

Placeholder for Attachment 1

LEP Amendment - Private Native Forestry Consent
Provisions.DOC

Attachment One - DP&E Gateway Determination


Ballina LEP 1987 – Private Native Forestry Provisions.

Proposal Title : **Ballina LEP 1987 – Private Native Forestry Provisions.**

Proposal Summary : **The planning proposal seeks to amend Ballina LEP 1987 by;**

- 1. Adding definitions for 'forestry' and 'private native forestry' to the LEP;**
- 2. Requiring development consent for private native forestry in the 1(b) Rural (Secondary Agricultural Land), 1(d) Rural (Urban Investigation), 1(e) Rural (Extractive and Mineral Resources), 7(c) Environmental Protection (Water Catchment), 7(f) Environmental Protection (Coastal Lands) and 7(l) Environmental Protection (Habitat) zones.**
- 3. Adding a clause to the LEP which specifies matters to be considered when determining a development application for private native forestry.**

PP Number : **PP_2015_BALLI_001_00** Dop File No : **15/01168**

Proposal Details

Date Planning Proposal Received :	07-Jan-2015	LGA covered :	Ballina
Region :	Northern	RPA :	Ballina Shire Council
State Electorate :	BALLINA	Section of the Act :	55 - Planning Proposal
LEP Type :	Policy		

Location Details

Street : _____
 Suburb : _____ City : _____ Postcode : _____
 Land Parcel : **This planning proposal applies to all land in Ballina Local Government Area which has been deferred from Ballina LEP 2012 and is subject to the Ballina LEP 1987.**

DoP Planning Officer Contact Details

Contact Name : **Paul Garnett**
 Contact Number : **0266416607**
 Contact Email : **paul.garnett@planning.nsw.gov.au**

RPA Contact Details

Contact Name : **Klaus Kerzinger**
 Contact Number : **0266861201**
 Contact Email : **klausk@ballina.nsw.gov.au**

DoP Project Manager Contact Details

Contact Name : **Jim Clark**
 Contact Number : **0266416604**
 Contact Email : **jim.clark@planning.nsw.gov.au**

Ballina LEP 1987 – Private Native Forestry Provisions.

Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0

The NSW Government Lobbyists Code of Conduct has been complied with: **Yes**

If No, comment :

Have there been meetings or communications with registered lobbyists?: **No**

If Yes, comment :

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **Ballina LEP 1987 applies only to land deferred from the Ballina LEP 2012. The proposal does not seek to amend Ballina LEP 2012.**

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The Statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to require development consent for private native forestry in zones 1(b) Rural (Secondary Agricultural Land), 1(d) Rural (Urban Investigation), 1(e) Rural (Extractive and Mineral Resources), 7(c) Environmental Protection (Water Catchment), 7(f) Environmental Protection (Coastal Lands) and 7(l) Environmental Protection (Habitat) in the Ballina LEP 1987 and introducing a clause that specifies matters to be considered when determining applications for private native forestry.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The planning proposal will include definitions for 'forestry' and 'private native forestry' in the Ballina LEP 1987 and will amend the land use tables for the respective zones to ensure 'private native forestry' is required with consent.**

The proposal also introduces a clause that specifies matters to be considered when determining applications for private native forestry.

Ballina LEP 1987 – Private Native Forestry Provisions.

It is recommended that the Gateway Determination require that the RPA exhibit a plain English document which explains the intent of the proposed clause in addition to the draft clause which may be changed by Parliamentary Counsel's Office when the plan is drafted.

Justification - s55 (2)(c)

- a) Has Council's strategy been agreed to by the Director General? No
- b) S.117 directions identified by RPA :
 - 1.2 Rural Zones
 - 1.5 Rural Lands
- * May need the Director General's agreement
 - 2.1 Environment Protection Zones
 - 2.2 Coastal Protection
 - 2.3 Heritage Conservation
 - 2.4 Recreation Vehicle Areas
 - 3.1 Residential Zones
 - 3.2 Caravan Parks and Manufactured Home Estates
 - 3.3 Home Occupations
 - 3.4 Integrating Land Use and Transport
 - 3.5 Development Near Licensed Aerodromes
 - 4.1 Acid Sulfate Soils
 - 4.3 Flood Prone Land
 - 4.4 Planning for Bushfire Protection
 - 5.1 Implementation of Regional Strategies
 - 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
 - 5.4 Commercial and Retail Development along the Pacific Highway, North Coast
 - 6.1 Approval and Referral Requirements
 - 6.2 Reserving Land for Public Purposes

Is the Director General's agreement required? Yes

- c) Consistent with Standard Instrument (LEPs) Order 2006 : No
- d) Which SEPPs have the RPA identified? SEPP (Rural Lands) 2008

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? Yes

If No, explain : See the assessment section of his report

Mapping Provided - s55(2)(d)

Is mapping provided? No

Comment : No maps are required for the LEP amendment. The planning proposal does not propose any amendments to the LEP maps. The planning proposal contains maps which show the extent of the land within Ballina Shire to which the proposed provisions will apply. The proposed provisions will only apply to that land which is deferred from the Ballina LEP 2012 and to which the Ballina LEP 1987 applies.

