



Department of
Primary Industries

North coast private native forest project

**NSW planning and regulatory instruments
that interact with private native forestry**

www.dpi.nsw.gov.au

Published by the NSW Department of Primary Industries

NSW planning and regulatory instruments that interact with private native forestry

First published June 2018

ISBN number

More information

John Samuel (john.samuel@dpi.nsw.gov.au) or Nick Cameron (nick.cameron@dpi.nsw.gov.au) /DPI Forestry - Forest Science unit Parramatta

www.dpi.nsw.gov.au

Acknowledgements

This report has been produced with the cooperation of many local government authorities providing information. Thanks also to Ricardo Aravena and Masoomah Alaibakhsh for undertaking the GIS analysis.

PUB18/148

© State of New South Wales through the Department of Industry, Skills and Regional Development, 2018. You may copy, distribute and otherwise freely deal with this publication for any purpose, provided that you attribute the NSW Department of Primary Industries as the owner.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (June 2018). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent advisor.

Table of Contents

1. Summary.....	4
2. Key findings of the PNF planning and regulatory instruments review	9
3. Meaning of key terms.....	10
4. About this report.....	11
5. About private native forestry.....	11
6. Private native forestry regulatory instruments.....	13
Private native forestry legislative framework	13
7. Planning instruments that interact with private native forestry	15
Local Environmental Plans.....	15
State Environment Planning Policies	16
Biodiversity Conservation Act and Local Land Services Amendment Act	19
8. Council Local Environment Plan survey method	21
Correlation of private native forest with LEP zoning	21
Council Local Environment Plan zoning and development controls on PNF.....	21
Council survey of development controls on PNF	22
9. Council survey results.....	23
Local Environment Plan analysis results.....	23
Council LEP survey responses	27
Council roads and bridge survey response.....	32
10. Discussion	34
Links	36
Appendix 1 – Methodology for calculating regulatory and planning exclusions	37
Appendix 2 – Regulatory exclusions.....	38
Appendix 3 – Letter sent to Councils requesting information.....	40
Appendix 4 – Follow up questions emailed to councils.....	42
Appendix 5 – Council responses to Local Environment Plan and PNF Plan questions	44

1. Summary

Private native forestry (PNF) is about the sustainable management of private native forests for timber and other forest values. This report examines the NSW planning and regulatory instruments that interact with private native forestry (PNF) using the NSW north coast region as a case study. It illustrates the extent and complexity of the PNF operating environment, as well as the current balance between environmental and commercial considerations. The report is part of a larger project commissioned by the NSW Department of Primary Industries to examine the broader character and extent of north coast private native forests and their dependent timber industry. The information provided by this report may be used by policy makers in setting the future balance between a reliable long-term sustainable timber supply, and the maintenance of environmental values. It should also be useful in examining regulatory complexity in relation to PNF, in line with the Government's efforts to reduce red tape.

The regulatory framework for private native forestry (PNF) is currently the subject of a major review. We examined the existing regulatory framework that applies to PNF, the principal legislative instruments being the *Forestry Act 2012* and the *Environmental Planning and Assessment Act 1979* (EP&A Act). We also examined the effect of the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016*.

We found that planning and regulatory instruments applied to PNF are extremely complex but provide a high level of protection for environmental and cultural heritage values. We identified 44 different types of planning and regulatory exclusions and 350 operating conditions within the *PNF Code of Practice for Northern NSW*.

The union of the planning constraints and exclusions¹ totalled 734,992 ha, which equated to 25.6% of the total area of private native forest on the NSW north coast. In effect, these areas are acting as large-scale informal conservation reserves (Figure 1).

To determine how PNF is treated under the EP&A Act we undertook a survey of local councils and an analysis of their Local Environmental Plans (LEPs). Twenty-one councils with responsibility for 24 LEPs responded to the survey.

We found that on 25% (689,300 ha) of private native forest land, approval to undertake PNF requires "dual consent" (i.e. separate approvals are required from the NSW Environment Protection Agency (EPA)² and local council). Private native forestry is prohibited by council LEPs on a further 6.5%³ (174,560 ha) of private native forest land. The balance of the private native forest estate (68.5%) has zoning that permits forestry without council consent (Figure 2).

¹ Private native forest land where landholders are not permitted to undertake PNF operations

² Note Local Land Services will replace the NSW EPA as the new approval authority from May 2018

³ Note this exclusion is included in the 734,992 hectares of planning and regulatory exclusions

Our survey also revealed that LEP zoning by itself was not a clear indicator of how PNF is regulated, with different councils applying different rules to land with the same zoning. These differences are a product of local decision making which are not readily explainable by science. For example, nearly two thirds of the private native forest in the Bellingen Local Government Area (LGA) is zoned Environmental (E) while in the adjoining Nambucca LGA there is no E zoning. Both councils have similar private forest types.

In relation to existing PNF Property Vegetation Plans (PNF Plans) issued by the NSW EPA, the survey found that councils responsible for 50% of LEPs (n=10) would not require development consent for PNF if the landholder had an existing approved PNF Plan. Other councils advised that they would require development consent if the PNF Plan was issued after the LEP came into force, or had been inactive for 12 months or more.

Local councils are responsible for about 90% of the NSW road network by length⁴. Our survey asked councils about the number of bridges with weight restriction within their LGA. Bridges with weight restrictions can prevent or economically impede the transport of logs from the forest to wood processing facilities. Based on the 12 councils who responded and information gathered from council websites, it was estimated that 8% of council bridges, in an often-sparse road network, currently have weight restrictions (126 out of 2,198) that would prevent their use by log trucks.

