

Planning and Assessment

IRF19/7849

Gateway determination report

LGA	Ballina Shire
PPA	Ballina Shire Council
NAME	Alteration to rural industry definition in Ballina LEP 1987 (0 homes, 0 jobs)
NUMBER	PP_2019_BALLI_005_00
LEP TO BE AMENDED	Ballina Local Environmental Plan 1987
ADDRESS	Various allotments across the local government area
RECEIVED	5 December 2019
FILE NO.	IRF19/7849
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1. INTRODUCTION

1.1 Description of planning proposal

This planning proposal seeks to substitute the definition of *rural industry* applicable to Ballina LEP 1987 with the definition of *rural industry* contained within the Standard Instrument – Principal Local Environmental Plan. The Ballina LEP 1987 applies to those lands that were deferred from Ballina LEP 2012 due to the Northern Councils E Zone Review.

The intent of the planning proposal is to prohibit water extraction for non-agricultural or domestic use such as water bottling on those lands to which the Ballina LEP 1987 applies. The adoption of the definition of *rural industry* contained within the Standard Instrument – Principal Local Environmental Plan will also result in consistency between the Ballina LEP 1987 and the Ballina LEP 2012 in relation to this matter.

The aim of the proposal is to adopt a consistent approach to prohibiting water bottling across the Shire and implement Council's position on this matter as adopted under Ballina LEP 2012. The current anomaly and inconsistency in the permissibility of water bottling in certain areas of the Shire occurred due to Government's deferral of lands associated with the Northern Councils E Zone Review.

The Standard Instrument LEP does not mandate water bottling as a permitted use. It is therefore considered a local matter for Council to work with their community and other relevant stakeholders on whether water bottling should be a permitted or prohibited land use.

1.2 Site description

This planning proposal seeks to amend the Ballina LEP 1987, which applies to those lands subject to the Northern Councils E Zone Review (noted as deferred matters in the Ballina LEP 2012).

1.3 Existing planning controls

The definition of rural industry applicable to Ballina LEP 1987 is contained within the *Environmental Planning and Assessment Model Provisions 1980*, as follows:

rural industry means handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality.

Pursuant to the definition of ‘rural industry’ in the Ballina LEP 1987, water extraction for non-agricultural or domestic use is permissible with consent in the following zones:

- 1(a1) Rural (Plateau Lands Agriculture)
- 1(a2) Rural (Coastal Lands Agriculture)
- 1(b) Rural (Secondary Agricultural Land)
- 1(d) Rural (Urban Investigation)
- 1(e) Rural (Extractive and Mineral)
- 2(b) Village Area Zone
- 7(d) Environmental Protection (Scenic / Escarpment)
- 7(d1) Environmental Protection (Newrybar Scenic / Escarpment)
- 7(i) Environmental Protection (Urban Buffer)
- 9(a) Roads (Main Roads Proposed)
- 9(b) Roads (Local Roads Proposed)

The definition of *rural industry* contained within the Standard Instrument – Principal Local Environmental Plan and Ballina LEP 2012 is as follows:

rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

- (a) agricultural produce industries,
- (b) livestock processing industries,
- (c) composting facilities and works (including the production of mushroom substrate),
- (d) sawmill or log processing works,
- (e) stock and sale yards,
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.

As detailed above, the definition of ‘rural industry’ prescribed by the Standard Instrument – Principal Local Environmental Plan and Ballina LEP 2012 only permits

the processing of plants and animal products for commercial purposes in the rural area, thereby excluding uses such as water extraction.

1.4 Summary of recommendation

It is considered that the proposal has merit to proceed to Gateway. It is recommended that the planning proposal proceed subject to conditions for the following reasons:

- the proposal will improve consistency between the Ballina LEP 1987 and Ballina LEP 2012 in relation to permissible land uses in rural zones;
- the proposal is consistent with the North Coast Regional Plan 2036 and Ballina Shire Growth Management Strategy;
- there are no pertinent matters that are required to be addressed as an outcome of the NSW Chief Scientist and Engineer's independent review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW released in 2019; and
- the proposal responds to the high level of community interest in development applications involving water extraction in the Ballina local government area.

