



C O N S U L T I N G

Planning Proposal

Private Native Forestry

Prepared for Kyogle Council

By Planit Consulting Pty Ltd

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1 Introduction

1.1 Overview

This planning proposal (PP) relates to an amendment to the *Kyogle Local Environmental Plan 2012* (Kyogle LEP 2012) to vary the planning pathway for Private Native Forestry (PNF) on land zoned RU1 Primary Production and RU4 Primary Production Small Lots.

Currently, to conduct PNF on land zoned RU1 or RU4 in the Kyogle Local Government Area (LGA), landowners are required to obtain dual consent from:

- Local Land Services (LLS) pursuant to Part 5B of the *Local Land Services Act 2013*;
and
- Kyogle Council under Part 4 of the *Environmental Planning and Assessment Act 1979*.

Experience in the Kyogle LGA demonstrates that landholders that receive PNF approval through LLS are not seeking consent from Council. Landowners have consistently reported that they were unaware that consent was required from different levels of government and are not advised by LLS when they receive approval from that agency that the approval to conduct PNF issued by LLS is subject to receiving subsequent approval by Kyogle Council.

Council contends that the requirement for landowners to obtain dual consent for PNF is duplication of regulatory processes that presents a significant regulatory burden for Council and landowners, and most importantly, has no effect on the land use planning and environmental outcomes achieved.

The proposed LEP amendment would change the planning pathway for PNF from development permitted with consent to development permitted without consent under the Kyogle LEP 2012, through amendments to the Land Use Table for zones RU1 and RU4.

The purpose of the proposal is to remove the dual approval framework for PNF such that only approval is required through LLS. This will streamline approval processes for industry, reduce development costs and alleviate unnecessary compliance issues for Council and landowners, with no adverse impacts on land use planning or environmental outcomes.

The Proponent is Kyogle Council.

The proposal is considered to be a **complex** planning proposal, as it is not consistent with a basic, standard or principal planning proposal category outlined in page 14 of the Department of Planning, Industry and Environment Local Environmental Plan Making Guideline 2023 (the LEP Guidelines).

Kyogle Council requests to be the **Local Plan-Making Authority (LPMA)** for this PP.

Due to there being no specific sites relating to the PP and the proposal involving a variation of the permissible planning pathway for PNF within the RU1 Primary Production and RU4 Primary Production Small Lots zones, it is not possible to commission specific environmental studies to support the proposed LEP amendment.

Therefore, no technical studies are proposed to support the PP.

Documentation supporting this PP includes:

- Appendix A - Extent of the Kyogle Council Local Government Area
- Appendix B - Private Native Forestry Code of Practice for Northern NSW (the code)
- Appendix C - Ministerial Directions (s.9.1 Directions) Checklist

1.2 Subject Land

The proposal relates to all areas of land zoned RU1 – Primary Production zone and RU4 Primary Production Small Lots zone within the Kyogle Council LGA. The extent of the Kyogle Council LGA is shown in Appendix A.

1.3 Background

1.3.1 Primary Contention

Prior to the commencement of the Kyogle LEP 2012 on 13 February 2013, forestry was permitted without consent in non-urban zones under the Kyogle Interim Development Order (IDO) and Terania IDO, with approval required under the *Native Vegetation Act 2003*.

The previous forestry provisions (permitted without consent) under the IDOs were not transferred to the Kyogle LEP 2012.

Under the provisions of the Kyogle LEP 2012, forestry requires development consent within the RU1 Primary Production and RU4 Primary Production Small Lots zones.

Council records indicate that there are approximately 146 currently approved PNF plans in the Kyogle LGA. Approximately 133 of these plans commenced after 13 February 2013. This means development consent was required from Council prior to PNF being conducted under these plans unless deemed to be an existing, or continuing, lawful use, under the EP&A Act. Council records indicate that not a single development application has been submitted to Council seeking consent for PNF. Accordingly, any PNF conducted under these plans is unlawful under the EP&A Act unless deemed to be an existing, or continuing, lawful use. This situation presents significant potential compliance issues for Kyogle Council, as well as being a significant issue for landowners who may have committed offences under the EP&A Act, many unwittingly.

Council asserts that, through the LLS PNF approval process, major development impacts of concern including biodiversity, heritage, soils and water quality are adequately assessed and landscape features of significant value protected, as all PNF plans must be consistent with the Private Native Forestry Code of Practice for Northern NSW (the code). It is assumed that the assessment conducted by LLS is informed by appropriate supporting documentation which identifies landscape features of significance, as a necessary precursor to approval of a PNF Plan. All PNF approvals are also subject to compliance checks by the NSW EPA. Further detail on the PNF approval process is provided at Sections 1.3.2 and 1.3.3 below.