Community consultation - s55(2)(e)

Has community consultation been proposed? Yes

Comment : The planning proposal nominates a community consultation period of 14 days. The RPA has requested a consultation period of 14 days so as to prevent pre-emptive clearing of native vegetation. It is considered that the proposal is a 'low impact' proposal as it is consistent with the strategic planning framework, presents no infrastructure servicing issues and does not reclassify public land. It is also considered that the proposal is effectively clarifying the Council's position on the requirement for consent for private native forestry and therefore a community consultation period of 14 days is considered

Ballina LEP 1987 – Private Native Forestry Provisions.

to be appropriate.

Additional Director General's requirements

Are there any additional Director General's requirements? No

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? Yes

If No, comment :

Time Line

The RPA has provided a project timeline which estimates the completion of the planning proposal in May 2015. While the RPA is likely to progress this proposal relatively quickly, it is recommended that a 9 month period for completion is given to allow time to address matters that may arise from community consultation.

Delegation.

Council has provided a completed 'Evaluation Criteria for the Delegation of Plan Making Functions' form. The evaluation concludes that the proposal can be delegated to Council for making of the LEP amendment. Since the planning proposal relates to an amendment to the Ballina LEP 1987 which is not a Standard Instrument LEP, it is considered that an Authorisation for the execution of delegation can be issued to Ballina Council in this instance.

Overall Adequacy

The planning proposal satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line
6. Providing an evaluation of the delegation of plan making functions

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP :

This planning proposal seeks an amendment to the Ballina LEP 1987 and will apply only to the land deferred from the Ballina LEP 2012.

Assessment Criteria

Need for planning proposal :

The proposal to amend the LEP to introduce controls for private native forestry (PNF) is not directly the result of a specific strategic study or report. Council is concerned with the ecological and amenity impacts that PNF is having in the local government area (LGA). The Ballina Shire Koala Habitat and Population Assessment 2013 identified the loss of koala habitat as a primary threat to koala populations and Council considers PNF to be a potential cause of habitat loss. The RPA intends to require consent for PNF in order to address the ecological and amenity impacts and the potential for loss of koala habitat through this land use.

Native vegetation cannot be cleared, including for the purposes of PNF, without an approval under the Native Vegetation Act 2003 (NVA). Typically, for PNF, this approval constitutes a property vegetation plan (PVP). However obtaining approval under the NVA does not negate the need for approval to clear vegetation or undertake forestry activities under the Environmental Planning and Assessment Act 1979.

Ballina LEP 1987 – Private Native Forestry Provisions.

A proposal for PNF must comply with the Private Native Forestry Code of Practice for Northern NSW as specified under the Native Vegetation Regulation 2013. However this code of practice does not require the proponent to consider matters such as visual impact, impacts on surrounding road networks and the amenity of neighbouring properties.

Much of the land within Ballina LGA which is currently suited to PNF is deferred from the Ballina LEP 2012 as Council had proposed to apply an E zone to this land in the 2012 LEP. Land to which an E zone was to be applied has been deferred from the Ballina LEP 2012 until the Northern Councils E Zone Review has been completed.

Council currently advises proponents that consent is required for PNF under the Ballina LEP 1987, however this is not clear in the provisions of the LEP, as 'forestry' as defined in the LEP is permitted without consent in the 1(b), 1(d) and 1(e) zones. The planning proposal therefore seeks to clarify the requirements for PNF. The amendment to Ballina LEP 1987 will require development consent for PNF on land in the 1(b) Rural (Secondary Agricultural Land), 1(d) Rural (Urban Investigation), 1(e) Rural (Extractive and Mineral Resources), 7(c) Environmental Protection (Water Catchment), 7(f) Environmental Protection (Coastal Lands) and 7(l) Environmental Protection (Habitat) zones.

PNF will be permissible with consent in the 1(b), 1(d) and 1(e) zones since they are open zones and the addition of a definition for PNF to the LEP will make it an innominate use in these zones.

Forestry is currently permissible with consent in the 7(c), 7(f) and 7(l) zones. The amendment to the LEP will add PNF to the land use tables of these zones to make it permissible with consent.

The planning proposal also proposes to include provisions which require the consideration of certain matters when a development application for PNF is received. This is appropriate, however the planning proposal contains a clause which is already drafted and which may be changed by Parliamentary Counsel's Office to meet current legal drafting requirements. It is recommended that the planning proposal be amended to include a plain English explanation of what the clause intends to achieve to ensure the final drafting of the provisions achieves the intent of the planning proposal.