The *Private Native Forestry Code of Practice for Northern NSW* prohibits forest operations within any area identified as core koala habitat within the meaning of *State Environment Planning Policy (SEPP) 44—Koala Habitat Protection* (SEPP 44). Koalas are known to be present in low densities across all of the North coast's 34 council areas. The cryptic nature of these animals makes it very difficult to identify their core habitat. Koala plans of management (KPoM) prepared by local councils have been the preferred method for the identification and mapping of core koala habitat.

Of the region's 34 councils only six have an approved⁵ KPoM in place. Of these, only three have maps of core koala habitat (the others have maps of primary and secondary or preferred koala habitat which are not defined by SEPP 44). A further six north coast councils have a draft koala plan of management. The extent of core koala habitat identified in these draft plans was not assessed.

Where a KPoM does not exist, responsibility for identifying core koala habitat falls to the landholder. In general landholders do not have the expertise or financial resources to identify core koala habitat. The interaction between PNF and koalas is further complicated where the zoning in a council LEP requires a PNF landholder to obtain council development consent. In this case the council has discretion to determine what conditions they impose, potentially including a requirement to prepare a KPoM in accordance with SEPP 44 if one does not already exist.

A current review of SEPP 44 includes re-examination of the definition of core koala habitat. Options under consideration include a lowering of the threshold for determining core koala habitat based on the presence of individuals rather than populations and expanding the definition of koala habitat feed trees

⁴ <https://www.lgnsww.gov.au/policy/roads-and-transport/road-funding-and-management>

⁵ Approved means that the council's koala habitat mapping is included within the Biodiversity Conservation Act's sensitive regulated land layer which came into force in August 2017

from 12 to 65 preferred species. The potential of these changes to impact on PNF is significant, however, the effect of any change will not be quantifiable until the review of SEPP 44 and implementation of the NSW Koala Strategy are complete.

Land captured by the draft *State Environment Planning Policy (Coastal Management) 2016* is land adjacent (1 km buffer) to coastal rivers, estuaries, wetlands and rainforests. These lands include 172,233 ha of private native forest. How PNF will interact with the Coastal Management SEPP and whether it will be impacted is yet to be determined.

Through the *Biodiversity Conservation Act 2016*, the NSW Government is funding a large-scale program to develop a private conservation land network. Despite its environmental merits, this program has the potential to reduce the availability of private native timber resources and impact on PNF social and economic values.

In conclusion, this report has identified and quantified the extent and complexity of the high level regulatory constraints that apply to PNF. The NSW Government's Forestry Industry Roadmap⁶ states that policy decisions should try and balance long-term sustainable and reliable timber supply with the maintenance of environmental values. It is intended that the information presented in this report along with other resources generated by NSW Department of Primary Industry's (DPI) private native forest project will help decision makers to achieve this balance.

⁶ https://www.crownland.nsw.gov.au/__data/assets/pdf_file/0006/711852/summary-of-nsw-forestry-industry-roadmap.pdf