Given that adequate environmental protection is established through the LLS PNF approval process (i.e. compliance with the code) and NSW EPA compliance checks, Council seeks to remove the dual approval process and regulatory burden for Council and landowners.

1.3.2 Approval Framework

Forestry is defined under the Kyogle LEP 2012 to mean *forestry operations within the meaning of the Forestry Act 2012 or Part 5B of the Local Land Services Act 2013*. The definitions as applicable under the legislation is shown at Table 1.1 below.

Table 1.1 Forestry Definitions

Legislation	Forestry definition
Forestry Act 2012	<p>forestry operations means—</p> <ul style="list-style-type: none"> (a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or (b) the harvesting of forest products, or (c) ongoing forest management operations, namely, activities relating to the management of land for timber production such as thinning, burning and other silvicultural activities and bush fire hazard reduction, or (d) ancillary activities to enable or assist in the above operations such as the provision of roads, snig tracks, waterway crossings and temporary timber storage facilities.

Legislation	Forestry definition
Local Land Services Act 2013	<p>forestry operations means—</p> <ul style="list-style-type: none"> (a) logging operations—namely the cutting and removal of timber from land for the purpose of timber production, or (b) the harvesting of forest products—namely the harvesting of the products of trees and other vegetation (other than timber) that are of economic value, or (c) ongoing forest management operations—namely activities relating to the management of land for timber production such as thinning, burning and other silvicultural activities, or (d) ancillary activities to enable or assist in the above operations such as the provision of roads, snig tracks, waterway crossings and temporary timber storage facilities.

There are currently four primary sets of NSW legislation that create the approval framework for forestry in NSW as outlined in Table 1.2 below.

Table 1.2 Forestry Approval Framework

Legislation	Approval Framework
Forestry Act 2012	<p>Integrated Forestry Operations Approvals (IFOAs) set environmental rules for how forestry operations can be carried out in State Forests and Crown Timber Lands in NSW.</p> <p>The Coastal IFOA applies to the Kyogle LGA.</p> <p>Part 5B, Clause 69W of the <i>Forestry Act 2012</i> exempts approved integrated forestry operations from requiring any approvals under the <i>EPA Act</i>.</p>
Plantations and Reafforestation Act 1999	<p>The <i>Plantations and Reafforestation Act 1999</i> (the Act) and <i>Plantations and Reafforestation (Code) Regulation 2001</i> regulate plantations on private and Crown Land.</p> <p>The Act and Code are administered by the Plantations Regulation Unit (PRU) of the Department of Primary Industries (DPI) as delegated by the Minister administering the Act and the Secretary of Department of Regional NSW.</p> <p>The Act requires all plantations greater than 30 hectares in area to be authorised and comply with environmental standards for establishing and managing the plantation.</p> <p>Part 6, Clause 47 of the <i>Plantations and Reafforestation Act 1999</i> exempts authorised plantation or farm forestry from requiring any approvals under the <i>EPA Act</i></p>
Local Land Services Act 2013 (LLS Act)	<p>Private Native Forestry (PNF) is the management of native vegetation on private property for sustainable logging and timber production.</p> <p>A PNF Plan is an approval granted under Part 5B of the <i>LLS Act</i> to carry out PNF operations in accordance with the minimum operating standards set out in the relevant PNF Code of Practice (PNF Code).</p> <p>A PNF Plan holder is a landholder with an approved PNF Plan from the Local Land Services (LLS).</p> <p>It should be noted that Clause 8 of <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> provides that authority is not required under that Policy for the clearing of native vegetation in a non-rural area of the State if the clearing comprises forestry operations authorised under Part 5B of the <i>LLS Act</i>.</p>

Legislation	Approval Framework
Environmental Planning and Assessment Act 1979 (EPA Act)	<p>Division 8 Clause 2.58 of <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> enables development for the purpose of forestry to be carried out by or on behalf of a public authority without consent on land in Zone RU3 Forestry or an equivalent land use zone.</p> <p>Local environmental plans also define the approval pathways for Forestry within specific zones as either:</p> <ul style="list-style-type: none"> - development permitted without consent; - development permitted with consent; or - prohibited development. <p>The Kyogle LEP 2012 currently lists forestry as a land use that requires development consent under the EPA Act when proposed in the RU1 Primary Production zone and RU4 Primary Production Small Lots zone.</p> <p>The Kyogle LEP 2012 currently lists forestry as a land use that is permitted without development consent when proposed in the RU3 Forestry zone; providing consistency with provisions of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>.</p>

Based on the legislative framework outlined in Table 1.2.