2. PROPOSAL

2.1 Objectives or intended outcomes

The statement of objectives clearly describes the intention of the planning proposal. The proposal seeks to amend Ballina LEP 1987 to:

- exclude from its provisions a reference to the definition of *rural industry* as contained within the Environmental Planning and Assessment Model Provisions 1980; and
- insert within Ballina LEP 1987 the definition of rural industry as contained within the Standard Instrument – Principal Local Environmental Plan and Ballina LEP 2012.

2.2 Explanation of provisions

The explanation of the provisions adequately addresses the intended changes to Ballina LEP 1987, which could be achieved by:

- amending clause 6(a) of Ballina LEP 1987; and
- inserting the Standard Instrument – Principal Local Environmental Plan definition of *rural industry* in clause 5 of Ballina LEP 1987.

It is considered that suitable mechanisms are available by which to amend the Ballina LEP 1987 and achieve the intended outcomes of the planning proposal. The most appropriate means will be determined by Parliamentary Counsel as part of the drafting process.

2.3 Mapping

There is no mapping required in support of this planning proposal.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of a strategic study or report. Rather, it is an outcome of Council's review into the permissibility of water extraction and bottling facilities in the Ballina local government area and neighbouring Tweed.

Council intend to remove the anomaly that is created by having two separate definitions of *rural industry* apply within the Ballina Shire. Ideally, the resolution of this anomaly should occur through the implementation of the Northern Councils E Zone Review Final Recommendations Report and subsequent repeal of the Ballina LEP 1987. However, as an interim measure that addresses the permissibility of water extraction specifically, the subject planning proposal is considered the best means for achieving the intended outcome.

It is also noted that the NSW Chief Scientist recently released the final report into an independent review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW. The report analyses the current impacts and makes a number of recommendations around the need for further work and monitoring to develop a better knowledge and understanding, along with State agencies and local government working to clarify their roles and responsibilities. The report does not establish a position regarding whether the industry is appropriate or not as this was not within the scope of the report.

4. STRATEGIC ASSESSMENT

4.1 State

The planning proposal does not contain any matters of state or regional significance and is not inconsistent with the Premier's Priorities currently being actioned by the State Government.

The NSW Chief Scientist and Engineer's independent review of the impacts of the bottled water industry on groundwater resources in the Northern Rivers region of NSW does not contain any statutory planning / policy related recommendations that require consideration as part of this assessment (other than to note under the existing water sharing plan the Alstonville Plateau area of Ballina LGA has been fully allocated – which Council has advised they believe further supports their existing position to water bottling in the Shire should be prohibited).

4.2 Regional / District

The planning proposal has been assessed against the provisions of the *North Coast Regional Plan 2036* (NCRP). The proposed LEP amendment is considered not to be inconsistent with the intent and direction of the Plan.

There are no changes in policy which are considered to be inconsistent with matters of regional environmental planning.

4.3 Local

The planning proposal is not inconsistent with the guiding principles of the adopted Ballina Shire Growth Management Strategy endorsed by the Department in 2013 as well as the Ballina Shire Council Community Strategic Plan 2017 – 2027.

4.4 Section 9.1 Ministerial Directions

The proposal is considered to be consistent with all relevant section 9.1 Directions except for:

2.2 Coastal Management

The planning proposal is inconsistent with this Direction as it includes land mapped in State Environmental Planning Policy (Coastal Management) 2018 and does not include provisions which give effect to the objectives of the Coastal Management Act 2016, the NSW Coastal Management Manual, the NSW Coastal Design Guidelines 2003 and any coastal management program or coastal zone management plan. The inconsistency is considered to be of minor significance as the SEPP contains appropriate provisions that allow this issue to be adequately addressed at the development application stage if necessary.