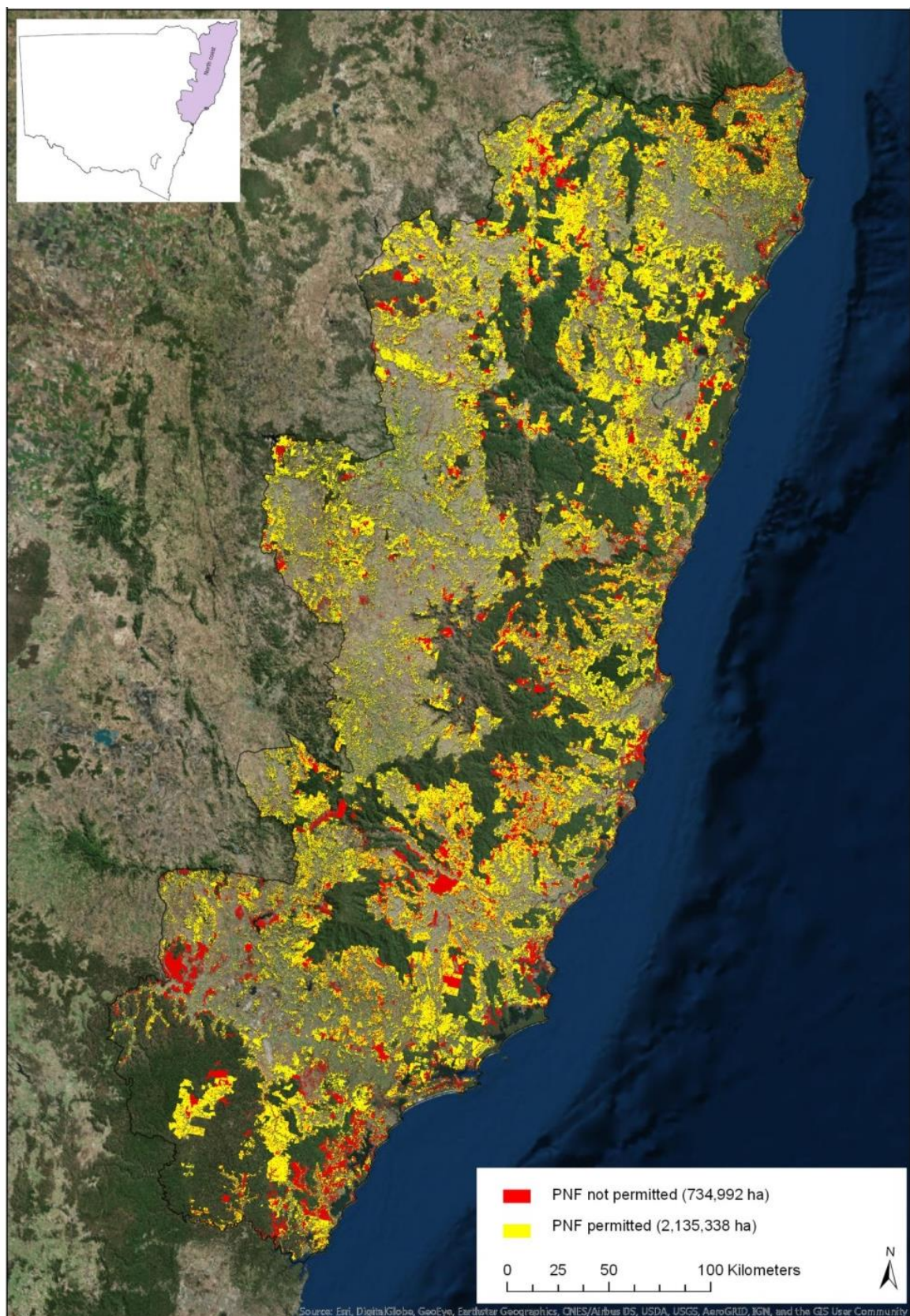


Figure 1 – NSW north coast private native forest showing where private native forestry is permitted and not permitted to operate by regulatory and planning exclusions.

PNF = private native forestry.

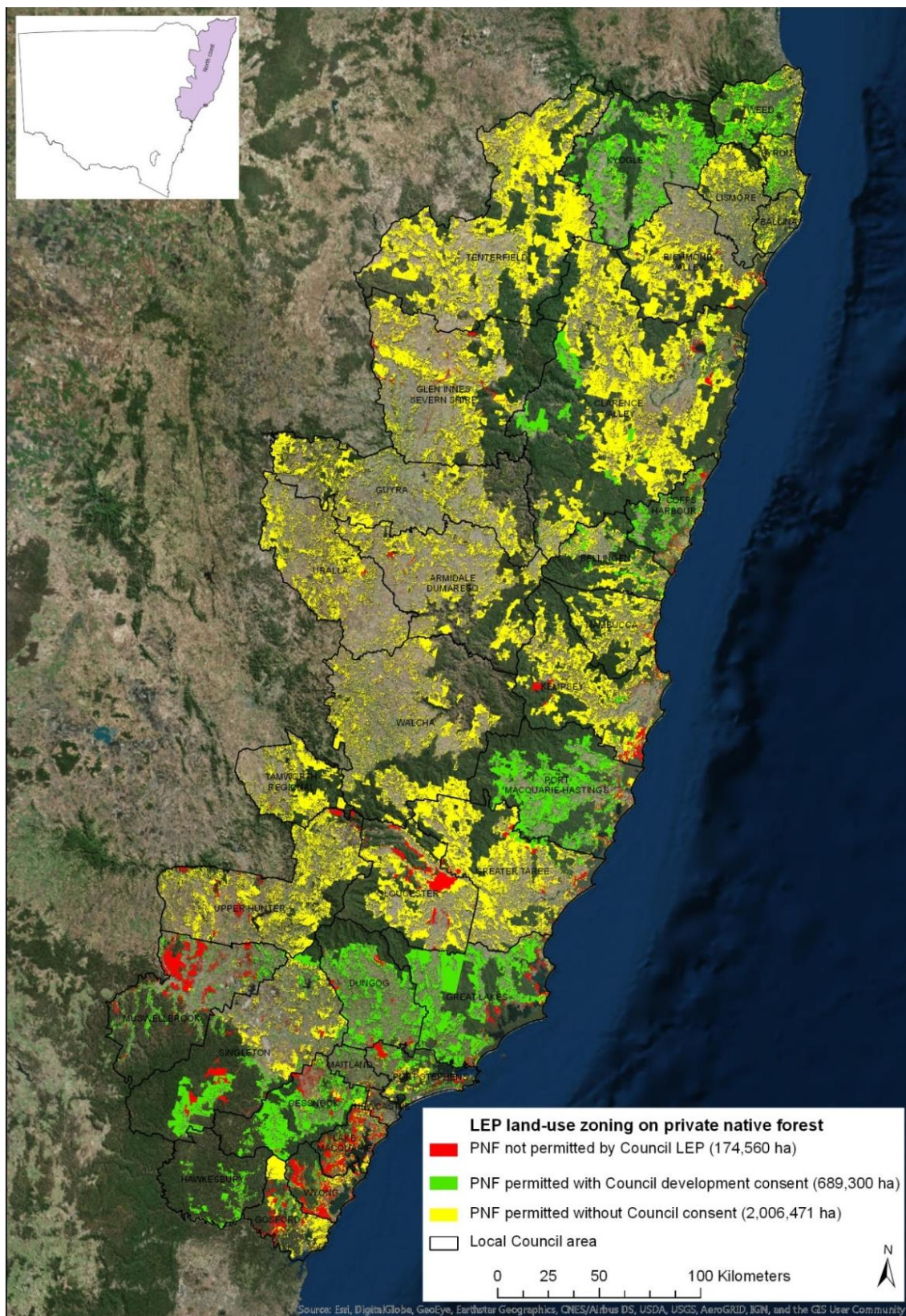


Figure 2 – NSW north coast private native forest showing regulatory effect of Local Environmental Plan zoning on private native forestry.