- PNF in zones RU1 Primary Production and RU4 Primary Production Small Lots currently requires development consent under the Kyogle LEP 2012 and approval under Part 5B of the *Local Land Services Act 2013*.
- Forestry approved under the *Forestry Act 2012* and *Plantations and Reafforestation Act 1999* is exempt from requiring approval under the *EPA Act*

1.3.3 LLS and PNF Approval

Forestry development impacted by the proposed LEP amendment relates to forestry under a PNF plan approved under the LLS Act.

As defined under the definitions within the LLS Act, PNF involves the following:

- (a) *logging operations—namely the cutting and removal of timber from land for the purpose of timber production, or*
- (b) *the harvesting of forest products—namely the harvesting of the products of trees and other vegetation (other than timber) that are of economic value, or*
- (c) *ongoing forest management operations—namely activities relating to the management of land for timber production such as thinning, burning and other silvicultural activities, or*
- (d) *ancillary activities to enable or assist in the above operations such as the provision of roads, snag tracks, waterway crossings and temporary timber storage facilities.*

Under the LLS Act and associated PNF approval framework, temporary portable mills are permitted as an ancillary use to PNF to assist with the timber harvesting. The locations of the temporary portable mills must be identified within the Forestry Management Plan (FMP) area under the PNF approval by LLS.

A PNF Plan in the Kyogle LGA is required to comply with the Private Native Forestry Code of Practice for Northern NSW (the code) under provisions of the LLS Act. Clause 60ZY of the LLS Act requires that LLS must determine whether a PNF can be carried out under the proposed plan in accordance with the code prior to granting approval.

A copy of the code is provided at Appendix B.

The code sets environmental controls for PNF to protect landscape features of environmental and cultural significance and outlined in Table 1.3.

Table 1.3 Approval Environmental Protection Areas under the Code

Landscape feature	Operational conditions
Threatened ecological communities	Forestry operations must not occur in threatened ecological communities. However, existing roads may be maintained.
Threatened populations	Forestry operations must not result in: <ul style="list-style-type: none"> (a) any harm to an animal that is part of a threatened population, or (b) the picking of any plant that is part of a threatened population, except that existing roads may be maintained.
Areas of outstanding biodiversity value	Forestry operations must not occur in declared areas of outstanding biodiversity value, except that existing roads may be maintained
Rainforest	Forestry operations must not occur within rainforest, except that existing roads may be maintained.
Old growth forest	Forestry operations must not occur within old growth forest, except that existing roads may be maintained.
Wetlands	Forestry operations must not occur in any wetland or within 20 metres of any wetland, except that existing roads may be maintained
Heathland	Forestry operations must not occur in any heathland or within 20 metres of heathland, except that existing roads may be maintained.
Rocky outcrops	Forestry operations must not occur on any rocky outcrop or within 20 metres of a rocky outcrop, except that: <ul style="list-style-type: none"> • existing roads may be maintained; and • existing snig tracks may be used.
Cliffs, caves, tunnels or disused mineshafts (excluding open pits less than 3 metres deep)	Forestry operations must not occur within 10 metres of cliffs, caves, tunnels or disused mineshafts, except that existing roads may be maintained.
Steep slopes	Forestry operations must not occur on slopes greater than 30 degrees, except that: <ul style="list-style-type: none"> • existing roads and tracks may be maintained; and • new roads and tracks may be constructed subject to conditions in clause 9.1 (18) of this Code.
Aboriginal object or Aboriginal place as defined in the National Parks and Wildlife Act 1974	Forestry operations must not occur within: <ul style="list-style-type: none"> • 50 metres of a known burial site • 20 metres of an Aboriginal scarred or carved tree • 10 metres of a known Aboriginal object, or Aboriginal place (this requirement does not apply to Aboriginal objects or places that may lawfully be destroyed).

Landscape feature	Operational conditions
Areas containing items identified as heritage items in an environmental planning instrument	Forestry operations must not occur within 10 metres of a listed heritage item.
Areas of existing mass movement	Harvesting operations which create canopy openings must not occur within the area of existing mass movement, and harvesting machinery must not enter that area, except that existing roads may be maintained. New roads must not be constructed.
Dispersible soils or highly erodible soils	<ul style="list-style-type: none"> • Drainage feature crossings must be armoured with erosion-resistant material. Road batters and table drains must be stabilised using erosion-resistant material, ameliorants, vegetation or slash. • Log landings must be stabilised using erosion-resistant material, vegetation or slash at the completion of forestry operations. • Measures must be taken to immediately stabilise any erosion of roads or snig tracks. • Existing roads may be maintained.
Habitat trees	<ul style="list-style-type: none"> • Hollow bearing trees, recruitment trees, food resource trees, roost trees and nest trees are defined as habitat trees under the code • Habitat trees must be retained
Riparian exclusion zones	<ul style="list-style-type: none"> • Unmapped drainage lines, unmapped and mapped first-order streams, mapped drainage features -10m exclusion zone • Mapped second-order streams – 20m exclusion zone • Mapped third-order or higher streams and Prescribed Streams – 20m exclusion zone • Harvesting machinery must not enter riparian exclusion zones • A tree must not be felled into a riparian exclusion zone
Protection of existing core koala habitat	Forestry operations must not occur on any land mapped as 'PNF Core Koala Habitat – April 2022

