

Planning Services

Gateway Determination Report

LGA	Bellingen
RPA	Bellingen Shire Council
NAME	Proposal to require development consent for horticulture in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living zones and list some forms of horticulture, including some blueberry farms, as exempt development. (0 homes, 0 jobs)
NUMBER	PP_2017_BELLI_001_00
LEP TO BE AMENDED	Bellingen Local Environmental Plan 2010
ADDRESS	The proposal applies to all land in the above zones in Bellingen Shire
DESCRIPTION	Various
RECEIVED	28 November 2017
FILE NO.	IRF17/681
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

INTRODUCTION

Description of planning proposal

The planning proposal seeks to require development consent for blueberry farms where:

- setbacks do not comply with those recommended in the Department of Primary Industries (DPI) – Agriculture’s *Living and Working in Rural Areas* handbook;
- setbacks from watercourses do not comply with DPI – Office of Water’s *Guidelines for riparian corridors on waterfront land* or clearing of these corridors is proposed;
- the farm is on identified core koala habitat; or
- netting is a colour other than black.

The proposal will make horticulture permissible with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living zones. The proposal will also list horticulture and blueberry farming as exempt development in these zones. Blueberry farming will only be exempt development if it satisfies certain criteria.

Currently, all forms of horticulture in the RU1, RU2, RU4 and E4 zones are permissible without consent.

Site description

The proposal will apply to all land in the Bellingen local government area (LGA) zoned RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living.

Summary of recommendation

It is considered that the planning proposal should proceed, except for the requirement for netting to be black and with clarification around the clearing provision, for the following reasons:

- the proposal seeks to ensure new blueberry farms comply with DPI guidelines;
- the proposal does not change the permissibility of most horticultural land uses in the Bellingen LGA;
- the proposal does not prohibit blueberry farming in the Bellingen LGA and permits blueberry farming as exempt development in most instances;
- the proposed exempt development standards for blueberry farms relating to distances from property boundaries, neighbouring houses, watercourses and core koala habitat are considered to be well founded and appropriate; and
- the colour of the netting and its aesthetic impact is not considered to be an appropriate standard for exempt development.

PROPOSAL

Objectives or intended outcomes

The planning proposal objectives are:

- to address concerns regarding the environmental impact of blueberry farming in Bellingen Shire by requiring development consent for new blueberry farms in certain rural areas of the Shire, unless those farms are located to minimise their impact on the environment and surrounding properties; and
- to protect the contribution that is made to the local economy by agricultural activities by ensuring that any regulatory option is quarantined to blueberry growing only and does not impact on other forms of horticulture or agriculture.

Explanation of provisions

The proposal seeks to amend Bellingen LEP 2010 as follows:

- horticulture will be permissible with development consent in zones RU1, RU2, RU4 and E4; however, an additional category of exempt development will be inserted into Schedule 2 of Bellingen LEP 2010; and
- horticulture will be exempt development in all instances, except for a blueberry farm that does not comply with the following criteria:
 - a) blueberry plants and associated infrastructure (such as poles and netting) are located a minimum of 200m from any dwelling (not including a dwelling on the same property) and a minimum of 50m from any property boundary not held in the same ownership;
 - b) blueberry plants and associated infrastructure (such as poles and netting) are located the following minimum distances away from watercourses based on the Strahler method of stream ordering:

Stream order	Minimum distance either side of watercourse
1st order	10m
2nd order	20m
3rd order	30m
4th order and greater	40m

- c) where it is necessary to apply the setback distances specified in subclause b), and those setbacks are vegetated, the setback distances must be retained in their vegetated state, with the exception of the removal of any non-native species;
- d) blueberry plants and associated infrastructure such as poles and netting are not located within any area mapped as core koala habitat in any adopted koala plan of management; and
- e) any netting proposed for the protection of the crop must be black.

Mapping

No mapping is required by the proposed amendment to Bellingen LEP 2010.