4.1 Acid Sulfate Soils

The proposal is inconsistent with this Direction as a portion of the land affected by Ballina LEP 1987 is affected by acid sulfate soils and the proposal is not supported by an acid sulfate soils study. This inconsistency is of minor significance as the proposal relates to a change in land use definition rather than a specific development. Consideration of acid sulfate soils can be undertaken at the development application stage as required by Clause 36 of the Ballina LEP 1987.

Direction 4.3 Flood Prone Land

The planning proposal is inconsistent with this Direction as it does not include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). The inconsistency is considered to be of minor significance as any flooding issues can be adequately addressed at the development application stage if necessary.

4.4 Planning for Bushfire Protection

The proposal is potentially inconsistent with this Direction as a portion of the land affected by Ballina LEP 1987 is classified as bushfire prone land. This Direction requires Council as the Relevant Planning Authority to consult with the Commissioner of the NSW Rural Fire Service after a Gateway Determination has been issued. Until this consultation has occurred, consistency of the proposal with this Direction will remain unresolved.

4.5 State environmental planning policies (SEPPs)

The proposal is considered to be consistent with all applicable state environmental planning policies.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social and Economic

The planning proposal seeks to substitute the definition of *rural industry* applicable to Ballina LEP 1987 with the definition of *rural industry* contained within the Standard Instrument – Principal Local Environmental Plan and Ballina LEP 2012. The proposal will affect the permissibility of uses on land affected by Ballina LEP 1987, including water extraction for non-agricultural or domestic use, which may affect commercial interests in the local government area. Nevertheless, considering that established uses will be afforded existing use rights and there is a high level of community interest in development applications involving water extraction in the Ballina local

government area, the proposal is unlikely to have a detrimental impact on the socio-economic welfare of the Ballina Shire.

5.2 Environmental

As the proposal relates to land use permissibility it is unlikely to create any negative environmental impacts. Further, reducing the ability to establish industrial-type land uses on rural land within the Shire is expected to assist to maintain the environmental and scenic amenity of the region by reducing heavy traffic and presence of industrial-style buildings.

5.4 Infrastructure

The provision and funding of State infrastructure is not necessary for this proposal.

6. CONSULTATION

6.1 Community

It is considered appropriate that a 28 exhibition period be undertaken in regard to the proposal.

6.2 Agencies

Council has not proposed consultation with any specific agencies. Given the nature of the proposed amendment, consultation with the following agencies is considered appropriate:

- Department of Planning, Industry and Environment - Water Group
- NSW Rural Fire Service
- NSW Chief Scientist and Engineer

7. TIME FRAME

The planning proposal includes a project time line which indicates a completion time of four months. To ensure Council has adequate time to complete community consultation, it is recommended that a six month timeframe be specified.

8. LOCAL PLAN-MAKING AUTHORITY

The As the proposal deals with a matter that is permitted by the Standard Instrument LEP and is most appropriately by Council in consultation with their local community and other relevant stakeholders, it is recommended that Council be authorised to exercise plan-making delegation in relation to this matter. It is noted that should any State agency object to the proposal, Council's authorisation could not be exercised, and the Department would become the local plan-making authority for the proposal.

9. CONCLUSION

The planning proposal is supported to proceed to provide Council the opportunity to consult with its community and relevant stakeholders to determine whether water bottling should be permitted or prohibited in the Shire.

Notwithstanding the above, Council is still encouraged to implement the recommendations of the Northern Councils E Zone Review Final Recommendations Report as soon as possible in order to resolve all deferred matters in the local government area.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Directions 2.2 Coastal Management, 4.1 Acid Sulfate Soils and 4.3 Flood Prone Land are minor or justified; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
 - Department of Planning, Industry and Environment - Water Group
 - NSW Rural Fire Service
 - NSW Chief Scientist and Engineer
3. The time frame for completing the LEP is to be six months from the date of the Gateway determination.
4. Given the nature of the planning proposal, Council should be the local plan-making authority.



19/12/19

Craig Diss
Team Leader, Northern Region



14-1-2020

Jeremy Gray
Director, Northern Region
Local and Regional Planning

Assessment officer: Kate Campbell
A/Senior Planning Officer, Northern Region
Phone: 5778 1401