The code also sets the environmental requirements and design standards for:

- Construction and maintenance of roads;
- Road drainage;
- Roads crossing drainage features;
- Log landings, portable mill sites and snig tracks;
- Snig tracks and extraction tracks;
- Snig track and extraction track crossings on drainage features;
- Wet weather limitations for snigging, log landing and portable mill operations;
- Seasonality limitations within the former Northern Rivers Catchment Management Authority Area (includes Kyogle LGA); and
- Forestry regeneration after clearing is completed.

A PNF Plan must not commence until a Forest Management Plan (FMP) has been approved by LLS under the LLS Act. The FMP cannot be approved unless it is consistent with the code.

FMPs outline how individual forestry operations will be undertaken within a PNF Plan area. The FMP includes a map and written section describing the forest condition, forestry operations and forest management activities.

The NSW EPA is responsible for monitoring compliance with, and enforcement of, PNF Codes of Practice across NSW. The requirements of the PNF Codes of Practice are the responsibility of both the landowner and timber harvesting contractors. A timber harvesting contractor must sight the FMP, read and understand it and have it on site at all times whilst harvesting. Landowners and contractors must ensure the harvesting operation is carried out in accordance with the relevant code of practice.

It is noted that section 5.4 (forest regeneration) of the code sets the regeneration requirements for PNF for the purpose of regenerating or re-establishing the native forest after forestry. This includes compliance audits by the NSW EPA. Under a PNF approval, a native forest area must be regenerated along a trajectory that maintains (or improves on) preharvest forest conditions, and landholders must implement regeneration management actions.

1.3.4 PP Stage 1

Kyogle Council prepared a scoping proposal (SP) and submitted the SP to the NSW Department of Planning and Environment (DPE) on 21 June 2023 in accordance with the Stage 1 PP process outlined in the LEP Guidelines.

DPE issued the SP to authorities and government agencies for comment and a pre-lodgment meeting with DPE was held on 18 October 2023. Unfortunately, of the stakeholders consulted, only DPE attended the pre-lodgment meeting.

Kyogle Council subsequently decided to proceed to prepare and lodge a PP to DPE for Gateway Determination.

1.4 Council Resolutions

Kyogle Ordinary Council Meeting on 14 November 2022 resolved (CO/1122/10):

That Council:

1. Receives and notes the report, *Private Native Forestry in the Kyogle Local Government Area*;
2. Approves the preparation of a **Planning Proposal** to amend the Kyogle Local Environmental Plan 2012 to make Private Native Forestry permitted without consent in zone RU1 – Primary Production;
3. Commits to progressing a study of the biodiversity and heritage value of land within the Kyogle LGA, consistent with the objectives of the *Kyogle Community Strategic Plan 2022 – 2032* and *Kyogle Council Local Strategic Planning Statement 2020*, with a view to introducing conservation zones into the *Kyogle Local Environmental Plan 2012* to protect land with high environmental or heritage value in future.
4. Writes to the State Member for Lismore Janelle Saffin seeking her support in advocating for the State Government to properly fund the Environment Protection Agency and Local Lands Service to carry out compliance and enforcement of legislation and Codes of Practice in regard to Private Native Forestry.

2 Planning Proposal

2.1 Part 1 - Objectives and Intended Outcomes

The intended outcome is to amend the land use tables of the Kyogle LEP 2012 to make private native forestry (PNF) a land use that is permitted without consent in the RU1 – Primary Production zone and RU4 Primary Production Small Lots zone.

The primary objective of the PP is to remove the dual approval framework for PNF such that approval is only required through the *Local Land Services Act 2013* (LLS Act). This will alleviate unnecessary duplication and compliance issues for Council and landowners regarding PNF.

2.2 Part 2 - Explanation of Provisions

The proposal will result in amendments to the land use tables of the Kyogle LEP 2012.

Currently, PNF is a land use that is permitted with consent within the RU1 and RU4 zones under the Kyogle LEP 2012. The proposal seeks to amend the land use tables of the RU1 and RU4 zones such that forestry is permitted without consent as outlined in Table 2.1.