LEP = Local Environmental Plan; PNF = private native forestry.

2. Key findings of the PNF planning and regulatory instruments review

- i. Existing PNF planning and regulatory instruments provide a high level of protection of environmental and cultural heritage values with 734,992 ha (26%) of private native forests on the NSW north coast set aside in informal reserves (PNF exclusion zones).
- ii. Regulation of PNF is highly complex, with 44 different types of regulatory and planning exclusion⁷ and 350 operating conditions within the *PNF Code of Practice for Northern NSW*.
- iii. On 6.5% (174,560 ha) of private native forest land in the study region Local Environmental Plans (LEPs) prohibit PNF.
- iv. On 25% (689,300 ha) of private native forest land on the NSW north coast approval to undertake PNF requires “dual consent” (i.e. separate approval is required from the NSW Environment Protection Agency⁸ and the relevant local council).
- v. The way local councils regulate native forestry through their LEPs is neither consistent nor predictable. A high level of uncertainty currently exists for landholders that are required to engage with councils on forestry matters.
- vi. Load limits on local council bridges are relatively common. Load limits prevent timber log haulage and by default affect where PNF can occur.
- vii. The development of a NSW private conservation land network can be expected to reduce the availability of timber resources unless forestry values are accounted for in the strategic planning phase.
- viii. The *PNF Code of Practice for Northern NSW* prohibits timber harvesting in core koala habitat in accordance with *SEPP 44—Koala Habitat Protection*. Koalas are found in all north coast council areas, however, most north coast councils do not have approved koala plans of management and have not mapped the location of core koala habitat. Mapping of core koala habitat is an onerous and difficult task that may be imposed on a landholder as a condition of a PNF development consent application⁹.

⁷ A full list of these types is provided at Appendix 2

⁸ Note: Local Land Services replaced the NSW EPA as the new approval authority from May 2018

⁹ The need for council development consent only applies to PNF where the zoning in a council LEP requires it

- ix. If the definition of 'core koala habitat' under *SEPP 44—Koala Habitat Protection* is broadened it has the potential to significantly reduce the availability of private timber resources. The effect on PNF will not be quantifiable until the review of *SEPP 44* is complete and the NSW Koala Strategy has been implemented.
- x. The new *SEPP (Vegetation in Non-Rural Areas)* does not apply to PNF, however, it does create a market for biodiversity offset credits through the Biodiversity Offsets Scheme. Under this Scheme private native landholders are incentivised to enter into in-perpetuity Biodiversity Stewardship Agreements (biodiversity offset areas) that preclude commercial timber harvesting.
- xi. The draft *SEPP (Coastal Management)* covers 172,233 ha (6%) of private native forest located near coastal rivers, estuaries, wetlands and rainforests on the NSW north coast. How PNF interacts with this new *SEPP* is yet to be determined.
- xii. The *Biodiversity Conservation Act 2016* (BC Act) and the *Local Land Services Amendment Act 2016* (LLSA Act) came into force on 25 August 2017. It may be anticipated that landholder response to these laws will progressively reduce the area of private native forest available for PNF as a result of legal forest clearing (land-use change) and the creation of set-asides and conservation agreements.

3. Meaning of key terms

Operating exclusions	Legally binding rules detailed in the <i>PNF Code of Practice for Northern NSW</i> that prohibit commercial timber harvesting on private property which are not mapped.
Planning instruments	Local Environment Plans (LEPs) and State Environmental Planning Policies (SEPPs) which are regulated under the <i>Environmental Planning and Assessment Act 1979</i> .
Private native forestry (PNF)	Management of private native forest for commercial wood production.
Private Native Forestry Property Vegetation Plan (PNF Plan)	A legally binding agreement between a landholder and the NSW Environment Protection Authority that permits commercial timber harvesting of native vegetation on private property.
Regulatory and planning exclusions	Legally binding regulations which prohibit private native forestry (PNF) on private property that may be mapped (excludes PNF operating exclusions).
Regulatory instruments	Legally binding regulations that apply to PNF in accordance with the <i>Forestry Act 2012</i> .
Zone	A mapped categorisation within a LEP planning instrument which is used to control rural land-use.

4. About this report

The aims of this report were:

- i. to highlight the type and extent of environmental and heritage protection that is applied to private native forests subject to PNF
- ii. to identify areas of regulatory uncertainty for PNF, particularly under the EP&A Act
- iii. to review the effect of new legislative instruments that have the potential to reduce the area of private native forest that is available for PNF in the future.

The study area was the NSW north coast, defined as the area of land covered by the NSW North East Regional Forest Agreement Area¹⁰.

Spatial data analysis undertaken in Arc GIS was the primary assessment tool. The *NSW Woody Vegetation Extent & FPC 2011* supplied by the NSW Office of Environment and Heritage formed the base layer for the analysis. To isolate the private native forest estate, land classified as National Parks, State forest, other Crown lands and plantations was removed leaving 2.874 million ha. Isolated trees were also removed (<20% cover in any 1 ha) leaving 2.778 million net ha of private native forest.

A survey of local councils within the study area was undertaken to provide further insight. The survey used a formal written questionnaire. Details of the survey methodology are provided in section 8.

In accordance with the NSW Forestry Industry Roadmap, it is intended that the findings of this report be used by policy advisers and decision makers to help maintain a balance between sustainable and reliable timber supply and the maintenance of environmental values.

