



Birthplace of Our Nation

5 September 2017
Our Ref: LP/35; OCR20175363

Department of Planning & Environment
PO Box 949
TAMWORTH NSW 2340

Dear Sir/Madam,

Re: Submission of Planning Proposal 2017-01 for Section 56 Gateway Determination – Tenterfield Local Environmental Plan 2013-Amendment No. 6

Further to Council's correspondence of 13 July 2017, Council has prepared an amended Planning Proposal under Section 55 of the *Environmental Planning and Assessment Act 1979*, to amend *Tenterfield LEP 2013*. Council now seeks a gateway determination under Section 56 of the Act.

Enclosed are copies of:

- The Council report and resolution to prepare the planning proposal; and
- The Planning Proposal (including amendments as per Council's resolution), prepared in accordance with the Department's "*A Guide to Preparing Planning Proposals*".

In addition, Council seeks to use its delegations to process the planning proposal once the gateway determination has been accepted.

Yours sincerely,

Tamai Davidson
Senior Planner
Encl.

All correspondence should be addressed to:

**The General Manager
Tenterfield Shire Council**

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Planning Proposal 2017-01

This is a Planning Proposal prepared under section 55 of the *Environmental Planning and Assessment Act 1979*, in relation to a proposed amendment to *Tenterfield Local Environmental Plan 2013*. It will be assessed by Tenterfield Shire Council, the NSW Department of Planning and Environment, and used for public participation on the proposed LEP amendment.

Background

Proposal To amend *Tenterfield Local Environmental Plan 2013* by removing the RU3 Forestry Zone and converting all existing RU3 Zoned land to RU1 Primary Production.

Property Details The Planning Proposal applies to all land within the Tenterfield Local Government Area zoned as RU3 Forestry.

Applicant Details Tenterfield Shire Council

Land owner Multiple

Brief history Planning Proposal 2017-01 has been prepared to make amendments to Tenterfield LEP 2013 by the removal of the RU3 Forestry zone and conversion of all that land to RU1 Primary Production. Council is aware that there are land parcels which are now held in freehold title and are zoned RU3 Forestry and approximately 50 Perpetual Leases with State Forest dedication over them are affected by the zoning.

Part 1 – Objectives or Intended Outcomes

The objective of this planning proposal is to make alterations to Tenterfield LEP 2013 through the removal of the RU3 Forestry Zone and converting all of that land to RU1 Primary Production zone.

Part 2 – Explanations of Provisions

The proposed outcome will be achieved by:

- Amending Tenterfield LEP 2013 through the removal of the RU3 Forestry Zone and rezoning this land to RU1 Primary Production.

Part 3 – Justification

Section A – Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is not the result of any strategic study or report. It is noted that during the Standard Instrument process, Council undertook the conversion process option from the Tenterfield LEP 1996 to the current Tenterfield LEP 2013. Therefore the option of reviewing this matter at that time was not considered.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Amending Tenterfield Local Environmental Plan 2013 is the only way to achieve the objectives of the planning proposal.

Section B – Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The planning proposal does not directly relate to the *New England North West Strategic Regional Action Plan 2012*.

4. Is the planning proposal consistent with the local council's community plan or other local strategic plan?

Council's adopted Community Strategic Plan (2017-2027) sets out under Goal Envo 9 "Land use planning provisions support and promote sustainable land use and management in the Shire." It has been brought to Council's attention that there are parcels of land which are held in freehold title (evidenced by copies of Title documents) which are zoned as RU3 Forestry and as such the RU3 Forestry zoning table in Tenterfield LEP 2013 places restrictions for future development.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

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

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The planning proposal is consistent with section 117 directions.

Section C – Environmental, social and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Some areas of RU3 Forestry zoned land, and RU1 Primary Production land are subject to the provisions of the State Heritage Act, with the land identified as containing High Conservation Value Old Growth Forest. Information from the Office of Environment and Heritage indicates that the 'Category' for the item is 'Fauna habitat.' High Conservation Value Old Growth Forest covers a vast area across 15 Local Government Areas in Upper North East NSW.

Any future development on the land under the proposed RU1 Primary Production zone is subject to the requirements and provisions for assessment under the *Environmental Planning & Assessment Act, 1979* and would be assessed on its merits at the time of lodgement of any future application for development requiring consent.

It is understood that the heritage listing was intended for sections of State Forests, National Park and Nature Reserve as evidenced by the notation on the listing Owner – State Government. The freehold landowner and NSW Farmers are currently in discussion with the Office of Environment & Heritage to amend the listing to remove the listing from all freehold land affected across the 15 local government areas.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Sections of the existing RU3 Forestry zoned land are subject to the provisions of the State Heritage Act, with the land identified as containing High Conservation Value Old Growth Forest.