Table 2.1 Proposed LEP 2012 Land Use Tables

Existing	Proposed
Zone RU1 Primary Production	
<p>2 Permitted without consent Environmental protection works; Extensive agriculture; Home-based child care; Home occupations; Intensive plant agriculture</p> <p>3 Permitted with consent Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Crematoria; Dual occupancies; Dwelling houses; Eco-tourist facilities; Educational establishments; Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Function centres; Helipads; Home businesses; Home industries; Industrial training facilities; Information and education facilities; Intensive livestock agriculture; Open cut mining; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Secondary dwellings; Timber yards; Turf farming; Veterinary hospitals; Water supply systems</p>	<p>2 Permitted without consent Environmental protection works; Extensive agriculture; Forestry; Home-based child care; Home occupations; Intensive plant agriculture;</p> <p>3 Permitted with consent Airstrips; Animal boarding or training establishments; Aquaculture; Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Camping grounds; Caravan parks; Cellar door premises; Cemeteries; Charter and tourism boating facilities; Community facilities; Crematoria; Dual occupancies; Dwelling houses; Eco-tourist facilities; Educational establishments; Environmental facilities; Extractive industries; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Function centres; Helipads; Home businesses; Home industries; Industrial training facilities; Information and education facilities; Intensive livestock agriculture; Open cut mining; Places of public worship; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Rural industries; Rural supplies; Rural workers' dwellings; Secondary dwellings; Timber yards; Turf farming; Veterinary hospitals; Water supply systems</p>

Existing	Proposed
Zone RU4 Primary Production Small Lots	
<p>2 Permitted without consent Environmental protection works; Extensive agriculture; Home-based child care; Home occupations; Intensive plant agriculture</p> <p>3 Permitted with consent Agricultural produce industries; Animal boarding or training establishments; Aquaculture; Backpackers' accommodation; Bed and breakfast accommodation; Building identification signs; Business identification signs; Cellar door premises; Community facilities; Dairies (pasture-based); Dual occupancies; Dwelling houses; Entertainment facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Function centres; Home businesses; Home industries; Neighbourhood shops; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Secondary dwellings; Turf farming; Veterinary hospitals; Viticulture; Water supply systems</p>	<p>2 Permitted without consent Environmental protection works; Extensive agriculture; Forestry; Home-based child care; Home occupations; Intensive plant agriculture;</p> <p>3 Permitted with consent Agricultural produce industries; Animal boarding or training establishments; Aquaculture; Backpackers' accommodation; Bed and breakfast accommodation; Building identification signs; Business identification signs; Cellar door premises; Community facilities; Dairies (pasture-based); Dual occupancies; Dwelling houses; Entertainment facilities; Environmental facilities; Farm buildings; Farm stay accommodation; Flood mitigation works; Forestry; Function centres; Home businesses; Home industries; Neighbourhood shops; Plant nurseries; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roads; Roadside stalls; Secondary dwellings; Turf farming; Veterinary hospitals; Viticulture; Water supply systems.</p>

2.3 Part 3 - Justification

2.3.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

No. The PP is not a direct result of a local strategic planning statement, strategic study or report.

The primary issue of contention relates to the dual approval framework for PNF. Under the current framework landowners are required to obtain dual consent from LLS and Kyogle Council. However, experience in the Kyogle LGA demonstrates that landholders that receive PNF approval through LLS are not seeking consent of Council as required under the EPA Act.

This duplication of regulatory process results in compliance issues for Council and landowners regarding PNF.

The PP will result in a variation in the planning pathway for PNF within the RU1 Primary Production and RU4 Primary Production Small Lots within the Kyogle LGA; such that development consent of Council is not required in the zones.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Council's view is that a PP is the best mechanism for achieving the intended outcome. A PP is the appropriate mechanism to vary the planning pathways for PNF under the Kyogle LEP 2012.

Forestry (PNF) is a land use that is permitted with consent within the RU1 and RU4 zones under the Kyogle LEP 2012. The proposal seeks to amend the land use tables of the RU1 and RU4 zones such that forestry is permitted without consent.

Should state authorities not accept Council's PP as the best mechanism for addressing issues regarding the PNF approval process, Council has identified one other change that could be implemented to address the current issues which is to integrate approval processes under the EP&A Act.

Under the EP&A Act, integrated development is development that requires approval under both the EP&A Act and another Act. Integrated development enables key issues under each Act to be assessed through the development application process, reducing delays and duplication in assessment. Integrated development benefits applicants by providing certainty that they will be able to obtain all approvals required for the proposed development.

Currently, a landowner is obtaining approval for PNF from LLS and not obtaining development consent from Kyogle Council as required under the EP&A Act. Even if a landowner does submit a development application to Council, it may be the case that Council refuses the application or requires changes to the proposal to provide consent. This means a landowner may invest significant time and resources to obtain an approval from LLS which cannot be acted upon if Council issues a decision that is in any way inconsistent with the LLS approval. Similarly, if Council refuses a development application submitted after obtaining an LLS approval, the time and resources invested in that approval process is wasted.