Council considers the definition of forestry in the Ballina LEP 2012 to include private native forestry, and therefore an amendment to the Ballina LEP 2012 is not necessary. Ballina LEP 2012 requires consent for forestry in the RU1, RU2, IN1, RE1 and RE2 zones and prohibits forestry in the remaining zones.

The proposed amendment to the Ballina LEP 1987 is the most efficient means of introducing specific controls for managing PNF in the LGA. The protection of koala habitat could be indirectly achieved through the adoption of a comprehensive koala plan of management (KPoM) for the LGA which identified core koala habitat. The Private Native Forestry Code of Practice for Northern NSW does not permit PNF on land identified as core koala habitat in a KPoM. However this would prevent PNF altogether on land which may have significant timber resources and for which negative impacts can be adequately mitigated. Therefore provisions which require certain matters to be considered before PNF is consented to is a more balanced and appropriate approach.

The NSW Office of Environment and Heritage is conducting a review of biodiversity legislation in NSW. The Final Report released on 18 December 2014, identifies the need to resolve the issue of dual consent for clearing or harvesting native vegetation, and recommends the introduction of appropriate regulatory arrangements for timber harvesting on private land. Until these reforms are introduced the proposed amendment to LEP 1987 is considered the most appropriate mechanism for controlling the impacts of PNF.

Ballina LEP 1987 – Private Native Forestry Provisions.	
<p>Consistency with strategic planning framework :</p>	<p>Far North Coast Regional Strategy (FNCRS) The proposed amendment to the Ballina LEP 1987 to include provisions for PNF is not inconsistent with the FNCRS. The proposal will require consent for PNF which has the potential to have an adverse impact on the biodiversity and amenity of rural land. In requiring consent Council will be able to mitigate any adverse impacts from PNF while enabling the continued use of timber resources for the economic benefit of the region. The proposal is also consistent with the Far North Coast Regional Conservation Plan, the preparation of which was an action in the FNCRS.</p> <p>Local Strategic Plans The proposed provisions are not inconsistent with the RPA's Community Strategic Plan.</p> <p>SEPPS The proposal is not inconsistent with any State environmental planning policies (SEPPs). While many SEPPs apply to the subject land the introduction of provisions in the LEP to manage the impact of PNF is not inconsistent with the provisions of any SEPP.</p> <p>Standard Instrument LEP The Ballina LEP 1987 is not a Standard Instrument LEP and therefore the proposed additions are not inconsistent with the mandatory clauses of the Standard Instrument LEP.</p> <p>S117 Directions. The following S117 directions are applicable to the proposal 1.2 Rural Zones, 1.5 Rural Lands, 2.1 Environmental Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.2 Caravan parks and Manufactured Home Estates, 3.3 Home Occupations, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 5.3 Farmland of State and Regional Significance on the NSW Far North Coast, 6.1 Approval and Referral Requirements, and 6.2 Reserving Land for Public Purposes.</p> <p>Of the above s117 Directions the proposal is inconsistent with Direction 4.4.</p> <p>Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. The proposed PNF provisions will apply to large areas of vegetated land in the LGA some of which is bush fire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service before exhibition. This can occur after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.</p> <p>The planning proposal is otherwise consistent with S117 directions.</p>
<p>Environmental social economic impacts :</p>	<p>The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment. The proposal seeks to introduce provisions to control PNF and require consideration of matters such as biodiversity, and amenity.</p> <p>The planning proposal has the potential to have indirect effects on the economic environment as consent will be required for PNF. However it is considered that this impact is minor in comparison to the beneficial impact of enabling mitigation measures to be applied through conditions of consent for PNF activities which may be adversely affecting other land uses or the environment in the LGA.</p> <p>The planning proposal has given consideration to social and economic impacts of the proposed amendment. The social and economic impacts will be largely positive as the introduction of the PNF provisions will provide clarity for the industry and have the potential to reduce the adverse impacts of the PNF on the community.</p>

Ballina LEP 1987 – Private Native Forestry Provisions.

