

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

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RPA Contact Details

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DoP Project Manager Contact Details

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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 0
(where relevant) :

Gross Floor Area : 0

No of Jobs Created : 0

The NSW Government **Yes**

Lobbyists Code of
Conduct has been
complied with :

If No, comment :

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

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.

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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 :

* May need the Director General's agreement

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

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

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.

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.

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Consistency with strategic planning framework :

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.

Local Strategic Plans

The proposed provisions are not inconsistent with the RPA's Community Strategic Plan.

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.

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.

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.

Of the above s117 Directions the proposal is inconsistent with Direction 4.4.

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.

The planning proposal is otherwise consistent with S117 directions.

Environmental social economic impacts :

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.

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.

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.

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Assessment Process

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

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

Public Authority Consultation - s56(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**

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- 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

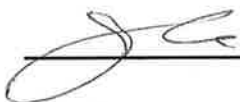
Additional Information : It is recommended that;

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:

JIM CLARK

Date:

16 January 2015