NEED FOR THE PLANNING PROPOSAL

The planning proposal has arisen from community consultation Bellingen Shire Council undertook regarding potential regulation of blueberry farms as part of its Rural Lands Planning Policy Review.

The minutes of Council's meeting of 27 September 2017 note that Council started receiving complaints regarding blueberry farming in the LGA in late 2014. The main concerns related to chemical spray drift, water pollution, water extraction, erosion and vegetation removal. These concerns prompted Council to seek the community's views via a survey as part of its Rural Lands Planning Policy Review.

The planning proposal notes that 65% of survey respondents supported an increased level of regulation of blueberry farms; however, only 46% of respondents supported this if it meant other forms of horticulture would also be regulated.

There are three blueberry farms in the Bellingen LGA.

Council's report notes that there are other non-statutory guidelines to address land-use conflict between blueberry farms and other rural land uses and manage the environmental impact of blueberry farm activities. These include:

- Australian Blueberry Industry Code of Practice (October 2013);
- *Soil and Water Management Practices for Blueberry growers in Northern NSW* (December 2008); and
- *Living and Working in Rural Areas – A handbook for managing land use conflict issues on the NSW North Coast* (DPI 2007).

However, these guidelines are not statutory.

Council also notes the resourcing constraints impacting the ability of state agencies to investigate complaints of inappropriate pesticide application. The proposed requirement for development consent for blueberry farms will not necessarily address this matter as Council will be required to place conditions on the consent and enforce those conditions where there is an alleged breach.

Appropriateness of making only some blueberry farms exempt development

Requiring consent for horticulture while making most forms of horticulture exempt development except for blueberry farms that do not meet certain criteria is an appropriate means of achieving the objectives of the planning proposal.

This approach will maintain the status quo of not requiring consent for most horticultural pursuits, while targeting blueberry farms where there is a demonstrated or perceived potential to cause land-use conflict.

This approach will not require consent for other forms of horticulture, which will be exempt development. It also enables new blueberry farms to be established in a staged approach, with the exempt area being established while consent is sought for those areas of the farm that do not comply with required setbacks.

The exemption of a particular land-use subject to compliance with predetermined standards is common in the NSW planning system. For example, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides for land uses such as farm buildings, subdivision and signage that meet specific development standards to be exempt development; however, where these land uses do not comply with the standards then a development application is required.

Implications for future changes of use

The proposal is not expected to have any significant impact on any future change of use of rural land to or from a blueberry farm. The Codes SEPP does not contain provisions relating to the change of use of rural land such as extensive or intensive forms of agriculture. Therefore, should a landowner seek to change the land use from a horticultural pursuit to the growing of blueberries, they may do so as exempt development if the proposal satisfies the exempt development standards, or they may lodge a development application for the part of their land that does not satisfy the exempt development standards.

Proposed development standards for exempt blueberry farms

The use of buffer distances from neighbouring dwellings, property boundaries and watercourses as standards for determining whether a proposed blueberry farm qualifies as exempt development is appropriate. This approach is easy to understand and implement and is effective in minimising the potential for land-use conflict with other rural land uses and mitigating potential environmental impacts on watercourses.

The proposal states that where a vegetated riparian zone is present, it cannot be developed for blueberry plants and associated infrastructure and must not be cleared. This provision appears to have been included to meet the intention of DPI – Office of Water's *Guidelines for riparian corridors on waterfront land*.

Vegetation adjacent to exempt development is also dealt with in clause 3.1(5)(b) of Bellingen LEP 2010 and section 60O(b)(i) of the *Local Land Services Act 2013*.

It is recommended that this clause of the proposal either be clarified for its interaction with the existing clearing control framework or removed, enabling clearing on riparian lands to be assessed under the existing planning framework.

One possible way of clarifying this provision may be that the reference to "associated infrastructure" in draft clause (b) of the proposal is replaced with "ancillary development", preventing ancillary clearing along riparian corridors.