Assessment Process

Proposal type : **Routine** Community Consultation Period : **14 Days**

Timeframe to make LEP : **9 months** Delegation : **RPA**

Public Authority Consultation - 56(2) (d) : **Office of Environment and Heritage
NSW Department of Primary Industries - Forests
NSW Rural Fire Service
Other**

Is Public Hearing by the PAC required? **No**

(2)(a) Should the matter proceed ? **Yes**

If no, provide reasons :

Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
1. Cover Letter for Ballina LEP 1987 Private Native Forestry planning proposal.pdf	Proposal Covering Letter	Yes
2. Planning Proposal -Ballina LEP 1987 Amendment -Private Native Forestry.pdf	Proposal	Yes
3. Ballina Shire Koala Habitat Study.pdf	Study	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

- S.117 directions:
- 1.2 Rural Zones
 - 1.5 Rural Lands
 - 2.1 Environment Protection Zones
 - 2.2 Coastal Protection
 - 2.3 Heritage Conservation
 - 2.4 Recreation Vehicle Areas
 - 3.1 Residential Zones
 - 3.2 Caravan Parks and Manufactured Home Estates
 - 3.3 Home Occupations
 - 3.4 Integrating Land Use and Transport
 - 3.5 Development Near Licensed Aerodromes

Ballina LEP 1987 – Private Native Forestry Provisions.

- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- 5.4 Commercial and Retail Development along the Pacific Highway, North Coast
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes

Additional Information : It is recommended that;

1. The planning proposal proceed as a 'routine' planning proposal.
2. The planning proposal is to be completed within 9 months.
3. Prior to undertaking community consultation, Council is to amend the 'Explanation of Provisions' within the planning proposal to provide a plain English description of the intended outcomes from the proposed heads of consideration clause for private native forestry.
4. That a community consultation period of 14 days is necessary for the planning proposal.
5. That the RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection.
6. That the RPA consult with;
 - a. NSW Office of Environment and Heritage
 - b. NSW Environment Protection Authority
 - c. NSW Department of Primary Industry - Forests

Supporting Reasons : The reasons for the recommendation are as follows;

1. The proposed provisions will clarify the requirements for private native forestry in the Ballina shire.
2. The proposed provisions will enable the potential adverse impacts of private native forestry to be addressed through the development application process.
3. The proposed provisions are not inconsistent with the strategic planning framework.

Signature:



Printed Name:

J.M. CLARK

Date:

16 January 2015


Ballina LEP 1987 – Private Native Forestry Provisions.

Proposal Title : Ballina LEP 1987 – Private Native Forestry Provisions.

Proposal Summary : The planning proposal seeks to amend Ballina LEP 1987 by;

1. Adding definitions for 'forestry' and 'private native forestry' to the LEP;
2. Requiring development consent for private native forestry in the 1(b) Rural (Secondary Agricultural Land), 1(d) Rural (Urban Investigation), 1(e) Rural (Extractive and Mineral Resources), 7(c) Environmental Protection (Water Catchment), 7(f) Environmental Protection (Coastal Lands) and 7(l) Environmental Protection (Habitat) zones.
3. Adding a clause to the LEP which specifies matters to be considered when determining a development application for private native forestry.

PP Number : PP_2015_BALLI_001_00 Dop File No : 15/01168

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions :

- 1.2 Rural Zones
- 1.5 Rural Lands
- 2.1 Environment Protection Zones
- 2.2 Coastal Protection
- 2.3 Heritage Conservation
- 2.4 Recreation Vehicle Areas
- 3.1 Residential Zones
- 3.2 Caravan Parks and Manufactured Home Estates
- 3.3 Home Occupations
- 3.4 Integrating Land Use and Transport
- 3.5 Development Near Licensed Aerodromes
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 5.1 Implementation of Regional Strategies
- 5.3 Farmland of State and Regional Significance on the NSW Far North Coast
- 5.4 Commercial and Retail Development along the Pacific Highway, North Coast
- 6.1 Approval and Referral Requirements
- 6.2 Reserving Land for Public Purposes

Additional Information : It is recommended that;

1. The planning proposal proceed as a 'routine' planning proposal.
2. The planning proposal is to be completed within 9 months.
3. Prior to undertaking community consultation, Council is to amend the 'Explanation of Provisions' within the planning proposal to provide a plain English description of the intended outcomes from the proposed heads of consideration clause for private native forestry.
4. That a community consultation period of 14 days is necessary for the planning proposal.
5. That the RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection.
6. That the RPA consult with;

