1/LEP/2006

TWEED SHIRE COUNCIL	
FILE No.	GT1/LEP/2006 PT. 1
Doe No
REC'D	21 MAR 2007
ASSIGNED TO	SMITH, G
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The General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Rel Doc: 1509833

Tweed Shire Council, LEP 2006.

Dear Sir

- 1509833

Reference is made to your letter dated 13 December 2006 concerning the preparation of a draft LEP.

Attached is a copy of a Memo of Understanding (MOU) and Section 117 Direction for the Pacific Highway setting out principles for managing development along the Pacific Highway. These principles should be taken into consideration with any new planning strategy.

Other roads such as Minjungbal Drive, Tweed Valley Way and the Tweed Coast Way are major arterial roads. It would be appropriate to provide these roads with a similar level of protection.

In relation to the ongoing management of the Classified Road system, the RTA would like to see the inclusion of the Pt 4 Principal Development Standards - Clause 28 of the new Standard Instrument 2006 to protect the new corridors for the upgrading of the Pacific Highway.

The RTA is concerned about the impact that the new B6 Enterprise Corridor Zone will have on Main Roads. This will encourage ribbon development and would conflict with the management of some State Roads. This concern has already been referred to the Department of Planning.

Land should not be rezoned unless safe and efficient access can be gained and the road infrastructure improvements identified.

Where possible industrial, retail and commercial development should be consolidated so that travel demand is reduced and the most efficient use of infrastructure is made.

Rural residential areas have a significant impact on the road network because of the lack of expensive infrastructure and the high dependency on private vehicle transport. Most of it is undesignated development and the lack of adequate contribution arrangements doesn't cater for the impact on the road network.



The planning for any community facilities such as schools, halls, sporting complexes, hospitals and neighbourhood centres should be located well away from arterial roads and close to the areas that they service.

Road traffic noise and vibration have an impact on residential amenity. They need to be addressed so mitigation measures are provided.

For any further information please contact Mr Greg Sciffer (Development Assessment Officer-Northern Region) on 02 66401344 or by email at land_use_northern@rta.nsw.gov.au.

Yours faithfully



19 MAR 2007

David Bell
AV Regional Manager, Northern Region

CONTROLS ON RETAIL/COMMERCIAL DEVELOPMENT ADJACENT TO NSW HIGHWAYS

- POINTS OF AGREEMENT -

At a meeting in Sydney on 29 March 2000, representatives of the Department of Urban Affairs and Planning, the Roads and Traffic Authority and the Commonwealth Department of Transport and Regional Services agreed on the following policy position:

1. Controls are needed on retail/commercial development adjacent to the following highway sections:
 - (i) the Pacific Highway from Hexham to the Queensland border (which is already covered by section 117 direction S28 but needs translation into REP clauses or equivalent to address development control as well as plan making);
 - (ii) the New England Highway from Hexham to the northern edge of Murrumbidgee Shire;
 - (iii) the Newcastle Link Road, between the F3 Freeway and the Lake Road intersection;
 - (iv) the F3 Freeway, from Wahroonga to Hexham;
 - (v) the Great Western Highway from Penrith to the western edge of the Lithgow City Council area;
 - (vi) the Hume Highway from Crossroad near Liverpool to the Victorian border (which is already covered by section 117 direction S24, but needs translation into REP clauses or equivalent to address development control as well as plan making);
 - (vii) the F6 Freeway from Heathcote south; and
 - (viii) the Princes Highway from Wollongong to the Jervis Bay turnoff.
2. The principles to be used in controlling retail/commercial development adjacent to these highways are:

Principle 1: The function of the nominated highways is to operate as primary inter- and/or intra-regional road traffic routes. That is, the purpose of the highways is regional transport, not retailing.

Principle 2: The safety and efficiency of the nominated highways, and the public expenditure invested in making and keeping those highways safe and efficient, should be protected.

Principle 3: Travellers on the nominated highways should have the opportunity to obtain ready-to-eat food, vehicle service and rest needs in convenient locations. These travellers' needs should only be accommodated within towns through which the highways pass, unless the highways go for long distances without passing through a town, in which case the needs of travellers may be provided in dedicated highway service centres.

Principle 4: The role of highway service centres should be differentiated from the role of commercial areas in towns. Highway service centres should only provide services essential to travellers on the highway. Other retail or commercial development should not relocate from town centres (where they can best serve the populations of the towns) to highway service centres, new town by-passes or other highway-oriented sites.

Principle 5: Other than highway service centres, retail or commercial development should not occur near the nominated highways in out-of-town locations.

3. The Department of Urban Affairs and Planning, the Roads and Traffic Authority and the Department of Transport and Regional Services should implement the principles through their various planning, design and approval roles. The main priority is that the principles be included in regional environmental plans or equivalent under the Environmental Planning and Assessment Act, so that preparation of new local environmental plans and decisions on development applications are consistent with the principles. In applying the five principles to the nominated highway segments, there will be a need to expand upon the principles - e.g. by including development standards - for each locality or region.