The proposal to use mapped core koala habitat as a standard for which blueberry farms require development consent is also considered to be appropriate. Core koala habitat is confirmed through the statutory planning process as having high environmental value and

it is appropriate that the clearing of this vegetation for any land use should be subject to development consent to enable compensatory planting to be required.

Netting colour requirement

The proposal to specify black netting as a standard by which blueberry farms can be exempt development is not considered to be appropriate. Council has advised that the reasoning for this provision is that black netting is considered less visually obtrusive on the landscape than white netting. It is not designed to improve visual amenity solely for adjoining landholdings and does not relate to any ecological concern.

Discussions with DPI officers have revealed that studies of netting colour are being undertaken for various industries, and while different netting colours have different benefits for different crops, it appears that blueberry growing may benefit from white netting because of better light penetration and compatibility for bees to pollinate the plants. There is also anecdotal evidence that white netting has less impact on animal entanglement because it is more easily seen than black netting. DPI also notes that it is increasingly the practice of some growers to roll up the netting when the fruit has been harvested and therefore the netting will not be in place for large portions of the year.

It is considered that the proposed buffer distances between property boundaries and neighbouring dwellings should be sufficient to mitigate any visual impact arising from netting that is any colour other than black.

Given that the colour of the netting may impact on the success of a crop and its visual impact may be mitigated by the required buffer distances, it is recommended that the Gateway determination be conditioned to require that the exempt development standard requiring the netting to be black be removed from the planning proposal.

STRATEGIC ASSESSMENT

State

Standard Instrument LEP

The Standard Instrument Local Environmental Plan (SILEP) provides standard definitions for land uses throughout the state. Blueberry farming is considered to be horticulture, which is defined as:

the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.

Under the land-use hierarchy in the SILEP, horticulture is a type of intensive plant agriculture. This is defined as:

any of the following:

- (a) the cultivation of irrigated crops for commercial purposes (other than irrigated pasture or fodder crops),*
- (b) horticulture,*
- (c) turf farming,*
- (d) viticulture.*

The SILEP also mandates and includes directions relating to the permissibility of certain land uses in certain zones. The SILEP requires that councils list intensive plant agriculture as permissible with or without consent in the RU1 and RU4 zones. The SILEP does not contain any direction or mandatory requirement for the permissibility of intensive plant agriculture in the RU2 or E4 zones.

Therefore, the proposal to list horticulture as permissible with consent in the RU1, RU2, RU4 and E4 zones of the Bellingen LEP 2010 is consistent with the SILEP.

NSW state priorities

One of the 18 state priorities being actioned by the state government relates to making it easier to start a business by focusing on reducing or removing barriers, costs and complexity, and making regulatory obligations easier to understand and implement.

It is considered that the proposal is consistent with this priority. The proposal does not introduce new regulatory requirements for any forms of horticulture other than blueberry farms that do not comply with DPI-recommended setbacks. The proposal to require consent for horticulture in the nominated zones is already possible in the SILEP. The standards that determine whether blueberry farms can be considered to be exempt development are clear as they relate to buffer distances from property boundaries, neighbouring dwellings and watercourses.

Right to farm

DPI has developed the NSW Right to Farm Policy (the RTFP). The RTFP relates to “a desire for farmers to undertake lawful agricultural practices without conflict or interference arising from complaints from neighbours and other land users”.

The planning proposal will further define what is considered to be a lawful agricultural practice in relation to blueberry farming as it will clarify when blueberry farming is exempt development and when development consent is required. The proposal does not prohibit blueberry farming in any rural zone and therefore maintains the rights of farmers to farm their land.

The RTFP includes six responses to deal with the issue of right to farm:

1. Reinforcing rights and responsibilities;
2. Establishing a baseline and ongoing monitoring and evaluation of land-use conflicts;
3. Strengthening land-use planning;
4. Ensuring ongoing reviews of relevant environmental planning instruments include consideration of options to ensure best land-use outcomes and to minimise conflicts;
5. Improving education and awareness on management of land-use conflicts; and
6. Considering potential future legislative options, should additional government intervention be required.