Ballina LEP 1987 – Private Native Forestry Provisions.	
Supporting Reasons :	<p>a. NSW Office of Environment and Heritage</p> <p>b. NSW Environment Protection Authority</p> <p>c. NSW Department of Primary Industry - Forests</p> <p>The reasons for the recommendation are as follows;</p> <ol style="list-style-type: none"> 1. The proposed provisions will clarify the requirements for private native forestry in the Ballina shire. 2. The proposed provisions will enable the potential adverse impacts of private native forestry to be addressed through the development application process. 3. The proposed provisions are not inconsistent with the strategic planning framework.
Panel Recommendation	
Recommendation Date :	22-Jan-2015
Gateway Recommendation :	Passed with Conditions
Panel Recommendation :	<p>The matter was considered by the Local Environmental Plan Review Panel (Panel) on 22 January 2015. The Panel consisted of:</p> <ul style="list-style-type: none"> o Simon Manoski (Chair), Acting General Manager, Metropolitan o James Matthews, Project Officer, Planning Services o David Rowland, General Manager, Hunter Region o David Green, Land Use Planning Manager, Wollongong Council <p>The Panel supported the regional office's recommendation that the matter proceed subject to agency consultation.</p> <ul style="list-style-type: none"> • Following the Panel meeting the Environmental Protection Agency and Department of Primary Industries – Forestry were informally consulted. • Neither agency expressed major concerns with the progression of the planning proposal at this stage. The Department of Primary Industries do not play a role in approving private native forestry but do liaise with the forestry industry, and the Environmental Protection Agency have only issued 10 approvals (property vegetation plans) for private native forestry since 2007 in the Ballina Shire. <p>Therefore, it is recommended that the an amendment to the Ballina Local Environmental Plan (LEP) 1987 to require development consent for private native forestry in certain zones, and introduce provisions which require the consideration of specific matters when considering a development application for private native forestry, should proceed subject to the following conditions:</p> <ol style="list-style-type: none"> 1. Prior to public exhibition, Council is to amend the planning proposal to include a plain English explanation of the objectives and matters to be considered in the proposed clause for private native forestry. 2. Council is to consult with the NSW Rural Fire Service as per the requirements of section 117 Direction 4.4 Planning for Bushfire Protection and amend the planning proposal, if necessary to take into consideration any comments made prior to undertaking public exhibition. 3. Prior to undertaking public exhibition Council is to consult with the following public authorities under section 56(2)(d) of the EP&A Act: <ul style="list-style-type: none"> • NSW Office of Environment and Heritage • NSW Environment Protection Authority • NSW Department of Primary Industry - Forests <p>Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.</p> <p>Council is to include any public authority comments in the planning proposal and address any concerns prior to proceeding to community consultation.</p>

Ballina LEP 1987 – Private Native Forestry Provisions.

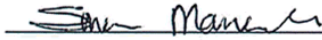
4. Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows:

- (a) the planning proposal is to be made publicly available for a minimum of 28 days; and
- (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2013).

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

6. The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination.

Signature:

 _____

Printed Name:

Simon Mason

Date:

19.2.15

BCA
24/03/2015qA349129
15/01719

Department Generated Correspondence (Y)

DEPARTMENT OF PLANNING AND ENVIRONMENT*Planning Services***BALLINA GATEWAY DETERMINATION: PP 2015 BALLI 001 00****PURPOSE**

- For the Deputy Secretary of Planning Services to determine that the planning proposal to require development consent for private native forestry under the *Ballina Local Environmental Plan 1987* (1987 LEP) should not proceed.

RECOMMENDATION

- That the Deputy Secretary, Planning Services, as the Minister's delegate:
 - **notes** the Planning Team Report (Tab A) and the Panel Recommendation Report (Tab B);
 - **signs** the Gateway determination (Tab C) for the planning proposal; and
 - **signs** the letter, if approved, notifying Ballina Shire Council of the decision (Tab D).

CURRENT POSITION**Planning Proposal**

- The Department has received a planning proposal (Tab E) from Ballina Shire Council to require development consent for private native forestry in the following 1987 LEP zones:
 - 1(b) Rural (Secondary Agricultural Land);
 - 1(d) Rural (Urban Investigation);
 - 1(e) Rural (Extractive and Mineral Resources);
 - 7(c) Environmental Protection (Water Catchment);
 - 7(f) Environmental Protection (Coastal Lands); and
 - 7(l) Environmental Protection (Habitat).
- The planning proposal also seeks to introduce a clause specifying matters to be considered when determining applications for private native forestry.
- The planning proposal has arisen because Council is concerned about the ecological impacts and loss of koala habitat as a consequence of private native forestry.
- Native vegetation cannot be cleared without an approval under the *Native Vegetation Act 2003*, typically in the form of a Property Vegetation Plan.
- A proposal for private native forestry must comply with the *Private Native Forestry Code of Practice*. This code deals with the issues of ecological impacts, loss of koala habitat and sedimentation issues.
- The code does not require proponents to consider matters such as visual impacts, impacts on the surrounding road network and the amenity of neighbouring properties, which Council also raises as a concern.
- Much of the land where private native forestry occurs within the Ballina local government area has been deferred from the *Ballina Local Environmental Plan 2012* (2012 LEP) as Council is proposing environmental zones (E zones) across this land. Accordingly, the 1987 LEP applies to the deferred areas.

- Under the 2012 LEP, the definition for forestry includes private native forestry, for which consent is required in the RU1, RU2, IN1, RE1 and RE2 zones. Forestry is prohibited in the remaining zones. Therefore, no amendments to Council's standard instrument LEP are required at this stage. The zoning of land subject to this planning proposal will be subject to future planning proposals to zone the land under the 2012 LEP.