DUAP file reference G94/00187

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
DIRECTION UNDER SECTION 117(2) No S28

COMMERCIAL/RETAIL DEVELOPMENT
ALONG THE PACIFIC HIGHWAY, NORTH COAST,
FROM THE QUEENSLAND BORDER TO HEXHAM

I, the Minister for Urban Affairs and Planning, pursuant to Section 117(2) of the Environmental Planning and Assessment Act 1979 (the Act), hereby direct each Council specified in Schedule 1 to exercise its functions under Divisions 4 and 5 of Part 3 of the Act in relation to the preparation of a draft local environmental plan specified in Schedule 2

Craig Knowles
Minister for Urban Affairs and Planning

Sydney,

1998

SCHEDULE 1

COUNCIL

Ballina Shire Council
Bellingen Shire Council
Byron Shire Council
Coffs Harbour City Council
Grafton City Council
Great Lakes Shire Council
Greater Taree City Council
Hastings Municipal Council
Kempsey Shire Council
Macleay Shire Council
Nambucca Shire Council
Port Stephens Shire Council
Richmond River Shire Council
Tweed Shire Council
Ulmarra Shire Council

SCHEDULE 2

Proposed Direction

Commercial/retail development along the Pacific Highway, North Coast, from the Queensland border to Hexham

Objectives

The objectives of this Direction relate to managing commercial/retail development along the Pacific Highway. The objectives are

Objective 1 To recognise that the Pacific Highway's function is to operate as the North Coast's primary inter- and intra-regional road traffic route. That is, the purpose of the Pacific Highway is regional transport, not retailing,

Objective 2 To recognise and protect the very large public expenditure being invested in the Pacific Highway, specifically, to limit the need for future public expenditure (eg further by-passes) to overcome new ribbon development,

Objective 3 To prevent, and as opportunities arise to reverse, the losses in highway safety and highway efficiency caused by incremental additions of out-of-town or town fringe retail/commercial development fronting the highway,

Objective 4 To provide for the food, vehicle service and rest needs of travellers on the highway;

Objective 5 To achieve Objective 4 in such a way that the role of highway service centres is differentiated from the role of commercial areas in towns, and

Objective 6 To prevent retail/commercial foci of towns from shifting from town centre areas (where they can best serve the populations of the towns) to highway-oriented sites

When this direction applies

This Direction will apply when a council listed in Schedule 1 prepares a draft local environmental plan for land in the vicinity of the existing and/or proposed alignment of the Pacific Highway

What a council must do if this direction applies

A draft LEP must

- be consistent with the objectives, and
- be consistent with the following principles

Within Town Segments of the Pacific Highway

For the purposes of Principles 1, 2 and 3, "within town" means areas which, prior to the draft local environmental plan, have an urban zone (eg "village", "residential", "tourist", "commercial", "industrial", etc) and where the Pacific Highway speed limit is less than 80km/hour

Principle 1 Within towns, new commercial or retail development should not spread along the highway. Rather, it should be concentrated within distinct commercial centres

Principle 2 Notwithstanding Principle 1, some commercial activities may not always be suited within a town's commercial centre (eg short stay accommodation, entertainment, tourism developments, clubs, petrol stations, vehicle sales, building materials/products sales or showrooms, other bulky goods retailing, wholesaling) These uses should be located "within town"

Principle 3 Where a commercial/retail outlet or area is established with frontage to the Pacific Highway within a town, special effort should be made to protect or enhance the safety and efficiency of the highway

Out-of-Town Segments of the Pacific Highway

For the purposes of Principles 4 and 5, "out-of-town" means areas which, prior to the draft local environmental plan, do not have an urban zone (eg "village", "residential", "tourist", "commercial", "industrial", etc) or are in areas where the Pacific Highway speed limit is 80km/hour or greater

Principle 4 In out-of-town locations (except as provided in Principle 6), new commercial or retail development should not be established near the Pacific Highway if this proximity would be inconsistent with Objectives 1, 2, 3 or 6 of this Direction

Principle 5 Retail or commercial uses which become by-passed by the Pacific Highway should not be relocated onto the new by-pass, except as provided in Principle 6

Highway Service Centres

Over the next 10 or more years, many towns on the Pacific Highway will be by-passed, while the highway will continue to pass through other towns. In either case, these towns will continue to act as service centres for the travelling public. However, in addition to the existing service towns, to meet Objective 4 it may be necessary to provide some highway service centres where towns have been by-passed. For the purposes of Principles 6 to 9, a highway service centre is a place which provides only services essential to long distance travellers on the highway.