The RTFP responses relevant to the planning proposal are responses 3 and 4.

3. Strengthening land-use planning

The actions arising from this response are as follows:

- the NSW Government will develop regional plans that identify priorities for growth, including for primary industries, and provide direction on managing land-use conflicts; and
- the NSW Government will work with local councils to identify any additional measures required to assist their efforts in best practice land-use planning to address land-use conflict issues.

The proposal is considered to be consistent with this response and the arising actions as it puts in place controls to address land-use conflict issues associated with blueberry farms. The proposed use of buffer distances to determine whether a proposed blueberry farm is exempt development is an appropriate and accepted approach to mitigate land-use conflict and gives certainty to the farmer and neighbouring landowners.

Equally, if the buffer distances cannot be met and a development application is required, any potential land-use conflict issues will be able to be resolved before the blueberry orchard and related infrastructure is established, giving certainty to the farmer and neighbouring landowners.

4. Ensuring ongoing reviews of relevant environmental planning instruments include consideration of options to ensure best land-use outcomes and to minimise conflicts.

One of the actions arising from this response is as follows:

- the NSW Government will review current land-use planning mechanisms and instruments, with the aim of delivering a planning policy framework that supports the management of current and future farming practices.

A review of the land-use planning mechanisms relating to blueberry farms in Bellingen LGA has been instigated by Council. The proposed changes to the permissibility of blueberry farms are in response to community consultation.

The proposal is consistent with this action as by specifying when blueberry farming can be exempt development and when a development application is required, it will support the management of future farming practices by giving certainty to blueberry farmers and neighbouring landowners.

Australian Blueberry Growers' Association draft code of conduct

The Australian Blueberry Growers' Association (ABGA) has prepared a draft blueberry industry code of conduct. The draft code will be voluntary and outlines the accepted best practice for establishing and operating a blueberry farm in Australia.

Relevant stakeholders were able to comment on the draft code until 31 December 2017. It is understood the final code of conduct is intended to be in place in February 2018.

While the provisions of the code will not be mandatory, it is understood that compliance with the code will be a requirement for blueberry growers to sell their product to the major blueberry supply organisations. The draft code recognises the potential for land-use conflict with neighbouring properties during the establishment of a blueberry farm. However, it specifies requirements to mitigate potential land-use conflict such as buffer distances between blueberry orchards and property boundaries or watercourses.

It is considered that Council should consult with the ABGA and amend the planning proposal if necessary to align with the proposed code of conduct. Consultation with the ABGA is to be undertaken before community consultation for the planning proposal

Regional / district

The proposal is considered to be consistent with the actions of the North Coast Regional Plan 2036. The relevant actions of the plan are as follows:

- Action 2.1 seeks to focus development on areas of least biodiversity sensitivity in the region. The proposal achieves this by directing exempt blueberry farming away from riparian land and mapped core koala habitat. Applying the same exempt development requirements to all forms of horticulture would have had a greater positive impact on biodiversity in the LGA. However, after considering the social, economic and environmental impacts of the proposal, it is considered that retention of the existing arrangement for most horticulture as exempt development is an acceptable and balanced approach.
- Action 11.3 provides for the identification and protection of intensive agriculture clusters in local plans to avoid land-use conflicts. The proposal is consistent with this action as it specifies the location on a property where blueberry farming can be undertaken as

exempt development, providing certainty to landowners and neighbouring properties and minimising the potential for land-use conflict with residential land uses in rural areas.

- Action 11.5 provides that sector-specific considerations for agricultural industries be addressed through local plans. The proposal is consistent with this action as it proposes to introduce specific controls for blueberry farms through the exempt development provisions of the Bellingen LEP 2010.
- Action 12.1 seeks to promote the expansion of food and fibre production through flexible planning provisions in LEPs. The proposal is consistent with this direction as it continues to enable most horticultural land uses as exempt development while only requiring development consent for blueberry farms that have a higher potential for land-use conflict.