9. Has the planning proposal adequately addressed any social and economic effects?

Removal of the RU3 Forestry zone and replacing it with the RU1 Primary Production zone will allow for an 'opening up' of existing forestry zoned land, to permit the lodgement of Development Applications for forms of development which were previously restricted.

However this will restore the pre-existing rights of title that were inadvertently changed as a result of the adoption of the LEP template.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

The planning proposal does not create the need for any additional public infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Whilst no views of public authorities were sought at this stage, Council received correspondence from the Forestry Corporation of NSW (21/7/17) indicating they had been made aware, through media, of Council's consideration of the Planning Proposal. Forestry have raised concerns that the decision to rezone land from RU3 Forestry to RU1 Primary Production was made with no prior consultation with the land owner. Forestry have indicated that they will assist Council with any amendment to correct the RU3 zoning on private land. Forestry does not support the change in zoning for dedicated State Forest from RU3 to RU1.

At this point, it is Council's preference to rezone all RU3 Forestry Land to RU1 Primary Production. It is understood that rezoning the land will not remove the provision for Crown Lease Holders on land dedicated as State forest to obtain consent to undertake certain activities as per the Forestry Act 2012 and Forestry Regulation 2012, on their leasehold. Conditions which apply to leaseholders, in terms of consent for activities outside planning regulation is a matter between the owner and leaseholder, regardless of the zoning under the LEP.

It is proposed to consult further with Forestry Corporation post the Gateway Determination.

Part 4 – Mapping

All currently zoned RU3 Forestry land is proposed to be rezoned to RU1 Primary Production.

Part 5 – Community Consultation

It is anticipated that community consultation and notification will occur as part of the formal exhibition of the planning proposal or as directed through the gateway determination process.

It is proposed that there be:

- One notification of the exhibition in a locally circulating newspaper.
- One notification in Council's Your Local News leaflet (distributed to all residents on a monthly basis)
- An exhibition period of 28 days.
- Notification on Council's website.

Part 6 – Project Timeline

Task	Anticipated timeframe
Date of Gateway Determination	End July 2017
Completion of required technical information, studies	Unknown – as determined by Gateway – following timeframes may require adjustment
Government agency consultation (pre exhibition as required by Gateway Determination)	End September 2017
Any changes made to Planning Proposal resulting from technical studies and government agency consultations. Resubmit altered Planning Proposal to Gateway panel. Revised Gateway determination issued, if required.	October 2017
Commencement and completion dates for public exhibition.	October-November 2017
Post exhibition review - Consideration of submissions, report Planning Proposal post exhibition	December 2017
Council request a draft instrument is prepared under Section 59(1) of the Act – directly to Parliamentary Counsel (concurrent notification to Department of Planning and Environment)	January 2018
Opinion issued by Parliamentary Counsel that the plan can be made	March 2018
Council resolves to adopt and make the draft LEP and notifies the Department of Planning and Environment who arrange for the plan to be notified on the NSW Government legislation website	April 2018
The plan comes into force on the day the LEP is published on the NSW legislation website	May 2018

Conclusion

The planning proposal is considered to be consistent with relevant statutory and policy provisions and seeks to rezone all existing RU3 Forestry land to RU1 Primary Production.

Contact Details

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Senior Planner

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Department:	Infrastructure, Environment & Regulation
Submitted by:	Senior Planner
Reference:	ITEM ENV12/17
Subject:	Tenterfield Local Environmental Plan 2013 - Proposed Amendment - Planning Proposal RU3 Zoned Land Provisions

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK

CSP Goal:	Environment - ENVO 9 - Our natural environment will be protected, enhanced and promoted for future generations.
CSP Strategy:	Land use planning provisions support and promote sustainable land use and management in the Shire.
Delivery Plan Action:	Provision of advice and guidance on legislative compliance for the construction of dwellings and commercial/industrial buildings.
Operational Plan Action:	Monitor and review Council's Local Environmental Plan and other strategic and supporting planning documents.

SUMMARY

The purpose of this report is to seek Council's direction in moving the Planning Proposal (PP) to rezone land from RU3 Forestry to RU1 Primary Production forward after the document was forwarded to the Department of Planning and Environment and a request made to incorporate matters raised by Forestry Corporation of NSW.

OFFICER'S RECOMMENDATION:

That Council:

- (1) Amends the Planning Proposal to incorporate comments from Forestry Corporation NSW as contained in Attachment 3 (Booklet 1); and**
- (2) Forwards the modified Planning Proposal to the Department of Planning and Environment for consideration through the Gateway process.**

BACKGROUND

At its meeting of 27 June 2017, Council considered options in relation to two (2) properties which are held in private ownership, however are zoned as RU3 Forestry. The report identified that an option would be to rezone all RU3 Forestry land to RU1 Primary Production, at the suggestion of the Department of Planning and Environment. However, since that time, concerns have been raised by the Forestry Corporation NSW in relation to the proposal and are detailed below.