By making PNF integrated development, the above outlined scenario should not occur, providing certainty and cost savings to landowners, and minimising compliance issues resulting from the current dual approval framework.

2.3.2 Section B – Relationship to Strategic Planning Framework

Q3 Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The North Coast Regional Plan 2041 (NCRP) is the current strategic planning document applying to the Kyogle LGA.

The PP is broadly consistent with the Regional Plan, which provides the regional framework for the consideration of policy development and the overall vision of the future.

Objective 10 of the NCRP relates to the sustainable management of our natural resources.

Strategy 10.1 of the NCRP is to enable the development of the region's natural, mineral and forestry resources by avoiding interfaces with land uses that are sensitive to impacts from noise, dust and light interference.

Forestry is not identified within the Local Government Narratives for Kyogle within the NCRP, however the following are listed key priorities for the Kyogle LGA:

- Retain and protect local biodiversity through effective management of environmental assets and ecological communities; and
- Support the retention of important farmland throughout the LGA by encouraging agricultural diversification and promoting contemporary sustainable farming practices.

The PP will not result in any conflict with the provisions of the NCRP. PNF development will still be able to operate through approval granted under the LLS Act.

Q4 Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Kyogle Local Strategic Planning Statement (LSPS) and Kyogle Community Strategic Plan (CSP)

The LSPS identifies Forestry as a key contributor to the local economy and employment. The LSPS places priority on the support of development in key sectors including agriculture, horticulture and forestry as outlined in priority statements A1 and A4.

The CSP identifies strategies to improve the prosperity of Kyogle including:

- Supporting sustainable growth in the timber and forestry industries; and
- Advocate for policies that will enable sustainable growth in the timber, forestry and allied value-adding businesses.

In this regard, the proposed LEP amendments do not present any detrimental outcomes regarding the forestry industry within the Kyogle LGA and the PP is consistent with the objectives and strategies associated with forestry outlined within the LSPS and CSP.

Both the LSPS and CSP identify an environmental objective of:

'To have protected, maintained and enhanced areas of high environmental and biodiversity value'

Both documents identify as a means of obtaining this environmental objective the following strategy:

'Work in partnership with state government agencies to identify areas of high biodiversity value and support the development of a Biodiversity Strategy.'

Whilst these environmental intentions outlined in the LSPS and CSP do not directly relate to forestry, Council acknowledges some community members view forestry as being incompatible with the achievement of these objectives. These objectives demonstrate a commitment by Kyogle Council towards protection of lands with high environmental and biodiversity value. As detailed previously, Kyogle Council resolved on 14 November 2022 (CO/1122/10) to commit to progressing a study of the biodiversity and heritage value of land within the Kyogle LGA, consistent with the objectives of the Kyogle Community Strategic Plan 2022 – 2032 and Kyogle Council Local Strategic Planning Statement 2020, with a view to introducing conservation zones into the *Kyogle Local Environmental Plan 2012* to protect land with high environmental or heritage value in future.

Kyogle Council is currently canvassing consultants to prepare the biodiversity study, mapping of lands containing high biodiversity values and a Biodiversity Strategy, to give effect to this Council resolution.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

The PP is consistent with applicable State Environmental Planning Policies (SEPPs).

Table 2.2 provides discussion on relevant SEPPs that are particularly significant to this PP.

Table 2.2 Assessment of SEPPs

SEPP	Comments
<p><i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></p>	<p>Chapter 3 and 4 of the SEPP addresses Koala Habitat protection in the RU1 zone and RU4 zone. The PNF code includes exclusion areas for mapped core koala habitat and further restrictions relating to Koala feed trees.</p> <p>This implies that approval under LLS has adequately assessed and protected Koala habitat impacts.</p> <p>It is noted that section 5.4 (forest regeneration) of the code sets the regeneration requirements for PNF for the purpose of regenerating or re-establishing the forest after forestry. This includes compliance audits by the NSW EPA. Under a PNF approval, a native forest area must be regenerated along a trajectory that maintains (or improves on) preharvest forest conditions.</p>

SEPP	Comments
	The variation of PNF planning pathway and removing the requirement for development consent in the RU1 and RU4 zone will not vary the outcome regarding impacts on Koala habitat.
State Environmental Planning Policy (Planning Systems) 2021	PNF development is unlikely to be deemed regionally significant or State significant development.
State Environmental Planning Policy (Resilience and Hazards) 2021	The Kyogle LGA is not located within the coastal zone. PNF development is unlikely to be considered as a “potentially hazardous industry” or “potentially offensive industry”. The LLS PNF approval process does not consider impacts associated with land contamination.
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	A PNF cannot be completed in accordance with the provisions of this SEPP. Therefore, the Codes SEPP does not apply.
State Environmental Planning Policy (State Significant Precincts) 2005	The subject site is not located within a state significant precinct. Further assessment against the State Significant Precincts SEPP is not required.
State Environmental Planning Policy (Primary Production) 2021	The PP does not present conflict with the aims of the SEPP.