5. About private native forestry

The north coast region of NSW has a total land area of 9.7 million ha, of which 60% (5.7 million ha) is forested. Within the region there are 2.8 million ha of native forests in private ownership. The north coast region accounts for around 80% of the State's PNF harvesting activity. Within the region, approved PNF Plans (which allow timber harvesting) cover more than 350,000 ha of private native forests and more than 2,600 properties (Figure 3). In total, 275,000 m³ of hardwood logs are estimated to be harvested from these forests each year¹¹. The harvesting and processing of these logs generates around \$175 million in regional economic turnover and direct employment of 654 people^{6,12,13}. The scale of PNF makes it one of the region's most significant land uses.

¹⁰ <http://www.agriculture.gov.au/forestry/policies/rfa/regions/nsw-northeast>

¹¹ Jamax Forest Solutions (2017) Survey of North Coast NSW PNF harvesting contractors

¹² NSW DPI (2017) North Coast NSW Private Native Forest Primary Processors survey.

¹³ Note these figures are not directly comparable with figures in the NSW Forestry Industry Roadmap as they only relate to the primary processing of logs (i.e. they exclude the value of forestry and logging and the value of downstream processing).

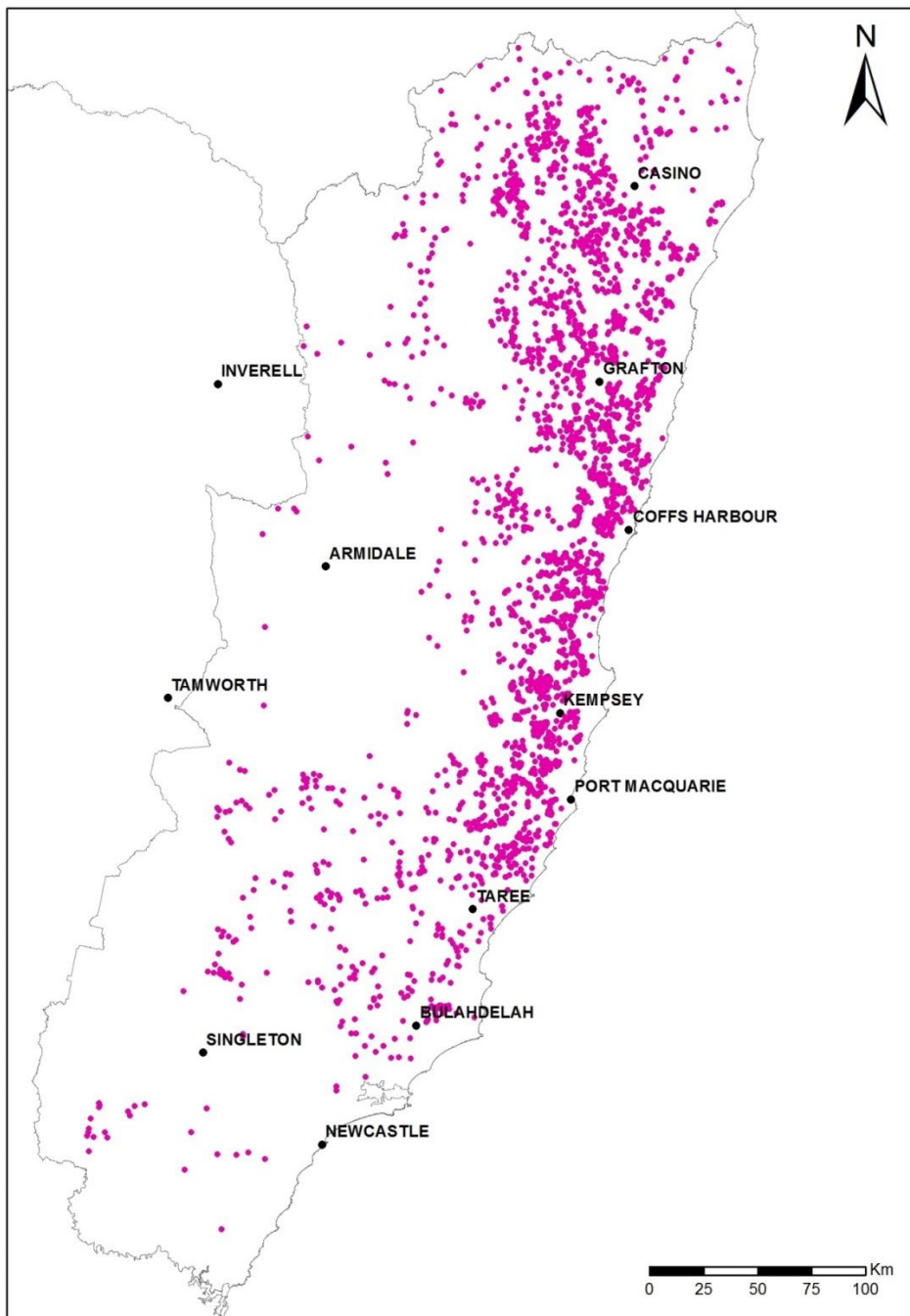


Figure 3 – Location of private properties on the NSW north coast that have an approved Private Native Forestry Property Vegetation Plan (PNF Plan).

6. Private native forestry regulatory instruments

Private native forestry legislative framework

A new NSW legislative framework is currently being developed for PNF. This legislative change has been triggered by the NSW Government land management reforms¹⁴. At present, PNF is being regulated by Part 5C (Private native forestry) of the *Forestry Act 2012*. Prior to 25 August 2017, PNF was regulated by the *Native Vegetation Act 2003* and the *Native Vegetation Regulation 2013*.