The resolution from Council's meeting of 27 June, 2017, is as follows;

Resolved that Council forward the Planning Proposal to the Department of Planning and Environment for assessment through the Gateway process to include the following amendments:

- (1) In the section titled "Brief History", the following be added at the end of the last sentence. "and approximately 50 Perpetual Leases with State Forest dedication over them are affected by the zoning."*
- (2) In Section C, 7 – add after the last paragraph:*

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11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Whilst no views of public authorities were sought at this stage, Council received correspondence from the Forestry Corporation of NSW (21/7/17) indicating they had been made aware, through media, of Council's consideration of the Planning Proposal. Forestry have raised concerns that the decision to rezone land from RU3 Forestry to RU1 Primary Production was made with no prior consultation with the land owner. Forestry have indicated that they will assist Council with any amendment to correct the RU3 zoning on private land. Forestry does not support the change in zoning for dedicated State Forest from RU3 to RU1.

At this point, it is Council's preference to rezone all RU3 Forestry Land to RU1 Primary Production. It is understood that rezoning the land will not remove the provision for Crown Lease Holders on land dedicated as State forest to obtain consent to undertake certain activities as per the Forestry Act 2012 and Forestry Regulation 2012, on their leasehold. Conditions which apply to leaseholders, in terms of consent for activities outside planning regulation is a matter between the owner and leaseholder, regardless of the zoning under the LEP.

It is proposed to consult further with Forestry Corporation post the Gateway Determination.

Option 2 – Amend Planning Proposal to reflect FCNSW comments

Amend the PP by;

1. Identifying the land which is in private ownership and is zoned RU3 Forestry and rezoning that land to RU1 Primary Production.
2. Amending the RU3 Forestry zoning table to allow for an expanded 'Permitted with consent' list, and removing any 'Prohibited' uses.

COUNCIL IMPLICATIONS:

1. Community Engagement / Communication (per engagement strategy)

Community consultation will be set out by the DPE once the PP is successful at the Gateway Determination stage.

2. Policy and Regulation

The steps in the process to formally amend Tenterfield LEP 2013 are set out through the *Environmental Planning & Assessment Act, 1979* and processed by the NSW Department of Planning & Environment through the Gateway Process.

The Gateway Process follows the following steps;

1. The Planning Proposal – the relevant authority (usually Council) prepares the planning proposal.
2. Gateway – the Minister decides whether the planning proposal can proceed (with or without variation) and subject to other matters including further studies being undertaken, public consultation, public

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hearing, agency consultation and time frames. A planning proposal does not usually proceed without conditions of this nature. The conditions are then complied with and if necessary, the proposal is changed. A decision on whether the relevant council is able to finalise particular types of LEPs is also determined at this stage.

3. Community consultation –the proposal is publicly exhibited as required by the Minister.
4. Assessment – the relevant planning authority reviews public submissions. Parliamentary Counsel then prepares a draft local environmental plan.
5. The making of the LEP – with the Minister’s approval the local environmental plan is published on the NSW legislation website and becomes law.

3. Financial (Annual Budget & LTFP)

No implications at this stage.

4. Asset Management (AMS)

No implications.

5. Workforce (WMS)

No changes to WMS at this stage.

6. Legal and Risk Management

No implications at this stage.

7. Performance Measures

No implications at this stage.

8. Project Management

Not a major project.

Andre Kompler
Acting Chief Executive

Prepared by staff member:	Tamai Davidson, Senior Planner	
Approved/Reviewed by Manager:	Andre Kompler, Acting Chief Executive	
Department:	Infrastructure, Environment & Regulation	
Attachments:	1 Attachment No. 3 (Booklet 1) - Planning Proposal 2017-01	6 Pages
	2 Attachment No. 4 (Booklet 1) - Forestry Corporation	6 Pages

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Correspondence - Planning
Proposal 2017-01

OUR ENVIRONMENT

(ITEM ENV12/17) TENTERFIELD LOCAL ENVIRONMENTAL PLAN 2013 - PROPOSED AMENDMENT - PLANNING PROPOSAL RU3 ZONED LAND PROVISIONS

SUMMARY

The purpose of this report is to seek Council's direction in moving the Planning Proposal (PP) to rezone land from RU3 Forestry to RU1 Primary Production forward after the document was forwarded to the Department of Planning and Environment and a request made to incorporate matters raised by Forestry Corporation of NSW.

Resolved that Council:

- (1) Amends the Planning Proposal to incorporate comments from Forestry Corporation NSW as contained in Attachment 3 (Booklet 1); and
- (2) Forwards the modified Planning Proposal to the Department of Planning and Environment for consideration through the Gateway process.
(Michael Petrie/Brian Murray)

Motion Carried

Councillor Bronwyn Petrie, returned to the meeting the time being 10.52 am.