Principle 6 - Acceptance of the need for highway service centres Highway service centres should be permitted to establish beside the Pacific Highway, subject to Principles 7 to 9

Principle 7 - Location criteria for highway service centres Highway service centres will be limited in distribution. They should be strategically located to serve, but not to overserve, the travelling public. They should

- be located as near as possible to an existing town that has been by-passed, preferably at an intersection/interchange with the town access road, so that they act to economically support that town, to encourage visitation to that town and so that employees do not have to use the Pacific Highway to get to work. Highway service centres should not be located remote from existing towns. Where a town or village is to be by-passed and that town has developed largely to service the needs of highway traffic, the likely future impact on the town's economy should be considered before approval is given to establish any new or expanded highway service centre on the edge or outside the town, and
- be spaced no closer than 24 kilometres from another highway service centre or a town through which the highway still passes, and
- be limited to one highway service centre to serve both directions of traffic, or one highway service centre per side of the highway, for each segment identified as potentially appropriate for a highway service centre. If there is a need for one highway service centre each side of the highway, they should be located either opposite each other, or staggered such that the highway service centre on the driver's approach is viewed first and is no more than 500 metres from the other

Note that Principle 7 would not allow establishment of a highway service centre out-of-town if the highway still passes through that town, however the Principle does not place limits on development having highway service centre functions within towns.

Principle 8 - Uses allowed in a highway service centre The only uses which will be allowed in highway service centres are

- service stations (which may supply convenience goods catering for the needs of the travelling public),
- emergency vehicle repairs,
- bus/coach terminal facilities (but not depots),
- restaurant facilities (preferably both sit-down and fast food),

- toilet/shower facilities;
- tourist information (but not commercial tourist facilities);
- telephones;
- rest areas (including seating, barbecue and play areas); and
- adequate parking for cars, buses and trucks.

Principle 9 - Access and safety at highway service centres: Access to and from highway service centres should be carefully designed such that highway travel is not slowed or made more dangerous. The following criteria should apply:

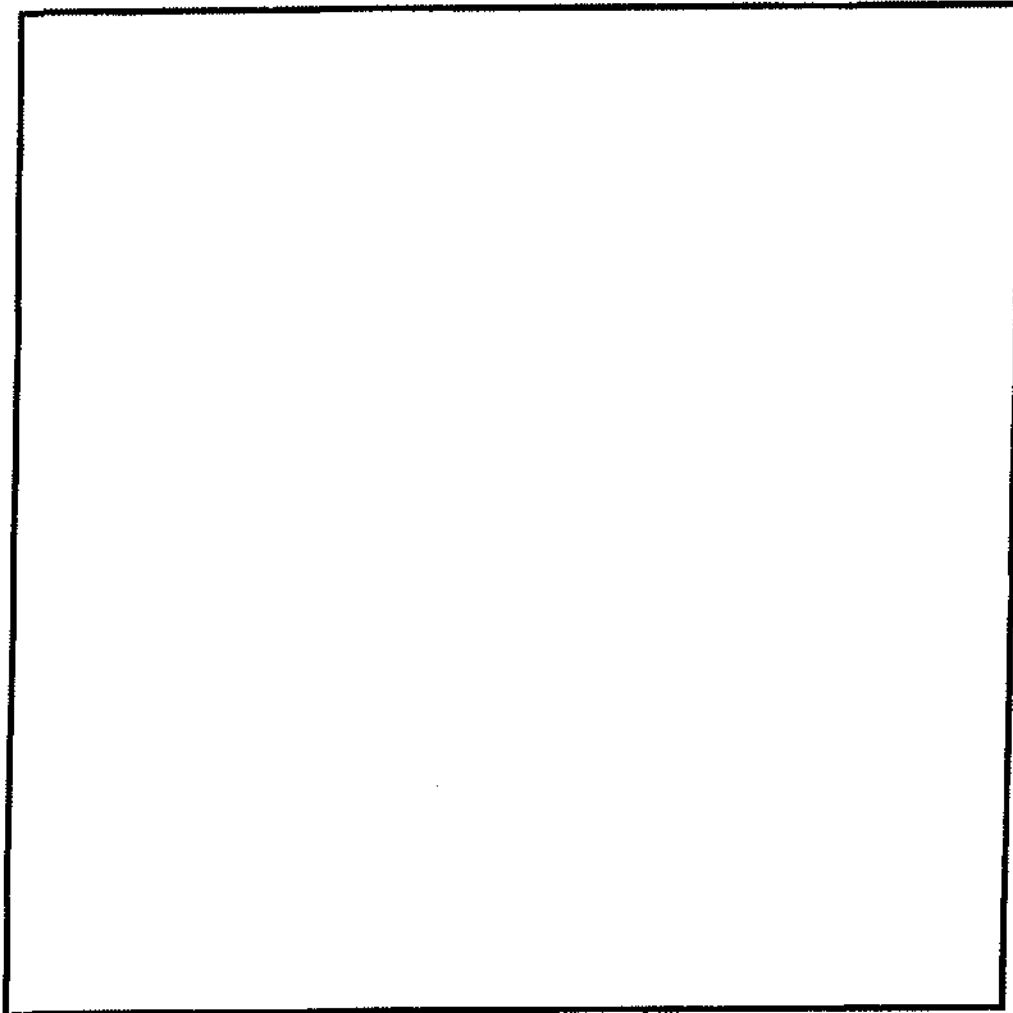
- where access is necessary from the far side of the highway, it should only be provided via grade separation or via safely designed public road intersection;
- if it is not possible to safely and efficiently provide vehicular access from the far side of the highway or to duplicate the highway service centre, then the highway design should prevent access from the far side, including pedestrian access;
- any proposal to provide access to a highway service centre from local streets will be assessed on its merits. The principal concerns to be addressed in such circumstances are:
 - the need to avoid the highway service centre access becoming a defacto, unplanned, uncontrolled intersection;
 - the need to avoid the highway service centre becoming an access to other commercial ventures such a shopping centres and motels;
 - the need to provide access for service vehicles (including those needed to restock the fuel tanks and food outlets);
 - the desirability of having highway service centre employees gaining access to highway service centres without the need to use the Pacific Highway; and
 - the desirability or otherwise of using the highway service centre also as a service for the local population.