District implications

Coffs Harbour City and Nambucca Shire councils have considered increasing the level of regulation for blueberry farms. Clarence Valley Council has also shown interest. At this stage, none of these councils have resolved to proceed with further regulation for blueberry farming.

It is recommended that the Gateway determination require consultation with these councils so that should they also seek to introduce additional regulation of blueberry farms, a consistent district approach could be achieved.

Local

The proposal is considered to be consistent with the Bellingen Shire Growth Management Strategy 2006-2026. The strategy contains no specific direction on the regulation of horticultural activities.

The proposal has, however, arisen from Council's Rural Lands Planning Policy Review, which is a review of various policies applying to rural land. Council has no specific policies relating to horticultural land uses in the Bellingen LGA.

Section 117(2) Ministerial Directions

The following section 117 Directions are relevant to the planning proposal: 1.2 Rural Zones; 1.5 Rural Land; 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; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land; 4.4 Planning for Bushfire Protection; 5.10 Implementation of Regional Plans; 6.1 Approval and Referral Requirements; 6.2 Reserving Land for Public Purposes; and 6.3 Site Specific Provisions.

The proposal is considered to be inconsistent with Directions 2.3 and 4.4 as discussed below.

Direction 1.5 Rural Lands

This Direction provides that where a planning proposal affects land within an existing rural or environmental protection zone, it must be consistent with the rural planning principles in State Environmental Planning Policy (Rural Lands) 2008.

The consistency of the proposal with these principles is discussed in the following section of this report. It is considered that the proposal is consistent with the principles.

Direction 2.1 Environmental Protection Zones

This Direction provides that where a planning proposal applies to land within an environmental protection zone, it must not reduce the environmental protection standards applying to the land.

The proposal applies to land zoned E4 Environmental Living and seeks to require development consent for blueberry farming in the zone where the proposed orchards and associated infrastructure do not meet specific buffer distances to watercourses. It is considered that the proposal does not reduce the environmental protection standards and clarifies best practice setbacks from watercourses while enabling variation of these buffer distances to be considered through the development application process. The proposal is therefore considered to be consistent with this Direction.

Direction 2.3 Heritage Conservation

This Direction provides that a planning proposal must contain provisions that facilitate the conservation of heritage and Aboriginal cultural heritage significance. Horticulture is currently permitted without consent in the RU1, RU2, RU4 and E4 zones in the Bellingen LEP 2010. The proposal will not change this permissibility for most horticultural land uses except for blueberry farms that cannot meet certain buffer distance requirements, which will require development consent.

Therefore, while the proposal does not facilitate the protection of matters of heritage significance from exempt development land uses, it does not reduce the protection afforded by the current planning framework and in some instances enables consideration of impacts on heritage significance at development application stage. The proposal is therefore considered to be inconsistent with the direction; however, this inconsistency is considered to be of minor significance.

Direction 4.4 Planning for Bushfire Protection

The RU1, RU2, RU4 and E4 zoned land will include bushfire-prone land. This Direction provides that the relevant planning authority must consult with the commissioner of the Rural Fire Service (RFS), and the draft plan must include provisions relating to bushfire control. Consultation with RFS is required after a Gateway determination is issued and before public exhibition, and until this consultation has occurred the consistency of the proposal with the Direction remains unresolved.

Direction 5.10 Implementation of Regional Plans

This Direction provides that a planning proposal must be consistent with the North Coast Regional Plan 2036.

The consistency of the proposal with the plan is discussed previously in this report. It is considered that the proposal is consistent with the provisions or actions of the plan.

The proposal is otherwise consistent with all other section 117 Directions.