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. Some section 9.1 directions are relevant to the PP. A section 9.1 checklist is provided at Appendix C.

2.3.3 Section C - Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Q9 Has the planning proposal adequately addressed any social and economic effects?

The PP does not relate to a specific site but will result in a variation in the permissible planning pathway for PNF within zones RU1 Primary Production and RU4 Primary Production Small Lots within the Kyogle LGA. The PP will result to a change in the decision-making framework (by removing duplicated approval processes) for PNF only; the PP does not seek to remove requirements under legislation for assessment of the environmental impacts of PNF and implementation of avoidance and mitigation measures as required to ensure environmental values are protected.

As outlined previously, the PNF Code of Practice sets environmental controls for PNF at individual sites and PNF approval under the LLS Act is dependent upon compliance with the code.

The code restricts PNF occurring within landforms of significant environmental value with a focus on protection of biodiversity, heritage, soils and waterways. The code also establishes suitable parameters for ancillary infrastructure required to enable PNF.

Section 5.4 (forest regeneration) of the code sets the regeneration requirements for PNF for the purpose of regenerating or re-establishing native forest after forestry harvesting is completed. This includes compliance audit by the NSW EPA.

Ancillary approval and legislative requirements under the *Roads Act 1993*, *Contaminated Land Management Act 1997*, *Protection of the Environment Operations Act 1997*, *Waste Avoidance and Resource Recovery Act 2001*, *Heritage Act 1977*, *National Parks and Wildlife Act 1974*, *Water Management Act 2000*, *Fisheries Management Act 1994* and *Environment Protection and Biodiversity Conservation Act 1999* create further legislative conditions for PNF not directly addressed under the code or LLS approval process. This suite of legislation would effectively address Council and community interests not covered under the code such as local amenity (noise, air quality, work hours), waste, socio-economic, land contamination or road related impacts.

2.3.4 Section D – State and Commonwealth Interest

Q10 Is there adequate public infrastructure for the planning proposal?

PNF approvals issued under the LLS Act address onsite temporary infrastructure required to support PNF works.

The PP is not site or project specific and it is therefore not possible to determine a quantifiable impact of on public infrastructure.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Kyogle Council staff discussed the issues relating to PNF approvals with the DPE in October 2022 with a view to finding a solution that removes duplication in regulatory processes while ensuring that state and local government interests are protected.

DPE advised at the time that the best way forward is to amend the Kyogle LEP to make PNF permitted without consent on land zoned RU1 Primary Production zone and RU4 Primary Production Small Lots zone. This would enable any landowner who obtains an approved PNF Plan from LLS after the proposed amendment to the LEP takes effect, to proceed with PNF without obtaining development consent from Council. Amending the Kyogle LEP in this way would bring Kyogle Council's planning framework for PNF into line with the following Far North Coast and Mid North Coast Councils; Lismore City, Richmond Valley, Clarence Valley, Bellingen, Nambucca and Kempsey.

However, DPE identified that a key issue for environmental agencies would be to ensure that the proposed changes to the planning framework do not result in a diminishing of environmental protection measures. As previously identified, Council is not proposing to remove requirements under legislation for assessment of the environmental impacts of PNF or implementation of avoidance and mitigation measures as required to ensure environmental values are protected. Council contends that the assessment and approval process undertaken by LLS ensures that landscape features of high environmental value are protected, and that forest regeneration occurs on completion of the activity, thus negating the need for Council to assess a proposal under the EP&A Act for this state interest.

Council understands that some environmental agencies have expressed a view that local environmental plans provide a necessary mechanism for obtaining current information regarding the biodiversity values located on specific parcels of land, by triggering submission of a Biodiversity Development Assessment Report (BDAR). Council contends that retention of dual approval processes on this basis is a flawed argument because identification of landscape features of high biodiversity value is a necessary requirement for LLS to issue approval of a PNF Plan. Accordingly, current and accurate information about the landscape features of high biodiversity value (as described in the PNF code) must be submitted to LLS as part of this decision-making process. Therefore, submission of a BDAR to Council as part

of a development application process, after LLS has already issued a PNF approval, is unnecessary.