Existing Development

There are a significant number of existing retail/commercial developments along the Pacific Highway which do not conform with the Principles listed above. Some of these perform highway service centre functions and others do not.

Principle 10: Where existing commercial/retail development does not conform with the Principles listed above, whether or not it performs highway service centre functions, it should not expand beyond its current level of service. (Principle 10 allows expansion or change of a development which currently does not conform with the policy where that expansion or change would make it consistent with the policy; for example, changing an existing service station into a highway service centre which conforms with Principles 7, 8 and 9. Principle 10 does not affect "existing use" opportunities in sections 106-108 of the Environmental Planning and Assessment Act, 1979).

Pacific Highway



**PLANNING POLICY ON COMMERCIAL/RETAIL
DEVELOPMENT ALONG THE PACIFIC HIGHWAY
FROM THE QUEENSLAND BORDER TO HEXHAM.**

**New South Wales Government
Department of Urban Affairs and Planning
Roads and Traffic Authority of NSW**

PLANNING POLICY ON COMMERCIAL/RETAIL DEVELOPMENT ALONG THE PACIFIC HIGHWAY

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PLANNING POLICY ON COMMERCIAL/RETAIL DEVELOPMENT ALONG THE PACIFIC HIGHWAY

SUMMARY

This paper deals with the major segment of Pacific Highway from the Queensland border in the north to Hexham in the south. A list of the local government areas in the study area is at Appendix A.

The paper is in two sections. The first section is a discussion paper which draws attention to the issues relating to management of commercial/retail development along the Pacific Highway north of Hexham in NSW. The main issue that needs to be addressed is the incremental losses to highway safety and efficiency caused by such development.

The second section recommends new planning policy to manage future pressure for commercial/retail development along the highway. The main philosophy behind the new policy is to physically separate areas having urban functions from the major highway which has a through-transport function. The policy provides for highway service centres to meet only the genuine travel related needs of the travelling public.

SECTION 1: DISCUSSION PAPER

1.1 THE ISSUE

The Pacific Highway is a road of national importance, which is subject to on-going, very significant, public expenditure. It is the major north-south through transport link in the North Coast and northern Hunter regions, giving access to Brisbane, Sydney, and towns between. It is also heavily relied upon as a local road. In total, over 41,000 vehicles use the highway each day (North Coast Road Strategy, 1992, page 10). This is expected to increase to more than 63,000 by 2016.

Because of its heavy use, the Pacific Highway in the North Coast and Hunter Regions has long attracted a range of commercial and retail enterprises, seeking benefit from high exposure to passing traffic. The Department conducted a survey of out-of-town commercial/retail developments along the Tweed to Hastings segment of the Highway in 1994. At that time, there were 262 commercial/retail establishments fronting the Highway in out-of-town locations. Only 43 of these supplied services genuinely required on the highway (petrol or fast food)¹.

As land in urban areas becomes fully developed, or as towns are by-passed by new highway, pressure is placed on rural land adjacent to the highway for new commercial/retail development. There is also pressure for industrial development adjacent to the highway where

¹ Full details of this survey are published in the Department of Urban Affairs and Planning "North Coast Population and Development Monitor No. 17", July 1995.

that development has a marketing component which would be assisted by exposure to the high volumes of passing motorists. Also, developing land adjacent to the highway (as in ribbon development) avoids the cost to developers of constructing local roads.

The main concerns of State/regional significance arising from this pressure are

- (i) loss of highway safety,
- (ii) loss of highway efficiency;
- (iii) the high public cost of providing highway upgrading or by-passes to overcome the above concerns,
- (iv) loss in the quality of the scenery, and
- (v) the undermining of existing commercial centres as major retailers seek to establish on separate, highway-fronting, sites.

At the same time, some benefits of retailing along the highway should be recognised, viz

- (i) convenient service to the motoring public, and
- (ii) local economic and employment benefits resulting from harvesting dollars that move along the highway.

In early 1996, a joint Commonwealth/State Government agreement was signed to substantially upgrade the Pacific Highway between Hexham and Queensland over a 10 year period. Jointly, the two governments are contributing \$2.2 billion to the upgrading program. This very significant investment needs to be protected with strong planning policies.

It is proposed that many towns will be by-passed as part of this upgrading work. It is important that clear policy on commercial/retail development be published in advance of the new work taking place, so that the new road's efficiency and safety is not jeopardised, and so that any highway service centres are strategically planned for in advance.

1.2 CURRENT POLICY - NORTH COAST AND HUNTER REGIONS

There are a number of existing policies which apply to rezoning and development application decisions in the North Coast and Hunter Regions. These are

State Environmental Planning Policy No. 11, which sets out a *process* to deal with certain traffic generating development applications.