Local Environmental Plan Review Panel

- The matter was considered by the Local Environmental Plan Review Panel (Panel) on 22 January 2015. The Panel consisted of:
 - Simon Manoski (Chair), Acting General Manager, Metropolitan;
 - James Matthews, Project Officer, Planning Services;
 - David Rowland, General Manager, Hunter Region; and
 - David Green, Land Use Planning Manager, Wollongong Council.
- The Panel supported the regional office's recommendation that the matter proceed subject to agency consultation (Tab F). Following the Panel meeting the Environmental Protection Agency and Department of Primary Industries – Forestry were informally consulted.
- The Department of Primary Industries does not play a role in approving private native forestry, but liaises with the forestry industry. The Environmental Protection Agency has only issued 7 property vegetation plans for private native forestry in the Ballina Shire since 2007.

Additional Review of the Planning Proposal

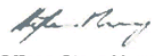
- Following consideration of the matter by the Regional Team and the Panel, a review of the proposal has been requested by the Executive Director, Regions, with regard to the consideration of the E zone review and the biodiversity legislation review.
- The E zone review was undertaken in response to concerns that environmental zones and some environmental overlays were being applied to land used for rural and agricultural purposes.
- The purpose of the review is to establish a methodology for the application of environmental zones to ensure that these zones are applied only to areas of environmental significance and not land primarily used for rural pursuits.
- The E zone review did not include a comprehensive review of land uses within the E zones, except for how extensive agriculture should be addressed. Submissions to the exhibition process raised concerns about introducing additional complexity to undertaking rural uses on rural land.
- Until the E zone review is finalised, it is not appropriate to include additional consent requirements in the deferred areas for a land use linked to existing rural pursuits.
- Under the 2012 LEP consent is required for private native forestry in the rural zones, creating the need for dual consents. However, such a consent requirement does not exist under the 1987 LEP.
- The independent review of the biodiversity legislation, including the *Native Vegetation Act 2003*, has recently been exhibited for public comment. Key recommendations include simplifying the approvals process, including removing the need for dual consent and changing the assessment regime for private native forestry.

- The planning proposal seeks to require development consent for private native forestry in 1(b) Rural (Secondary Agricultural Land), 1(d) Rural (Urban Investigation) and 1(e) Rural (Extractive and Mineral Resources) in the 1987 LEP. All other forestry activities will be able to continue without consent.
- Given the proposed changes outlined in the biodiversity legislation review, it is premature to introduce new controls and dual consent for private native forestry in the deferred areas under the 1987 LEP.


Tim Hurst 29/3/15
Executive Director, Regions


Marcus Ray 15/04/15
Deputy Secretary
Planning Services

Approved / ~~Not Approved~~ / ~~Noted~~


Contact Officer: Steve Murray
General Manager, Northern Region
Phone number: 02 6641 6602

**BALLINA SHIRE COUNCIL SUBMISSION
REVIEW OF GATEWAY DETERMINATION
PRIVATE NATIVE FORESTRY PLANNING PROPOSAL**



Introduction

Ballina Shire Council's application for review of the Gateway determination is based on the following grounds:

1. The Deputy Secretary, Planning Services, when exercising the delegation of the Minister for Planning, gave insufficient weight to the findings, conclusions and recommendations contained within the Report of the Northern Region Planning Team and the Recommendations Report of the Local Environmental Plan Review Panel.
2. The Briefing Report of the Executive Director, Regions is considered to be flawed in its interpretation of how the planning proposal relates to, and impacts upon, the Government's E zone review and the review of biodiversity legislation.
3. The Deputy Secretary, Planning Services, would not have reasonably concluded that the introduction of new consent requirements and dual consent for private native forestry pre-empted the final outcomes of the Northern Councils review of environmental zones and the Governments review of biodiversity legislation, had he not relied upon the inadequate information contained within the Briefing Report of the Executive Director, Regions.

An explanation of the above reasoning is provided below.

Northern Region Planning Team Report

The Northern Region Planning Team assessed the planning proposal as being of a *routine* type generally consistent with S117 Directions. The only inconsistency with directions related to *4.4 Planning for Bushfire Protection*. Planning proposals are typically inconsistent with this direction at the Gateway determination stage. Consultation with the Rural Fire Service after Gateway determination would have resolved this inconsistency.

The Northern Region Planning team also found that the planning proposal was adequate as it had:

- Provided appropriate objectives and intended outcomes;
- Provided as suitable explanation of the provisions proposed for the LEP to achieve the outcomes;
- Provided an adequate justification for the proposal;
- Outlined a proposed community consultation program;
- Provided a project timeline; and
- Provided an evaluation of the delegation of plan making functions.

