

Briefing: Executive Director, Regions
FOR APPROVAL

Bellingen Gateway determination: PP_2017_BELLI_001_00

Purpose: To recommend that the Executive Director, Regions, as delegate of the Minister, determine that planning proposal PP_2017_BELLI_001_00 should proceed.

Analysis: The planning proposal seeks to: make horticulture permissible with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living zones; list horticulture as exempt development; and list blueberry farming as exempt development if it satisfies certain development standards. The planning proposal is considered to have merit and should proceed subject to conditions.

Deadline: The Gateway determination is to be issued by 6 February 2018, being 40 working days since receiving the planning proposal.

Recommendation

That the Executive Director, Regions, as delegate of the Secretary:

1. **agree** that any 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 remains unresolved until consultation has been undertaken.

That the Executive Director, Regions, as delegate of the Minister:

1. **note** the planning proposal (**Attachment A**);
2. **note** the Gateway determination report (**Attachment B**); and
3. **sign** the Gateway determination (**Attachment C**) and the letter to Bellingen Shire Council (**Attachment D**).

Approval

<p>Jeremy Gray Director Regions, Northern</p>  <p>Date: 17-01-2018</p>	<p>Stephen Murray Executive Director, Regions</p> <p>Planning Services</p> <p><i>Not supported see covering memo</i></p> <p>Approved / Not Approved</p>  <p>Date: 26 February</p>
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Key reasons

The planning proposal

The planning proposal seeks to make horticulture permissible with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living zones, list horticulture as exempt development, and list blueberry farming as exempt development if it satisfies certain development standards.

The proposed development standards that will enable blueberry farming to be exempt development include:

- 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.

Planning assessment

The Gateway determination report (**Attachment A**) concludes that the planning proposal has merit and should proceed subject to conditions.

One of the proposed conditions requires that the planning proposal be amended to remove the proposed exempt development standard requiring that any netting proposed for the protection of the crop must be black.

Another condition requires further consideration of the wording of the riparian vegetation protection clause considering similar provisions in the Bellingen LEP and conflicting provisions in the *Local Land Services Act 2013*.

Section 117 Directions

The inconsistency with section 117 Direction 2.3 Heritage Conservation is considered to be justified in accordance with the terms of the direction.

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.

The proposal is otherwise consistent with the relevant section 117 Directions.

Delegation of plan-making functions

Council has requested delegation to finalise the planning proposal. It is considered that authorisation to exercise delegation should not be issued to Council. As adjoining local government areas are considering a similar approach and concerns from the Department of Primary Industries – Agriculture have been received, it is recommended that the Minister retain delegation in this instance.

Background

The Department of Primary Industries (DPI) has expressed concern with proposals to further regulate horticulture. A copy of DPI's letter to Council is at **Attachment E**.

It is considered that DPI's views on this proposal can be further addressed during agency consultation.

Attachments

Attachment	Title
A	Planning proposal
B	Gateway determination report
C	Gateway determination
D	Letter to Bellingen Shire Council
E	Letter from Department of Primary Industries to Council

Memorandum

To Marcus Ray
Deputy Secretary, Planning Services

From Stephen Murray
Executive Director, Regions
(02) 9274 6249 steve.murray@planning.nsw.gov.au

Date 22 February 2017 **File** IRF17/681

Planning Proposal PP_2017_BELLI_001_00

Purpose

To provide an alternate recommendation to the Planning Team Report which supports Bellingen Council's 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.

Proposal

Currently, all forms of horticulture (including blueberries) are permissible without consent under Bellingen LEP 2010 in the RU1, RU2, RU4 and E4 zones.

The planning proposal seeks to 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 however only be exempt development if:

- setbacks to property boundaries and dwellings on adjacent properties comply with those recommended in the Department of Primary Industries (DPI) – Agriculture's *Living and Working in Rural Areas* handbook;
- setbacks from watercourses comply with DPI – Office of Water's *Guidelines for riparian corridors on waterfront land* or clearing of these corridors is not proposed;
- the farm is not identified as core koala habitat; and
- netting is black.

The proposal and the supporting Council report justify the need for this approach as:

- the growth of blueberry farming and its associated impacts have become a matter of concern for the local community;
- will lessen the likelihood of land use conflict and help protect riparian areas and core koala habitat;
- the revised Australian Industry Code of Practice being prepared by the industry and State Government to address issues such as those raised by the Bellingen community is still under development, has no set timeframe for completion and will be voluntary with no consequences for non-compliance; and

- there is a lack of State Government resources to ensure compliance and enforcement of existing requirements applying to the sector.