The North Coast Regional Environmental Plan, 1988, which has several clauses which are currently used to address the issue of commercial/retail development along the Pacific Highway. These are

- (i) clause 39, which requires that an LEP shall not provide for significant retail, commercial or business purposes unless the expansion is adjacent to or adjoining the existing commercial centre, or if the expansion is not adjacent to or adjoining the existing centre, that development is in accordance with a commercial/retail expansion strategy prepared by the council,
- (ii) clause 47(1), which requires (among other things) that before preparing an LEP for commercial development, the council shall take into consideration the principle that strong multi-functional town centres should be maintained to focus the drawing power of individual businesses and maintain the integrity of the main business area by only zoning land for further commercial or retail development where that development adjoins or is adjacent to the existing town centre, and
- (iii) clause 53, which requires that an LEP applying to a primary arterial road shall identify that road and contain provisions to promote the safety and efficiency of the road. The provision shall restrict access onto the road except at specifically constructed intersections, and where through traffic is in conflict with local traffic, make provision for traffic to by-pass major urban areas

The Hunter Regional Environmental Plan, 1989, which has several clauses of relevance to highway protection, the main ones being

- (i) clause 33, which states that councils, when preparing local environmental plans, should identify the primary and secondary arterial roads and include provisions which (among other things) limit access to the route except at specially constructed intersections, facilitate in developed areas the segregation of through and local traffic, and restrict development where that development will be adjacent to or adjoining a road where traffic operates at high speed, and
- (ii) clause 34(b), which indicates that councils should not grant consent to development on land fronting a main or arterial road unless all vehicular access is from a road other than the main/arterial road where practicable, or where it is demonstrated that there will not be any adverse effects on traffic movement as a result of the development

The Roads and Traffic Authority Policy is detailed in its "Guide to Traffic Generating Development", 1994. The policy focuses on design requirements for different situations. The statements in the policy most relevant to the question of highway exposure are

- (i) major roads cater for high volumes of traffic providing links between major centres, with priority being given to the safe and efficient movements of through traffic, and
- (ii) it is important to acknowledge the relationship between road and land use planning. Roads should be designed and constructed in order to provide a service to existing and planned development rather than promoting inappropriately located development

The Roads and Traffic Authority's North Coast Road Strategy (1992) provides support for some general principles such as the need to separate local and through traffic (page 215) The Strategy does not specifically address the demand for commercial/retail development along the highway

The RTA has also prepared a "Roadside Environment Strategy Plan" Although it does not address commercial/retail development on the highway, it may be relevant to possible solutions

It should be noted that the RTA can control access on all State roads by designating the road a Controlled Access Road

Neither the Northern Rivers Regional Organisation of Councils (NOROC) nor the Mid North Coast Regional Organisation of Councils (MIDROC) transport strategies address the subject issue

1.3 CURRENT POLICY ELSEWHERE

The Commonwealth National Highway Service Centres policy clearly sets out the guidelines to achieve the objectives of locating service centres such that road safety is maintained and the substantial investment in highways to provide a high level of service is preserved

Department of Planning Circular C14 translates the Commonwealth policy into NSW State policy, to conserve the Hume Highway The policy addresses general location, spacing, access, ownership and uses for highway service centres A direction to councils (No S24) under section 117 of the Environmental Planning and Assessment Act 1979, is attached to the circular

The Department of Planning's Sydney to Canberra Corridor Strategy reinforces the section 117 direction S24 with specific policy statements, viz

- (i) maintain the primary role of the Hume Highway as a fast road link between capital cities and prevent adjacent development that will detract from safe and efficient traffic flow (p 32),
- (ii) maintain the current role of highway service centres as nodes for the provision of highway-oriented service to travellers Highway service centres should not provide or act as a focus for residential or short-stay accommodation, entertainment, convenience retailing, industrial or other higher order services Highway service centres should not develop into de facto urban settlements, nor should they act as a focus for rural residential development (p 33), and
- (iii) encourage development of a further highway service centre near Goulburn to improve levels of service to motorists along this stretch of the freeway, and to foster local economic activity in the Goulburn area (p 33)

Victorian Government's Highway Services Centres - Design Guidelines, Preliminary Notes prepared by Hassell Pty Ltd, Ove Arup and Partners, August 1996 The draft guidelines deal only with "highway service centres" Some of the key proposals include

- service centres to be located at strategic intervals along rural freeways, at no less than 50km from existing or approved centres,
- preference is for service centres to be established in staggered pairs to serve both carriageways . staggered distance should be no more than 500 metres aligned so as to ensure that the centre on the driver's approach is viewed first,
- facilities provided must be for the benefit of road users and must not generate additional traffic,
- facilities open 24 hours a day, 7 days a week,
- refuelling facilities including petrol, diesel, LP gas, air and water,
- convenience store,
- vehicle accessory sales area,
- public amenities, including toilets, telephone,
- refreshment facilities including sit-down eating areas, take away and drive-through facilities Separate dining facilities for both public and truck stop use,
- tourist information,
- play area,
- vehicle repair services,
- prohibition of sale/distribution/consumption of alcohol, overnight or long stay accommodation, gaming machines, entertainment