Approval to conduct PNF operations is required from the NSW EPA in accordance with a PNF Plan which includes a map and forest operation plan. Private native forestry operating constraints and conditions are specified in the *PNF Code of Practice for Northern NSW*. As of May 2018, responsibility for PNF approvals and extension services will transfer to Local Land Services (LLS); compliance will remain with the EPA.

Under the PNF legislative framework we identified and quantified the extent of 44 different types of regulatory exclusions which we grouped into 15 categories. The method we used is detailed at Appendix 1. The total area of all exclusions was 2.1 million ha. The three largest exclusion categories were Riparian, LEP zoning, and Old Growth Forest. Together these exclusions accounted for 50% of the total area.

We found that there was considerable overlap of exclusion categories. The union of all regulatory exclusion categories covers 734,992 ha, or 25.6%, of the total area of private native forest on the NSW north coast.

The results of the analysis are summarised in Figure 4. A more detailed table showing the 44 regulatory exclusion types is provided in Appendix 2.

The *PNF Code of Practice for Northern NSW* contains 350 operating conditions that regulate timber harvesting on private land. Under the Code operating conditions are grouped into five main categories: 1) forest operation planning and management, 2) silviculture, 3) protection of the environment, 4) construction and maintenance of forest infrastructure, and 5) listed species ecological prescriptions. Over one third of the conditions are ecological prescriptions designed to protect the habitat of species and ecological communities that are listed as threatened under the *Biodiversity Conservation Act 2016* (Figure 5).

¹⁴ <https://www.landmanagement.nsw.gov.au/>

Exclusion category	Size (ha)
Aboriginal	4,715
Conservation agreement area	64,409
Heathlands	30,359
Heritage	30,535
Local Environmental Plan zoning	174,561
Offsets	79,657
Old Growth Forest	139,542
Rainforest	97,917
Remedial action	551
Riparian	178,488
Rock	685
Soil conservation (incl. steep slopes)	97,091
Swamps & wetlands	48,288
Threatened species – animals	23,996
Threatened species – plants	22,792
Union of all exclusions	768,245

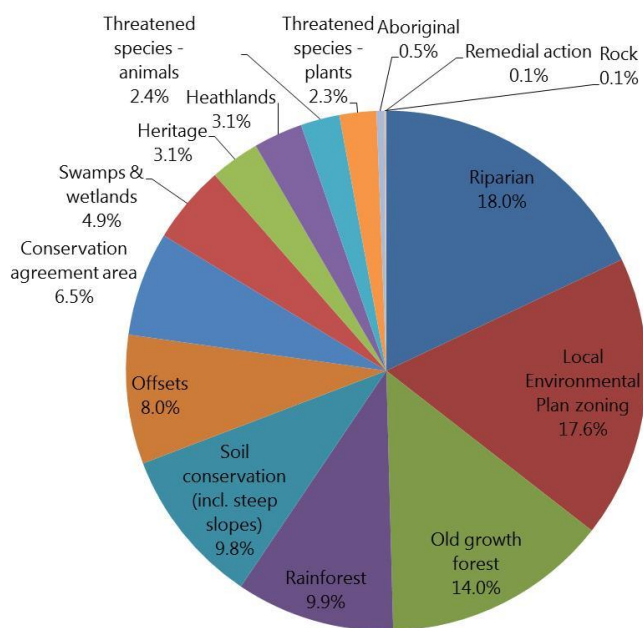


Figure 4 – Regulatory and planning exclusions applying to private native forestry on the NSW north coast by type and size.

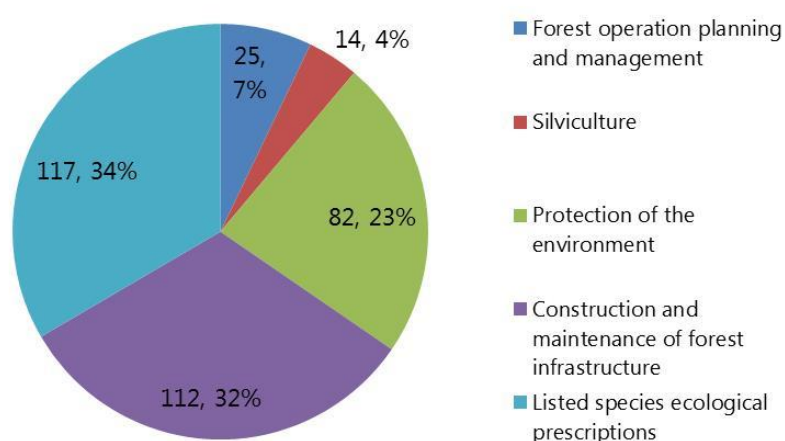


Figure 5 – Number of PNF Code operating conditions that regulate timber harvesting on private land on NSW north coast by category and proportion.

7. Planning instruments that interact with private native forestry

Private native forestry is subject to the EP&A Act, with specific provisions contained within LEPs and SEPPs.

Local Environmental Plans

This section details how LEPs operate. The methods used to analyse LEPs and the related results are detailed separately in sections 7 and 8, respectively. Please note that references made to local councils, councils and LGAs are used interchangeably.

Land-use planning in NSW is governed by the EP&A Act. Under the EP&A Act, each LGA has an LEP to guide development and protect natural resources. Local Environment Plans are prepared by local councils, in consultation with their community and approved by the Minister for Planning. Councils make their LEPs in accordance with state-based planning guidelines. Council's power to regulate the use of private native forest land for forestry purposes is not limited or otherwise constrained by the Forestry Act or any other Act.