In the above circumstances it is considered that it could reasonably have been expected that the Gateway determination would have permitted the planning proposal to proceed subject to conditions.

Local Environmental Plan Review Panel

The Panel supported the regional office's recommendation that the planning proposal proceed to agency consultation. Panel members included The Acting General Manager, Metropolitan and the General Manager Hunter. Of significance following the panel meeting both the Environmental Protection Agency (EPA) and Department of Primary Industries were informally consulted by the Panel. In both cases neither agency expressed major concerns with progression of the planning proposal. It is noted that the EPA administers the current private native forestry legislative provisions.

Local Planning Framework and E Zone Review Impacts

Ballina Local Environmental Plan 1987 (Ballina LEP 1987) was gazetted on 27 February 1987. It is a non Standard Instrument local environmental plan which is still applicable to areas deferred from Ballina Local Environmental Plan 2012 (Ballina LEP 2012). In terms of land area Ballina LEP 1987 applies to 137.1 sq km or 27.8% of Ballina Shire.

Ballina Local Environmental Plan 2012 commenced on 4 February 2013.

The deferred areas exist as a consequence of the Governments E zone review. In September 2012, prior to the NSW Department of Planning finalising the Council's local environmental plan, the (then) Minister for Planning initiated a review of environmental protection zones as applied by five councils on the Far North Coast. The State Government initially indicated that this review would be completed by March 2013.

It has now been 26 months since the commencement of the E zone review with no indication being provided as to when it will be finalised. In this context the Council has sought to better protect significant areas at risk of being logged through State regulated private native forestry provisions without direct Council oversight. Council's planning proposal only relates to certain deferred areas under the provisions of Ballina LEP 1987. The planning proposal is intended as a "stop gap" or interim measure pending the finalisation of the E zone review and a Standard Instrument zoning regime being applied (noting again that there is no indication from the DP&E as to whether the E zone matter will be resolved and if so, when and how). Therefore the proposed amendments to Ballina LEP 1987 do not pre-empt E zone outcomes.

The planning proposal also does not introduce additional complexity to the undertaking of rural uses on rural land as has been suggested. The proposed amendment of the *forestry* definition, and the insertion of the definition of *private native forestry* within Ballina LEP 1987, introduces consistency with Ballina LEP 2012. Ballina LEP 2012 requires development consent for forestry (which is interpreted as including *private native forestry*) within the RU1 Primary Production and RU2 Rural Landscape zones. Additionally the regulatory assessment regime applicable to *forestry* (excluding *private native forestry*) under the provisions of Ballina LEP 1987 is proposed to remain unchanged as a consequence of the planning proposal.

In the absence of the proposed LEP amendment the situation arises where *private native forestry* on a property zoned partly rural under Ballina LEP 1987 and partly rural under Ballina LEP 2012 is subject to either no consent or consent requirements depending on where a specific tree is located. This gives rise to confusion as to the nature of applicable controls. The planning proposal provides a means to resolve the current disjointed regulatory approach and proposes to introduce a consistent regulatory assessment regime for *private native forestry* within Ballina Shire.

9.2 LEP Amendment - Private Native Forestry Consent Provisions.DOC

Ballina Shire Council – Request for Review of Gateway Determination – Planning Proposal Private Native Forestry Provisions

The planning proposal does not pre-empt the E zone review in terms of seeking to apply environmental controls to agricultural land or land used for rural pursuits. It seeks to provide a degree of consistency between the provisions contained within two planning instruments. The introduction of the proposed provisions is not E zone dependent in any case, as they relate to the use of land and associated impacts and this may be addressed in a variety of land use zones (not only E zones) as is presently the case in the operating Ballina LEP 2012.

Given the extensive delays which have occurred in the Government's finalisation of the E zone review the planning proposal provides a mechanism through which the Council may address potential habitat loss, land degradation, traffic implications and visual and other adverse amenity impacts associated with private native forestry in Ballina Shire. The planning proposal seeks to establish a consistent, clear and transparent set of requirements to enable consideration and management of potential private native forestry impacts on the environment, infrastructure, amenity and residents. Given this the planning proposal warrants support.

Biodiversity Legislation Review Impacts

In June 2014, the Minister for the Environment appointed an independent panel (the panel) to conduct a comprehensive review of the Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001 and parts of the National Parks and Wildlife Act 1974. This review is known as the Biodiversity Legislation Review.

The panel's final report, which contained 43 recommendations, was presented to the Minister for the Environment on 18 December 2014. At the time of preparing this submission it is understood that the Government has still not formally accepted the recommendations made by the Independent Panel although it was an announced pre-election commitment.