Since submission of the proposal, Council has also forwarded a report prepared by Southern Cross University on behalf of Coffs Harbour Council regarding the potential impacts of intensive plant agriculture on the water quality of the Bucca Bucca Creek catchment. The report concluded a link between blueberry farming and nitrogen runoff into streams and identified opportunities to decrease the use of fertilisers, managing any nitrogen that escapes to creeks and site specific management approaches to reduce farm run-off to address this issue. Council believes that the report further validates the intent of their proposal and requested that it be noted by the Department in reaching a determination.

Comment

The North Coast Regional Plan 2036 identified that the gross value of agriculture on the North Coast in 2014-2015 was \$930 million. The Plan also identified that in 2011 the NSW North Coast produced 84% of Australia's blueberries which made a \$134 million economic contribution to the regional economy.

Direction 11 of the North Coast Regional Plan 2036 recognises the importance of agriculture (including horticulture) to the region and requires councils through their on-going strategy work to:

- direct urban and rural residential development away from important farmland and identifying locations to support small lot agriculture (such as horticulture);
- identify and protect intensive agriculture clusters in local plans to avoid land use conflict; and
- address site specific considerations for agricultural industries through local plans.

State Environmental Planning Policy (Rural Lands) 2008 and section 117 Direction 1.5 Rural Lands also identify rural planning principles to be used by councils when planning for rural lands. These principles primarily aim to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands.

Rather than an adopting a holistic and co-ordinated strategic planning approach for intensive agriculture to avoid land use conflict and to support and grow the sector (as advocated by SEPP (Rural Lands) 2008 and section 117 direction 1.5 Rural Lands and the North Coast Regional Plan), Council has elected in the current proposal to only apply site specific controls to the blueberry industry.

This approach is not considered to be consistent with the above planning framework for rural lands and is not supported as:

- the proposal states that only 3 blueberry farms currently exist in the LGA and provides no evidence of issues associated with these specific farms that require the currently proposed LEP changes / regulation for future farms;
- the primary justification for the proposal appears to be the outcomes of a community consultation process undertaken by Council in which 65% of respondents supported an increased level of regulation for the blueberry industry. It is noted that the consultation process constituted a survey of 91 participants, with a total of 60 respondents supporting increased regulation. It is also noted that this figure of support declined to 42 respondents, or 46%, if any changes would affect other forms of horticulture. With an estimated LGA population of over

12,500, and a North Coast population of over 500,000, it is not considered appropriate that a significant and growing industry for the region be singled out for regulation without further evidence;

- the impacts cited as being associated with the blueberry industry such as potential land use conflict, spray drift, visual impact, land clearing and increased nitrogen in waterways are commonly associated with many other forms of horticulture, intensive plant agriculture and agriculture. While the blueberry industry is presently growing strongly in the region, it is not considered reasonable to regulate this industry in isolation compared to other existing or potential agricultural activities without a more detailed evidence base justifying the proposed changes. Similarly, it is noted that Council's proposed exempt requirements would impose additional restrictions on the blueberry industry relating to land clearing and koala habitat that would not apply to any other forms of agriculture. Such an approach is considered unreasonable and difficult to implement effectively and could result in adverse environmental outcomes by potentially encouraging land owners to undertake unnecessary land clearing associated with other forms of agriculture just to ensure their right to farm the land is not limited in the future;
- such an approach if adopted (and potentially extended once accepted to other forms of horticulture, intensive plant agriculture and agriculture) would create a clear precedent and would have significant State wide implications for the future development and use of rural lands, the productive value of rural land, the right of landowners to farm their land and the NSW agricultural sector in general. It is noted that the Department of Planning and Environment's Policy Division recently finalised the exhibition of the *Draft Primary Production and Rural Development SEPP*. Due to the State wide implications of the current proposal, it is considered appropriate that the issues raised by Council in the proposal be forwarded to the Department's Policy Division for consideration as part of their current process to establish an appropriate future Department position.

The Department of Primary Industries (**Attachment E**) and the local member, Melinda Pavey MP (**Attachment F**), have outlined their concerns with the proposal and the negative implications to the sector and the North Coast economy of increasing regulation of the blueberry industry. Both the Department of Primary Industries and the local member advocate for the work already being undertaken by the blueberry industry and State Government in delivering a revised code of practice for the sector to help address the issues being cited by Council. It is understood that the development of the revised code is well underway and should be ready for stakeholder consultation in early 2018. The proposed revised code of conduct is supported and will help address any potential issues with the sector across a number of Local Government Areas and is more appropriate than making ad hoc local provisions in a single Council area.

