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24/03/2015



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15/01719

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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~~


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