Local Environment Plans apply zoning to assert planning control over land-use activities. These zones may be broadly grouped into three classes: Rural (RU), Environmental (E) and Industrial/Residential (IN/R).

Each zone within an LEP categorises land-use activities into one of three categories:

- prohibited development or
- development permissible with consent of the council or
- development permitted without consent of the council.

Conditions applying to activities that are 'permissible with consent of the council' are determined by individual councils. With the exception of forests zoned RU3¹⁵, there are no state-based planning guidelines that are specific to PNF. This means councils must use their discretion to determine how PNF is treated under the zoning of their LEPs. Conditions applying to PNF activities that are 'permissible with consent of the council' are similarly left to individual councils to determine.

New PNF Property Vegetation Plans

Through LEP zoning, local councils can require proponents to hold a development consent for PNF in addition to a PNF Plan approval.

¹⁵ The guidelines require forestry to be 'without consent' in RU3. Whilst the RU3 zone was originally intended to apply only to State forests and Timber Reserves, some councils have mapped private native forest as RU3

Local Environment Plans can provide that development for the purpose of forestry is either permitted without consent, permitted with consent of council or is prohibited.

Where development consent is required, the proponent is required to obtain council consent even though the clearing itself may be authorised under a separate consent by the Minister or PNF Plan under Part 5C (Private native forestry) of the *Forestry Act 2012*.

Existing PNF Property Vegetation Plan

Under section 17 of the *Native Vegetation Act 2003*, which is no longer in force, existing approved PNF Plans were not subject to changes in a LEP. In other words a revision or update to an LEP could not be retrospectively applied to an existing PNF Plan approval. When the Native Vegetation Act was repealed section 17 was not transferred to the *Forestry Act, 2012*.

Existing use rights

Existing use rights are as defined in Division 4.11 of the EP&A Act. Where an existing use is proven it may exempt a landholder from requirements in a LEP that prohibit forestry (e.g. through a change in zoning). In the case of forestry there are no specific guidelines to assist councils to assess and determine an existing use right. How existing use rights are assessed and determined is a matter for individual councils. In their response to the survey questionnaire council positions on existing use rights were very mixed (refer Table 2, Table 4 and Appendix 5).

State Environment Planning Policies

State Environment Planning Policy 44—Koala Habitat Protection

SEPP 44—Koala Habitat Protection (SEPP 44) was gazetted in 1995. The policy aims to encourage the proper conservation of areas of natural vegetation that provide habitat for koalas, to ensure permanent free-living populations over their present range and to reverse the current trend of population decline¹⁶.

PNF became directly subject to the SEPP 44 when new PNF codes of practice were gazetted in 2007 and 2008. The *PNF Code of Practice for Northern NSW* prohibits forest operations within any area identified as core koala habitat within the meaning of SEPP 44. The definition of core koala habitat means 'an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population'.

If PNF requires council development consent (i.e. as per the council's LEP) and the operation is proposed within an area that meets the SEPP 44 definition of potential koala habitat, then additional conditions may apply. If a LGA-level Koala Plan of Management (KPoM) doesn't exist then the council may require the applicant to prepare one. The requirement to prepare a KPoM is a relatively onerous one and may be sufficient to deter the applicant from proceeding with a development application. Where a KPoM does

¹⁶ Planning Circular B35 – Koala Habitat Protection ('Guidelines').

exist, council's determination of a development application must be consistent with it. The development consent conditions imposed on the applicant are at the discretion of the individual council.

Koalas are now known to extend in low densities over the entire study area, which includes 34 LGAs. Official records of a koala's presence are concentrated in coastal peri-urban areas (where koalas are more likely to be detected). Techniques for detecting koalas have dramatically improved in recent years and this is generating many new records in more remote forest localities.

Assessment and mapping of core koala habitat and the preparation of KPoMs has been focused in coastal council areas where koalas are commonly known to occur and where development (urban and industrial expansion) is concentrated. Six LGAs have an approved¹⁷ KPoM, these include; Coffs Harbour City Council (1999), Port Stephens (2002), Kempsey Shire Council (2011), south-east Lismore (2013), Bellingen Shire Council (January 2017), and Ballina Shire Council (July 2017) (Figure 6). Only three of these approved KPoMs have maps of core koala habitat. The other three used different classification systems such as 'primary, secondary and tertiary' and 'preferred habitat type A and type B'. These alternative classification systems are not defined in SEPP 44 nor are they defined in the *PNF Code of Practice for Northern NSW*. Analysis of the approved plans reveals that 11,102 ha of private native forest is currently mapped as either core, preferred or primary koala habitat. Having different definitions of koala habitat creates uncertainty for PNF particularly where council development consent applies.

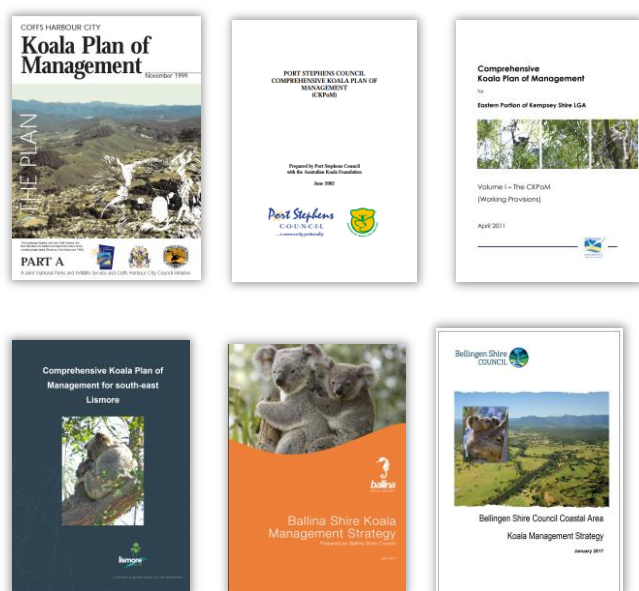


Figure 6 – Approved Koala Plans of Management for NSW north coast region – Coffs Harbour City Council, Port Stephens Council, Kempsey Shire Council, south-east Lismore Shire Council, Bellingen Shire Council and Ballina Shire Council.

