

**Supplementary  
Submission  
No 35a**

## **INQUIRY INTO ADEQUACY OF WATER STORAGES IN NSW**

**Organisation:** Tweed Shire Council

**Date received:** 3/10/2012

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Council Reference:  
Your Reference:



2 October 2012

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Standing Committee on State Development  
Inquiry into the Adequacy of Water Storages in NSW  
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Attention: Chairman The Hon. Rick Colless

Dear Sir

**NSW Legislative Council Inquiry into the Adequacy of Water Storages in NSW  
New State-wide LEP Restricts Planning for Water Storages**

The Tweed community faces significant water storage planning issues due to implementation of the new state-wide Local Environment Plan (LEP) template. These issues are in addition to those outlined in Council's original submission to the Inquiry dated 8 August 2012.

Of particular significance are risks to the Part V planning approvals process for genuine public infrastructure development, such as, water storages.

Current situation

As outlined in Council's 2 August submission, both Doon Doon Creek (Clarrie Hall Dam) and Byrill Creek have long been identified as sites for possible future water storages.

In the existing *Tweed Shire LEP (2000)* all land at each of these sites is zoned 1(a) Rural and water courses are unzoned. Clause 125 in *SEPP (Infrastructure)* permits development without consent for the purposes of water storage facilities on land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone SP1 Special activities, Zone SP2 Infrastructure, or an equivalent land use zone. Thus development at either of these water storage sites would be assessed under Part V of the *Environmental Planning and Assessment Act (EP&A Act)*.

The Part V pathway is specifically for community infrastructure where the proponent is a public utility, and is designed to reduce cost and delay risks without compromising the requirements for EIS studies or the rigour of the assessment process.

Future situation

On the direction of the Department of Planning and Infrastructure (DP&I), Tweed Shire Council is currently revising its LEP to comply with the new state-wide LEP template.

This template requires all land, including currently unzoned water courses, to be zoned according to new land zonings. Water courses at each site would become zoned as Zone W1 Natural Waterways.

Thus development at either of these water storage sites would not be able to be assessed under Part V of the *EP&A Act* since W1 is not a prescribed zone in Clause 125 of *SEPP (Infrastructure)*.

Assessment would be therefore be required under the *EP&A Act* through a Part IV pathway, or a combination of Part IV and Part V pathways.

*Significant additional project risks*

By precluding the existing Part V pathway, these changes expose Council and the Tweed community to significant additional cost and delay risks without any additional benefits in terms of more stringent EIS studies, greater public consultation, a more rigorous assessment process or any additional approval scrutiny.

*Inconsistent Instruments*

It appears that *SEPP (Infrastructure)* and the new state-wide LEP template are inconsistent in this regard, particularly considering almost all water storage development is likely to be situated on a W1 water course.

This effectively means all development for the purposes of water storage facilities is unlikely to occur without consent under *SEPP (Infrastructure)* anywhere in the state.

*SEPP (Infrastructure)* has long been used as the pathway for public authorities to gain development approval for these types of community infrastructure. Council does not believe it should be the objective of the new state-wide LEP template to force assessment of water storage developments through a Part IV rather than a Part V pathway under the *EP&A Act*.

Thank you for the opportunity to provide a submission on this significant issue. Please do not hesitate to contact me should you have any enquiries or require any assistance.

Yours faithfully

David Keéran  
GENERAL MANAGER