State environmental planning policies (SEPPs)

State Environmental Planning Policy (Rural Lands) 2008

The Rural Lands SEPP contains rural planning principles that are to be considered when a planning proposal relates to rural land. The principles are as follows:

- (a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas;
- (b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or state;
- (c) recognition of the significance of rural land uses to the state and rural communities, including the social and economic benefits of rural land-use and development;
- (d) in planning for rural lands, to balance the social, economic and environmental interests of the community;

- (e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land;
- (f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities;
- (g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing;
- (h) ensuring consistency with any applicable regional strategy of the Department of Planning and Environment or any applicable local strategy endorsed by the Director-General.

The planning proposal is consistent with the principles for the following reasons:

- the proposal will continue to protect opportunities for current and future productive horticultural pursuits in rural areas. The proposal does not prohibit horticulture or blueberry farms in the RU1, RU2, RU4 or E4 zones. The proposal will maintain the ability for most horticultural land uses to operate without development consent, including blueberry farms that meet the specified criteria;
- the proposal recognises the importance of agriculture and its economic benefits in the Bellingen LGA by continuing the ability for most horticultural land uses to be undertaken without development consent;
- the proposal recognises the changing nature, trend and issues relating to horticulture in the Bellingen LGA by introducing provisions to require development consent for some blueberry farms where land-use conflict may occur;
- the proposed standards by which blueberry farms can be exempt development are considered to be a balanced approach to addressing the concerns of the community about blueberry farming while enabling farms that comply with the buffer distance criteria to be established as exempt development; and
- the proposal considers the protection of native vegetation and water resources by specifying appropriate buffer distances between blueberry farming activities and watercourses and preventing blueberry activities on land mapped as core koala habitat unless the impacts are addressed through a development application.

Draft Primary Production and Rural Development SEPP

The draft SEPP will review the existing state planning controls applying to rural land, agriculture and related farming activities. It is intended to help industry and the community respond to challenges with rural land planning and provide simpler and more streamlined processes to enable adaption to emerging economic opportunities. The revised provisions will also support commitments in the NSW Right to Farm Policy.

The draft SEPP will consolidate the provisions of the following SEPPs:

- State Environmental Planning Policy (Rural Lands) 2008;
- State Environmental Planning Policy No 30 - Intensive Agriculture;
- State Environmental Planning Policy No 52 - Farm Dams and Other Works in Land and Water Management Plan Areas;
- State Environmental Planning Policy No 62 - Sustainable Aquaculture; and
- Sydney Regional Environmental Plan No 8 (Central Coast Plateau Areas).

The draft SEPP does not include provisions relating to intensive plant agriculture. The exhibition material for the draft SEPP notes the following:

- *intensive plant agriculture includes activities such as irrigated cropping, turf farming, viticulture, and the cultivation of fruits, vegetable, nuts, and cut flowers for commercial purposes;*
- *changes in intensive plant agriculture operations have raised community concerns in some locations. Common issues relate to: visual amenity and impacts of crop netting; spray-drift; vegetation removal, water extraction and dam construction; and noise. Many of these matters are regulated by a range of existing legislative requirements, such as the use of pesticides and approvals for the extraction of water; and*
- *whether a new intensive plant agriculture project requires development consent will depend on the provisions of the relevant local environmental plan (LEP). A proposal to change the LEP to make development consent required for a use that does not currently need consent would need a planning proposal to be prepared by the local council to explain the reasons for the change, together with relevant supporting analysis and information. These existing planning mechanisms are considered adequate and no reforms are currently proposed.*

The proposal is considered to be consistent with this approach. It addresses a specific form of intensive plant agriculture (blueberry farms) at the LEP level in response to community consultation and in a manner that will enable some blueberry farms to be established as exempt development. It is considered that adequate justification for Council's approach has been provided in the planning proposal.

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal notes that a blueberry farm that is established without regard to its proximity to neighbouring dwellings has the potential to have negative social impacts as a result of land-use conflicts.

It is considered that the proposal to specify development standards for exempt blueberry farms could have a positive social impact as it would provide clarity for growers and the public on the acceptable standards for the location of blueberry farms in Bellingen LGA. The development application process for the components of farms that do not comply with the exempt development standards is an appropriate means to consider potential land-use conflict and social impacts.