1.4 THE NEED FOR MORE SPECIFIC POLICY FOR THE PACIFIC HIGHWAY

The current DUAP and RTA policies for the North Coast and Hunter regions deal well with some specific land use and highway development principles However they do not

- differentiate between commercial/retail pressure in urban areas and rural areas,
- differentiate between those commercial/retail types which are essential services to motorists and those which are not, or
- specifically address highway service centres

There is a need to develop specific policy and/or planning initiatives which cater for the essential services needed by motorists Now that the highway is going to be subject to substantial upgrading between the Queensland border and Hexham, including by-passing of many towns, the "essential services needed by motorists" referred to above will need to be accommodated in highway service centres (in many areas) There is a need for policy on the distribution/location and appropriate uses for highway service centres A clear policy statement is also needed to deal with other commercial/retail pressures on the highway The policy solutions should aim at addressing the concerns identified in this discussion paper

SECTION 2 - NEW PLANNING POLICY FOR THE PACIFIC HIGHWAY (NORTH COAST AND HUNTER REGIONS)

2.1 OBJECTIVES

The objectives of the new planning policy for managing commercial/retail development along the Pacific Highway are

Objective 1 To recognise that the Pacific Highway's function is to operate as the North Coast's primary inter- and intra-regional road traffic route. That is, the purpose of the Pacific Highway is regional transport, not retailing,

Objective 2 To recognise and protect the very large public expenditure being invested in the Pacific Highway; specifically, to limit the need for future public expenditure (eg further by-passes) to overcome new ribbon development,

Objective 3 To prevent, and as opportunities arise to reverse, the losses in highway safety and highway efficiency caused by incremental additions of out-of-town or town fringe retail/commercial development fronting the highway;

Objective 4 To provide for the food, vehicle service and rest needs of travellers on the highway,

Objective 5 To achieve Objective 4 in such a way that the role of highway service centres is differentiated from the role of commercial areas in towns, and

Objective 6 To prevent retail/commercial foci of towns from shifting from town centre areas (where they can best serve the populations of the towns) to highway-oriented sites

2.2 PLANNING PRINCIPLES

The objectives listed above can be achieved by adoption of the following planning principles. The principles provide a clear statement of the DUAP/RTA policy intent of avoiding and eliminating ribbon development along the Pacific Highway, and avoiding a breakdown in the cohesion of existing urban centres.

Within Town Segments of the Pacific Highway

For the purposes of Principles 1, 2 and 3, "within town" means areas which, prior to the draft local environmental plan, have an urban zone (eg "village", "residential", "tourist", "commercial", "industrial", etc) and where the Pacific Highway speed limit is less than 80km/hour.

Principle 1 Within towns, new commercial or retail development should not spread along the highway. Rather, it should be concentrated within distinct commercial centres².

Principle 2 Notwithstanding Principle 1, some commercial activities may not always be suited within a town's commercial centre (eg short stay accommodation, entertainment, tourism developments, clubs, petrol stations, vehicle sales, building materials/products sales or showrooms, other bulky goods retailing, wholesaling). These uses should be located "within town".

Principle 3 Where a commercial/retail outlet or area is established with frontage to the Pacific Highway within a town, special effort should be made to protect or enhance the safety and efficiency of the highway³.

Out-of-Town Segments of the Pacific Highway

For the purposes of Principles 4 and 5, "out-of-town" means areas which, prior to the draft local environmental plan, do not have an urban zone (eg "village", "residential", "tourist", "commercial", "industrial", etc) or are in areas where the Pacific Highway speed limit is 80km/hour or greater.

Principle 4 In out-of-town locations (except as provided in Principle 6), new commercial or retail development should not be established near the Pacific Highway if this proximity would be inconsistent with Objectives 1, 2, 3 or 6 of this Direction.

Principle 5 Retail or commercial uses which become by-passed by the Pacific Highway should not be relocated onto the new by-pass, except as provided in Principle 6.

² North Coast Regional Environmental Plan, 1988 Clauses 39 and 47(1) are relevant to Principle 1.

³ The Roads and Traffic Authority will need to be satisfied on safety and traffic management arrangements.

Highway Service Centres

Over the next 10 or more years, many towns on the Pacific Highway will be by-passed, while the highway will continue to pass through other towns. In either case, these towns will continue to act as service centres for the travelling public. However, in addition to the existing service towns, to meet Objective 4 it may be necessary to provide some highway service centres where towns have been by-passed. For the purposes of Principles 6 to 9, a highway service centre is a place which provides only services essential to long distance travellers on the highway.