In respect to native forestry management the panel considered that it would be more appropriate for the Government to consider how to best regulate timber harvesting on private land in a separate process to the review of biodiversity legislation. Recommendation 7 of the independent panel relates to this issue.

The panel noted various concerns relating to the scale and intensity of private native forestry operations which included the fact that landholders are responsible for complying with the code of practice and regulatory action cannot be taken against contractors who do the wrong thing under the current legislative framework. The panel advocated the development of an outcomes based regulatory system that focused on the scale and intensity of operations and consequential environmental impacts.

In this context the proposed legislative framework applicable to private native forestry is likely to be some time from being further examined and reviewed. It is clear, however, given the panel's recommendation relating to the repeal of the Native Vegetation Act 2003 (Recommendation 1), and its recommendation that a separate process be initiated to review issues related to timber harvesting on private land that there are significant shortcomings relating to the manner in which private native forestry is regulated in NSW.

It remains unclear as to what timeframes will be associated with the implementation of the recommendations of the Independent Panel, or how long it will be before new biodiversity legislation, and legislation that better regulates private native forestry is enacted. Given the recent experience of the Government with respect to the review of the Environmental Planning and Assessment Act 1979, replacement legislation may be at least several years from being enacted.

9.2 LEP Amendment - Private Native Forestry Consent Provisions.DOC

Ballina Shire Council – Request for Review of Gateway Determination – Planning Proposal Private Native Forestry Provisions

It is in the above context that the Council has prepared the subject planning proposal so as to enable the assessment of private native forestry proposals under the provisions of Part IV of the Environmental Planning and Assessment Act 1979 and to introduce a consistent assessment regime for such proposals throughout Ballina Shire.

The proposed amendments to Ballina LEP 1987 should not be viewed as pre-empt the outcomes of the Government's biodiversity legislation review. This is because the panel has in fact recommended that a separate process, outside of the current biodiversity legislative review, be initiated to review issues related to timber harvesting.

Biodiversity Legislation Review – Dual Consent Concerns

The brief from the Executive Director, Regions to the Deputy Secretary Planning Services indicates that the independent review of biodiversity legislation contains recommendations relating to the removal of dual consent requirements and that this is a matter that consequently warrants consideration in respect to the implications arising from Council's planning proposal. In this respect it is noted that the only reference to the issue of dual consents is found on page 25 of the panel's report which is reproduced below:

'Clearing for non-agricultural development purposes that may currently require an approval under the Native Vegetation Act 2003 (e.g. certain types of developments in rural residential areas, dwellings, council infrastructure and tourist facilities) would be treated like any other form of development under the Environmental Planning and Assessment Act 1979. This will remove the current problem of dual consents where landholders are required to obtain an approval under both planning and native vegetation laws for the same activity.'

It would appear that the panel did not express its dual consent concerns relating to private native forestry which is discussed in detail in Section 3.2 of the panel's report. Therefore Council's planning proposal, which seeks to apply a consistent regulatory approach to the assessment of private native forestry under planning instruments applicable in Ballina Shire, is not considered to be impacted by the Panel's dual consent concerns as reproduced above.

Concluding Comments

Ballina Shire Council has identified an immediate need to introduce the proposed planning provisions so as to better regulate private native forestry. Issues of concern include the management of amenity issues such as noise and visual impact, erosion and sedimentation control, site access, traffic and potential ecological impacts. At present (in the absence of the proposed provisions), these factors do not receive adequate assessment and consideration.

With respect to ecology, koalas are a key consideration because key koala habitat supporting an 'important koala population' under the terms of the Commonwealth Environment Protection and Biodiversity Conservation Act forms part of the area that is the subject of the planning proposal. Private native forestry is enabled in these areas at present without detailed ecological assessment and consideration of impacts.

The Independent Panel which reviewed biodiversity legislation recognised the inadequacy of the *Native Vegetation Act 2003* to regulate concerns evident with native forestry management in NSW and have recommended a separate review of applicable legislation.

Council's strategy to address issues of concern relating to private native forestry within Ballina Shire does not pre-empt the Governments E zone review or the review of biodiversity legislation. It does however seek to introduce a uniform assessment regime for private native forestry within Ballina Shire and provide clarity as to applicable consent requirements.

9.2 LEP Amendment - Private Native Forestry Consent Provisions.DOC

Ballina Shire Council – Request for Review of Gateway Determination – Planning Proposal Private Native Forestry Provisions

In the absence of the planning proposal being able to proceed, there is a risk of an open ended continuation of private native forestry with very limited regulation and further adverse impacts in relation to amenity, ecology, soil erosion, sedimentation, noise, traffic, roads and other matters.

It is requested that the Gateway determination be changed so as to enable the planning proposal to proceed as recommended by the Department's Northern Region Planning Team and the Local Environmental Plan Review Panel.