The proposal to single out blueberry farms for specific controls may have an adverse impact on the social relationship between the public and blueberry growers. In the longer term, there is the opportunity for Council and the blueberry industry to improve this relationship. In the meantime, in response to community concern, Council's proposal to introduce exempt development standards and consent requirements for the blueberry industry is considered to be a reasonable compromise to address the concerns of the community and industry.

Environmental

The proposal will not have an adverse environmental impact. It will direct exempt blueberry farming away from sensitive ecological areas such as core koala habitat and riparian areas. This will ensure that clearing and stormwater runoff associated with blueberry farming does not have a negative impact on sensitive ecological areas. Applying the same exempt development requirements to all forms of horticulture would have had a greater positive impact on biodiversity in the LGA. However, after considering the social, economic and environmental impacts of the proposal, it is considered that the retention of the existing arrangement for most horticulture as exempt development is an acceptable and balanced approach.

Economic

The planning proposal recognises that the introduction of regulatory requirements for blueberry farming in the Bellingen LEP may result in a reduced level of interest in establishing blueberry farms in the LGA. Council has indicated it is willing to forego the economic benefits arising from the establishment of new farms in the interests of the longer-term protection of the natural environmental assets of the LGA.

Council's report that accompanies the planning proposal details the economic benefits of the blueberry industry. It is noted that the industry on the North Coast generates more than \$250 million of revenue and employs more than 600 full-time workers and approximately 5000 seasonal workers. There are three blueberry farms in the Bellingen LGA.

The report also notes that agriculture contributes approximately \$30 million to the Bellingen LGA economy and generates the highest percentage of jobs (13%) in the LGA. Council has considered the significance of the agricultural sector to the Bellingen economy in its decision to only require consent for blueberry farming that does not meet the proposed development standards.

Infrastructure

The proposal will not require any additional local or state infrastructure.

CONSULTATION

Community

Council has nominated a 28-day community consultation period. Given that the proposal applies to large areas of the LGA, this is considered appropriate.

Agencies

NSW Department of Primary Industries

DPI has written to Council (**Attachment E**) and advised that it is opposed to any requirement for consent for horticulture generally as this will have an adverse impact on other horticultural pursuits, not just blueberry farming.

DPI stated that the use of buffer distances from *Living and Working in Rural Areas – A handbook for managing land-use conflict issues on the NSW North Coast* as exempt development standards is of concern as these distances are intended to be guidelines only and should not be used in the intended manner. DPI states that decisions on buffer distances should be specific to a particular site and not standardised in an LEP.

DPI notes that it is reviewing current information around buffer distances and this will be available in early 2018 for use by industry and councils.

DPI states it is working with the blueberry industry to develop a code of conduct to prevent land-use conflicts.

DPI's comments have been taken into account when considering whether to issue a Gateway determination for this planning proposal. It is considered that since the proposal makes all other forms of horticulture exempt development other than certain blueberry farms, the proposal will not have an adverse impact on horticultural pursuits generally in the Bellingen LGA.

The use of buffer distances from the *Living and Working in Rural Areas* handbook is considered to be an appropriate development standard for identifying when a blueberry farm is exempt development. Since 2007, the buffer distances in the handbook have been accepted best practice when considering potential land-use conflicts between agricultural and non-agricultural land uses. The determination of site-specific buffers that are less than

those specified for exempt development can still be considered through the development application process.

DPI's review of buffer distances can be considered by Council during its community and agency consultation process and in its final consideration of the planning proposal in response to any submissions.

Department of Planning and Environment – Policy Branch

The advice obtained from the Department is as follows:

- there are no fundamental issues of concern from a statewide policy perspective;
- the Department's policy position has been, and remains, that the planning proposal pathway provides the mechanism for councils to argue the need for a change to an LEP for intensive plant agriculture land uses and to have it tested publicly. This is reiterated in the FAQ sheet for the draft Primary Production and Rural Development SEPP;
- Bellingen Shire Council has taken this approach and the merits of the proposal can be considered by the Department's Regional team; and
- DPI's concerns are noted and it will have further opportunity to comment if the planning proposal proceeds to exhibition.

