

Mr P Hickey
 General Manager
 Ballina Shire Council
 PO Box 450
 Ballina NSW 2478

Dear Mr Hickey

I write in response to Council's request for a Gateway review on the planning proposal to amend the *Ballina Local Environmental Plan 1987* (1987 LEP) to introduce a dual consent requirement for private native forestry.

I would like to offer an apology for this matter not yet being resolved. I also appreciate Council's patience while the Department has considered the planning, policy and legislative implications of the proposal.

The Department has been considering the advice of the Northern Joint Regional Planning Panel, the outcomes of the North Coast E Zone Review, and the Biodiversity Legislation Review. The support of the Panel to the Council's policy regarding the need for a dual consent process for private native forestry is acknowledged. However, the Department does not consider that sufficient legal power exists to give effect to Council's policy.

It is understood Council wishes to amend the 1987 LEP to require forestry to be a permissible use requiring development consent. Council has argued this would provide the same planning controls that exist under the *Ballina Local Environmental Plan 2012* (2012 LEP), where forestry requires development consent in rural zones. It is Council's intent that the requirement to obtain development consent for forestry operations would apply in addition to the current requirements for proponents of private native forestry to obtain approvals from the Environment Protection Authority.

The Department's interpretation of the *Plantations and Reafforestation Act 1999* (P&A Act) and the *Native Vegetation Act 2003* (NV Act) is that Council's proposal to require a dual approval is not possible. Section 47 of the P&R Act identifies that proposals to authorise plantations (including establishment, management and harvesting), are not subject to any control under the *Environmental Planning and Assessment Act 1979* (EP&A Act). Instead the P&R Act requires the management of plantations either:

1. under an approval issued in accordance with section 12 of the P&R Act, for plantations greater than 30 hectares; or
2. as 'exempt farm forestry' under the P&R Act, which requires a plantation to be less than 30 ha, established and operated in accordance with the *Plantations and Reafforestation Code* and any clearing to be exempt from a requirement for approval under the NV Act.

Department of Planning & Environment

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Any attempt by the Council to take or assess a development application for forestry operations on private land that may be carried out under the P&R Act would have no effect and would not be authorised by section 47 of the P&R Act.

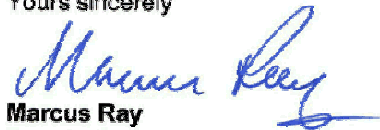
The Department acknowledges Council's policy position on the regulation of private native forestry, and recommends that Council make a submission about its proposed changes to the legislative approval requirements to the Biodiversity Legislation Review. The draft land management reform legislation is currently on public exhibition and submissions from the public and councils are being accepted.

I would also like to suggest Council focus its efforts on identifying and applying appropriate zonings to those areas deferred from the 2012 LEP. The release of the North Coast E Zones Review recommendations and the accompanying section 117 direction give Council guidance on the identification and application of appropriate zonings.

In light of the issues raised above the Department is of the view that progressing Council's planning proposal would have little benefit and potentially confuse landowners regarding approval processes. I therefore strongly encourage Council to withdraw its proposal.

Due to the complexity of the issue I am happy to offer for Mr Brett Whitworth, Executive Director, Local Planning Liaison to travel to Ballina to meet and discuss this matter in person with Council staff. Brett can be contacted on (02) 9228 6532 if Council wishes to organise a meeting.

Yours sincerely



Marcus Ray
Deputy Secretary
Planning Services

02/06/2016