Principle 6 - Acceptance of the need for highway service centres Highway service centres should be permitted to establish beside the Pacific Highway, subject to Principles 7 to 9

Principle 7 - Location criteria for highway service centres Highway service centres will be limited in distribution. They should be strategically located to serve, but not to overserve, the travelling public. They should

- (i) be located as near as possible to an existing town that has been by-passed, preferably at an intersection/interchange with the town access road, so that they act to economically support that town, to encourage visitation to that town and so that employees do not have to use the Pacific Highway to get to work. Highway service centres should not be located remote from existing towns. Where a town or village is to be by-passed and that town has developed largely to service the needs of highway traffic, the likely future impact on the town's economy should be considered before approval is given to establish any new or expanded highway service centre on the edge or outside the town, and
- (ii) be spaced no closer than 24 kilometres from another highway service centre or a town through which the highway still passes, and
- (iii) be limited to one highway service centre to serve both directions of traffic, or one highway service centre per side of the highway, for each segment identified as potentially appropriate for a highway service centre. If there is a need for one highway service centre each side of the highway, they should be located either opposite each other, or staggered such that the highway service centre on the driver's approach is viewed first and is no more than 500 metres from the other.

Note that Principle 7 would not allow establishment of a highway service centre out-of-town if the highway still passes through that town, however the Principle does not place limits on development having highway service centre functions within towns.

Principle 8 - Uses allowed in a highway service centre the only uses which will be allowed in highway service centres are

- service stations (which may supply convenience goods catering for the needs of the travelling public),
- emergency vehicle repairs,
- bus/coach terminal facilities (but not depots),
- restaurant facilities (preferably both sit-down and fast food),
- toilet/shower facilities,
- tourist information (but not commercial tourist facilities),
- telephones,

- rest areas (including seating, barbecue and play areas), and
- adequate parking for cars, buses and trucks.

At least fuel and fast food should be available 24 hours per day, seven days per week

Principle 9 - Access and safety at highway service centres Access to and from highway service centres should be carefully designed such that highway travel is not slowed or made more dangerous. The following criteria should apply

- (i) where access is necessary from the far side of the highway, it should only be provided via grade separation or via safely designed public road intersection⁴,
- (ii) if it is not possible to safely and efficiently provide vehicular access from the far side of the highway or to duplicate the highway service centre, then the highway design should prevent access from the far side, including pedestrian access,
- (iii) any proposal to provide access to a highway service centre from local streets will be assessed on its merits. The principal concerns to be addressed in such circumstances are
 - the need to avoid the highway service centre access becoming a defacto, unplanned, uncontrolled intersection,
 - the need to avoid the highway service centre becoming an access to other commercial ventures such as shopping centres and motels,
 - the need to provide access for service vehicles (including those needed to restock the fuel tanks and food outlets),
 - the desirability of having highway service centre employees gaining access to highway service centres without the need to use the Pacific Highway; and
 - the desirability or otherwise of using the highway service centre also as a service for the local population

Existing Development

There are a significant number of existing retail/commercial developments along the Pacific Highway which do not conform with the Principles listed above. Some of these perform highway service centre functions and others do not.

Principle 10 Where existing commercial/retail development does not conform with the Principles listed above, whether or not it performs highway service centre functions, it should not expand beyond its current level of service. (Principle 10 allows expansion or change of a development which currently does not conform with the policy where that expansion or change would make it consistent with the policy, for example, changing an existing service station into a highway service centre which conforms with Principles 7, 8 and 9. Principle 10 does not affect "existing use" opportunities in sections 106-108 of the Environmental Planning and Assessment Act, 1979)

⁴ Access to conform with Roads and Traffic Authority requirements

2.3 IMPLEMENTATION

It is proposed that the Objectives and Principles listed above be implemented by direction of the Minister for Urban Affairs and Planning under Section 117 of the Environmental Planning and Assessment Act, 1979. The direction would require any councils preparing draft local environmental plans for commercial or retail development on land in the vicinity of the existing or proposed alignment of the Pacific Highway in the North Coast and Hunter Regions (north of Hexham) to do so in accordance with the Objectives and Principles in Sections 2.1 and 2.2 of this discussion paper. After a trial period of about 12 months, the S 117 direction could be superseded by amendments to the North Coast and Hunter regional environmental plans.

The RTA would also use the Objectives and Principles in making decisions or recommendations on development applications that have impact on the Pacific Highway.

Councils would use the Objectives and Principles in advising potential applicants seeking commercial or retail development near the Pacific Highway, thus providing them with the Government's clear policy position.

APPENDIX A: List of Local Government Areas to Which the New Policy Applies.

Ballina Shire Council
Bellingen Shire Council
Byron Shire Council
Coffs Harbour City Council
Grafton City Council
Great Lakes Shire Council
Greater Taree City Council
Hastings Municipal Council
Kempsey Shire Council
Maclean Shire Council
Nambucca Shire Council
Port Stephens Shire Council
Richmond River Shire Council
Tweed Shire Council
Ulmarra Shire Council



File No. 438.5314;20 07/926
Michael Baldwin

LEP-REVIEW ENV PLAN + ASSES ACT

TWEED SHIRE COUNCIL	
FILE No.	GTI/LEP/2006
Doc. No.	
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IMAGE	<input type="checkbox"/>

The General Manager
Tweed shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Preliminary Draft Tweed Local Environmental Plan 2007.

Dear Sir

I refer to your letter dated 17 April 2007, your reference, GTI/LEP/2006 Pt1.