The Department queried whether the proposed requirement for black netting is reasonable. It is understood that there may be technical reasons why black netting may not be appropriate as it can impact crop productivity. As drafted, the proposal would mean that the use of another colour netting would require development consent regardless of location or visibility. Without clear justification and consideration of the impacts of mandating black netting as one of the criteria for exempt development, this aspect of the planning proposal seems inappropriate.

As previously discussed, it is recommended that the Gateway determination require that the need for black netting be removed from the exempt development standards.

Proposed agency consultation

Council has indicated that it intends to consult with the following state agencies:

- Department of Primary Industries – Agriculture;
- Local Land Services;
- Department of Primary Industries – Water;
- Office of Environment and Heritage;
- Environmental Protection Authority; and
- Rural Fire Service.

It is considered that consultation with these agencies is appropriate. It is also considered appropriate that Council consult with the Australian Blueberry Growers' Association and neighbouring councils (Coffs Harbour City Council, Clarence Valley Council and Nambucca Shire Council) to obtain their views on a potential regional approach to the regulation of blueberry farming.

TIME FRAME

The planning proposal includes a project timeline that estimates completion of the proposal within six months of the issue of the Gateway determination, expiring in May 2018. Given the need for Council to consult with state agencies and possible opposition to the proposal, it is suggested that a nine-month time frame would be appropriate.

DELEGATION

Council has requested delegation to finalise the planning proposal. It is considered that an authorisation to exercise delegation should not be issued to Council. The proposal to introduce further regulation for blueberry farming warrants consultation with the community and state agencies before a decision on whether to amend the Bellingen LEP 2010 to introduce such controls is made.

CONCLUSION

It is considered that the planning proposal should proceed for the following reasons; however, it is recommended that the requirement for netting to be black be removed from the exempt development standards:

- the proposal does not change the permissibility of most horticultural land uses in the Bellingen LGA;
- the proposal does not prohibit blueberry farming in the Bellingen LGA and continues to permit blueberry farming as exempt development in most instances;
- the proposed exempt development standards for blueberry farms relating to distances from property boundaries, neighbouring houses, watercourses and core koala habitat are considered to be well founded and appropriate; and
- the colour of the netting and its aesthetic impact is not considered to be an appropriate standard for exempt development.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that the inconsistency with section 117 Direction 2.3 Heritage Conservation is justified in accordance with the terms of the direction; and
2. note that the consistency with section 117 Direction 4.4 Planning for Bushfire Protection is unresolved until consultation with the Rural Fire Service has been undertaken and will require justification.

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

1. The planning proposal is to be amended to:
 - (a) remove the exempt development standard requiring that any netting proposed for the protection of the crop must be black, and
 - (b) clarify how the proposed retention of vegetation clause interacts with clause 3.1 of the Bellingen LEP 2010 and section 60O of the *Local Land Services Act 2013*.
2. The planning proposal should be made available for community consultation for a minimum of 28 days.
3. Consultation is required with the following public authorities or organisations:
 - a) Department of Primary Industries – Agriculture;
 - b) Australian Blueberry Growers' Association;
 - c) Local Land Services;
 - d) Department of Primary Industries – Water;
 - e) Office of Environment and Heritage;
 - f) Environmental Protection Authority;

- g) Rural Fire Service;
- h) Coffs Harbour City Council;
- i) Clarence Valley Council; and
- j) Nambucca Shire Council.

Consultation with DPI – Agriculture and the Australian Blueberry Growers' Association is to be undertaken prior to community consultation and, if necessary, the planning proposal is to be amended in response to this consultation.

- 4. The time frame for completing the LEP is to be nine months from the date of the Gateway determination.
- 5. Given the nature of the planning proposal, Council should not be authorised to exercise delegation to make this plan.



16/1/18

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