However, recognising environmental agency's concerns about the currency of environmental information used in decision-making processes, Council has committed to progress a study of the biodiversity and heritage value of land within the Kyogle LGA with a view to introducing conservation zones, or an equivalent protection mechanism, to protect land with high environmental or heritage value in future. Such a study may supplement information provided in BDARs and provide government agencies with a better understanding of the location and extent of lands with high biodiversity value which may be used to inform updates to key decision-making tools such as state and local government mapping. Should such a study identify land with high biodiversity values in addition to currently identified land, it would be appropriate to investigate implementing protection mechanisms such as conservation zones or updates to statutory mapping.

The completion of biodiversity/heritage mapping and preparation of a Biodiversity Strategy are key actions of the CSP and LSPS. The completion of the Biodiversity Strategy, biodiversity/heritage mapping and introduction of conservation zones into the Kyogle LEP 2012 are also actions under Council Resolution CO/1122/10. Kyogle Council is currently canvassing consultants to prepare the biodiversity study, mapping of lands containing high biodiversity values and a Biodiversity Strategy, to give effect to this Council resolution.

Agency response was sought through the stage 1 (Scoping Proposal) phase. The Scoping Proposal was issued to DPE in June 2023 identifying that the following key agencies are consulted on the proposal:

- Transport for NSW (Regions)
- NSW Environmental Protection Authority (EPA);
- NSW Planning and Environment (Biodiversity and Conservation); and
- National Resources Access Regulator (NRAR).

Unfortunately, DPE was unable to coordinate agency responses during Stage 1.

An overview of the Agency consultation undertaken to date and deemed necessary under the PP process is outlined at Table 2.3.

The relevant agencies will be consulted in accordance with the Gateway Determination.

Table 2.3 Agency Consultation

Agency	Consultation Rationale
Preliminary consultation undertaken with DPE (Local and Regional Planning)	Preliminary consultation undertaken by Kyogle Council with DPE in October 2022 indicated support for the PP subject to Kyogle Council committing to undertaking a biodiversity study to assist with the improvement of knowledge about values across the LGA and ensuring that current environmental protection mechanisms under the Kyogle LEP 2012 are not diminished.
Transport for NSW (Regions)	PNF has potential to impact classified roads although the specifics of the impacts cannot be quantified. Regardless, Transport for NSW (Regions) should be consulted regarding the proposal.
Heritage NSW	PNF development is not granted approval under the LLS Act within a landscape that features a heritage item within an environmental planning instrument or area featuring Aboriginal objects or Aboriginal places in accordance with the code. It is therefore considered not necessary to refer to proposal to Heritage NSW.

Agency	Consultation Rationale
NSW Environmental Protection Authority (EPA)	The EPA has a compliance role regarding PNF. It is therefore recommended that the EPA are consulted regarding the proposal.
NSW Planning and Environment (Biodiversity and Conservation)	PNF development is not granted approval under the LLS Act within a landscape that features significant biodiversity value in accordance with the code. It is acknowledged that conditional to the support of the progression of the PP is ensuring that environmental protection mechanisms for biodiversity under the Kyogle LEP 2012 are not diminished. It is therefore recommended that Biodiversity and Conservation are consulted regarding the proposal.
National Resources Access Regulator (NRAR)	PNF development has potential to impact waterfront land although the specifics of the impacts cannot be quantified. Regardless NRAR should be consulted regarding the proposal.
Local Land Services (LLS)	LLS issues the PNF approvals and therefore should be consulted regarding the PP.

2.4 Mapping

The proposal relates to all areas of land zoned RU1 – Primary Production zone and RU4 Primary Production Small Lots zone within the Kyogle Council Local Government Area.

There are no specific sites relating to the PP.

No maps under the Kyogle Local Environmental Plan 2012 will require amendment.

2.5 Community Consultation

The LSPS and CSP identifies forestry as a key contributor to the local economy and employment. These strategic documents support the sustainable growth in the timber, forestry and allied value-adding businesses. The LSPS and CSP were developed and informed through consultation undertaken with the community.

The community will be consulted further regarding the PP based on the outcome of the Gateway Determination and in accordance with the Kyogle Community Participation Plan 2019.

2.6 Project Timeline

Stage 2 of the PP for a complex PP category the LEP Guidelines and the proposed timeline for completion of the PP is as follows:

Plan Making Step	Estimated Completion Timeframe	Approximate date
Stage 3 Gateway Determination	45 working days	March 2024
Stage 4 – Post Gateway	70 working days	April 2024
Stage 5 - Public Exhibition and Assessment	115 working days	April – June 2024
Stage 6 - Finalisation	70 working days	September 2024



CONSULTING

Appendix A – Kyogle Local Government Area



CONSULTING

Appendix B - Private Native Forestry Code of Practice



CONSULTING

Appendix C – Ministerial Directions Checklist