Thankyou for the opportunity to review Tweed Shire Council's preliminary draft local environmental plan (LEP), the Roads and Traffic Authority (RTA) would like Council to consider the following comments in relation to the LEP to ultimately be adopted.

The RTA has the following general principles for management of the Classified Road network that Council should be aware of when developing new planning instruments for its Local Government area;

- **Efficiency of the classified road system**, the primary function of major roads should be to serve through traffic with local or collector roads serving local traffic and local development. Road hierarchies should be identified and to preserve traffic efficiency restrictions on; direct access, ribbon development and the types of zoning along classified roads should be applied.
- **Safety of the classified road system**, planning instruments should reinforce vehicular, cyclist and pedestrian safety. Pedestrian and vehicular conflicts should be eliminated or at least not increased. The interaction of through and local traffic should be minimised.
- **Integration of land use and transport planning**, land use should be planned to reduce private vehicle kilometres travelled and encourage alternate transport such as walking, cycling and public transport.
- **Security of the classified road network**, planning instruments should preserve the integrity of the road network, so that planning does not unduly restrict the management or development of the road network.

Specifically with regards the draft LEP proposed by Council the RTA offers the following comments;

Road side stalls are permitted in RU1 primary production and RU2 rural landscape zones, this type of development has previously caused adverse road safety impacts particularly when located adjacent to major roads. Traditionally the scale of these businesses has been insufficient to support the necessary road improvements to safely cater for the vehicle and pedestrian traffic they generate. Road side stalls are better located away from major roads.

Roads and Traffic Authority



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In RU2 Rural Landscape zones it is proposed to permit schools with consent. In the past schools located in rural localities have presented difficulties with regards traffic management and the provision of safe student access. Schools are better located in town away from major roads. If Council intends to allow this use in rural zonings direct access to major roads should be restricted, and schools should be located so that they are not affected by traffic noise or emissions.

The relevance of including Clause 25A Referrals to other agencies is unclear. If referral to another agency is relevant to the consent authority's ability to determine a provision of the LEP, then the provision of external advice would be a procedural matter for liaison between the external agency and the consent authority.

With respect to Clause 30A (c), it is felt Council's proposed modifications to the Standard Instrument weakens the intent of this clause. Clause 30 in the Standard Instrument is intended to restrict development adjacent to Classified Roads that may be sensitive to road noise or traffic emissions, unless measures to ameliorate these impacts are provided. The inclusion by Council of exceptions "if practical and economic measures can not be provided" reduces the effectiveness of the Standard instrument.

With regards exempt developments, Schedule 2 Exempt Development, 3 (b) of the draft LEP footpath trading, The Roads Act requires RTA concurrence to footway restaurants adjacent to Classified Roads. It is anticipated that bed and breakfast and refreshment room proposals would be affected by the proposed Clause 30A and would not be considered exempt or complying development if adjacent to Classified Roads particularly in rural locations. Advertising signs adjacent to Classified Roads would be covered by the provisions of SEPP 64 and would not be considered exempt development if the requirements of SEPP 64 are triggered.

If Council has any further enquiries please contact Michael Baldwin on 6686 1832 or email land_use_northern@rta.nsw.gov.au.

Yours faithfully



David Bell
Regional Manager, Northern Region

29 JUN 2007

Felicity Maitre

From: Mitchell Alward
Sent: Monday, 8 January 2007 10:46 AM
To: Records Management Section
Subject: FW: LEP Template

LEP REVIEW EPA ACT 2006 .

TWEED SHIRE COUNCIL	
FILE No	GT1 LEP 2006 p.11
Doc No	
REC'D	- 8 JAN 2007
ASSIGNED TO	AWARD, M
HARD COPY	<input checked="" type="checkbox"/> . IMAGE <input type="checkbox"/>

Hi, could this email please be registered and put on file
 GT1/LEP/2006

-----Original Message-----

From: SCIFFER Greg [mailto:Greg_SCIFFER@rta.nsw.gov.au]
Sent: Friday, 22 December 2006 11:01 AM
To: Mitchell Alward
Subject: LEP Template

Mitchell

Attached is a map of Region showing Classified Road network. I have also attached a copy of Section 117 and MOU for Pacific Highway as these have a bearing on the way development along the highway is to be managed.

With regards to the new templates RTA has raised concerns with DOP regarding the impact of the new B6 Enterprise Corridor Zone on main roads. EPA Act uses term main roads to describe what are now known as Classified Roads.

The RTA is also seeking the introduction Clause 28 - Principal Development Standard, especially for the upgraded sections of the Pacific Highway and would recommend it for major local arterials such as the Tweed Valley Way.

The Roads Act refers to Classified Roads. The RTA also uses terms such as State Roads (Highways and important Main Roads) and Regional Roads (other classified roads) for managing and funding. RTAs focus is mainly on State Roads as they form part of the State's transport network.

Merry Christmas
 Greg Sciffer
 Development Assessment Officer
 Northern Region

ROADS & TRAFFIC AUTH PO Box 546 GRAFTON.

Before printing, please consider the environment.

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