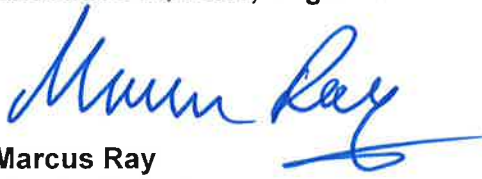
Should Council wish to address the issues cited in the proposal associated with intensive agriculture, this can be done through a strategic review of Council's Local Growth Management Strategy in consultation with key stakeholder and industry groups which seeks to ensure urban and rural residential development is directed away from important farmland and identifying appropriate locations to support small lot agriculture (such as horticulture). Any review would need to be considered in a state and regional context.

Recommendation

It is recommended that:

- the proposal not be supported as it does not sufficiently demonstrate the need or justification for the proposed provisions or its inconsistencies with s117 Directions 1.5 Rural Lands, State Environmental Planning Policy (Rural Lands) 2008 and the North Coast Regional Plan 2036 as it will not protect the agricultural production value of rural land; and
- Council be advised that the Department would need to undertake a review of the State wide implications of such a policy to regulate further certain forms of agriculture before it can be determined whether a similar proposal could be support in the future.

 26 February 2018
Stephen Murray
Executive Director, Regions


Marcus Ray
Deputy Secretary
Planning Services
08/03/2018



Gateway Determination

Planning Proposal (Department Ref: PP_2017_BELLI_001_00): to make horticulture permissible with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living zones, list horticulture as exempt development and list blueberry farming as exempt development if it satisfies certain development standards.

I, the Deputy Secretary, Planning Services at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Bellingen Local Environmental Plan (LEP) 2010 to make horticulture permissible with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living zones, list horticulture as exempt development and list blueberry farming as exempt development if it satisfies certain development standards, should not proceed for the following reason:

1. The planning proposal does not adequately demonstrate the need or justification for the proposed provisions or its inconsistencies with s117 Directions 1.5 Rural Lands, State Environmental Planning Policy (Rural Lands) 2008 and the North Coast Regional Plan 2036 as it will not to protect the agricultural production value of rural land.

Dated *8th* day of *March* 2018.


Marcus Ray
Deputy Secretary
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning



Ms Liz Jeremy
General Manager
Bellingen Shire Council
PO Box 117
BELLINGEN NSW 2454

Dear Ms Jeremy

Planning proposal to amend Bellingen Local Environmental Plan 2010

I am writing in response to Council's request for a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to make horticulture permissible with consent in the RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots and E4 Environmental Living zones, list horticulture as exempt development and list blueberry farming as exempt development if it satisfies certain development standards.

As delegate of the Minister for Planning, I have now determined the planning proposal should not proceed as outlined in the attached Gateway Determination.

The rural planning principles underpinning *State Environmental Planning Policy (Rural Lands) 2008*, section 117 Direction 1.5 Rural Lands and the North Coast Regional Plan 2036 seek to protect the agricultural productive value of rural land. It is considered that the planning proposal has not adequately addressed these principles, the need and implications for rural lands management or the wider consequences of introducing such provisions for farming generally.

Due to the broader State and regional implications of Council's proposed provisions, I have referred the issues raised by the proposal as part of the current deliberations on the *Draft Primary Production and Rural Development SEPP* for consideration by the Department.

Should Council wish to continue proactively addressing the issues cited in the proposal associated with intensive agriculture, this can be done through a strategic review of Council's Local Growth Management Strategy. This review should be done in consultation with relevant State agencies, key stakeholders and industry groups, and seek to ensure urban and rural residential development is directed away from important farmland and that appropriate locations to support small lot agriculture (such as horticulture) are identified. I would also encourage Council to continue to work with the Department of Primary Industries and the blueberry industry on the development of the revised code of conduct currently under preparation for the sector.

Should you have any enquiries about this matter, I have arranged for Mr Craig Diss of the Department's Northern Region office to assist you. Mr Diss can be contacted on 6701 9685.

Yours sincerely



Marcus Ray
Deputy Secretary
Planning Services

08/03/2018

Encl: Gateway determination