¹⁷ A KPoM is assumed to be approved if its habitat mapping has been included in the Sensitive Regulated Land layer in the Biodiversity Conservation Act regulation which came into force in August 2017.

According to the NSW Office of Environment and Heritage¹⁸, a further six north coast councils (Byron, Clarence Valley, Nambucca, Port Macquarie-Hastings, Richmond Valley, Tweed) have completed koala habitat studies and/or commenced work or have draft plans of management. The extent to which these draft plans comply with the SEPP 44 definition of core koala habitat identified in these draft plans has not been assessed.

In summary, the majority of the councils on the NSW north coast have not identified or prepared KPoMs, or required development applicants to identify core koala habitat. With the recent advances in koala detection technology and growing number of koala records in more remote forest areas it is considered much more likely that these assessments will be triggered in the future. Where approved KPoMs do exist they can create uncertainty for PNF, particularly where council development consent is required and core koala habitat is not clearly defined.

A current review of *SEPP 44—Koala Habitat Protection* includes re-examination of the definition of core koala habitat. Under the proposed changes the threshold for determining core koala habitat will be lowered to include the presence of individuals rather than populations and the definition of koala habitat browse trees is to be expanded from 12 to 65 preferred species. The effect of these changes on PNF may be significant, however, it will not be quantifiable until the NSW Government has completed the implementation of the NSW Koala Strategy and settled on a new definition of core koala habitat.

In conclusion, the effect of *SEPP 44—Koala Habitat Protection* on PNF is currently limited, however, this is likely to change in the future, particularly if the definition of core koala habitat is expanded.

State Environment Planning Policy (Vegetation in Non-Rural Areas) 2017

A new *SEPP (Vegetation in Non-Rural Areas) 2017*¹⁹ was introduced on 25 August 2017. This SEPP applies only to private native forests in certain listed 'non rural' LEP zones (i.e. urban and E zones). Private native forestry activities are not currently considered in the provisions of the SEPP.

Under the rules of the new SEPP, applicants that exceed a proposed clearing threshold²⁰ are required to submit a biodiversity development assessment report (to a review board called the Native Vegetation Panel) and retire biodiversity offset credits (commensurate with the level and extent of the proposed clearing).

Private native forestry is indirectly affected by this SEPP which creates a market for biodiversity offset credits under the Biodiversity Offsets Scheme. Offset sites are created using Biodiversity Stewardship Agreements. These are voluntary in-perpetuity agreements between a private native forest landholder and the Minister for the Environment. Offset areas currently exclude PNF from 30,623 ha of NSW north coast private native forest. Under this new SEPP, the number and extent of these agreements is expected to grow as peri-urban and mining development expands into forested areas.

¹⁸ <http://www.environment.nsw.gov.au/topics/animals-and-plants/native-animals/native-animal-facts/koala/koala-conservation>

¹⁹ <http://www.planning.nsw.gov.au/Policy-and-Legislation/State-Environmental-Planning-Policies-Review/Draft-Vegetation-SEPP>

²⁰ Clearing disturbance created by PNF exceeds the threshold

Draft Coastal Management SEPP

The Coastal Management SEPP is planned to replace *SEPP 14—Coastal Wetlands*, *SEPP 26—Littoral Rainforests* and *SEPP 71—Coastal Protection*. Its objective is to ensure that future coastal development is appropriate and sensitive to the coastal environment. On the NSW north coast there are 172,233 ha of private native forests to which the draft SEPP applies (Figure 7).

The treatment of PNF under the new Coastal Management SEPP is yet to be clarified. Private native forestry could become subject to a public interest test.

Biodiversity Conservation Act and Local Land Services Amendment Act

The *Biodiversity Conservation Act 2016* (BC Act) and the *Local Land Services Amendment Act 2016* (LLSA Act) came into force on 25 August 2017. These Acts provide for the protection of biodiversity and the management of native vegetation.

The provisions of these Acts do not directly apply to PNF. However, PNF is indirectly impacted by land being excluded from production by landholders who enter into contractual conservation agreements with the Minister for the Environment.

On the NSW north coast there are currently 64,409 ha of private native forest subject to conservation agreements (Figure 4) and 79,657 ha²¹ classified as offsets. Under the new LLSA Act clearing codes, farmers are also eligible to clear native vegetation in exchange for setting aside native vegetation in reserves (set-aside areas).

The extent of private native forest subject to conservation agreements and set-aside agreements²², is expected to greatly expand over the next five years with \$240 million of NSW Government expenditure committed and \$70 million per year thereafter (subject to performance review). On 13 March 2018 the NSW Government publicly committed \$37 million for the opening programs from the new NSW Biodiversity Conservation Trust²³. Included in this amount was \$2 million to protect priority koala habitat and \$15 million for purchase of properties for private land conservation.

²¹ Note this figure is also referred to in the section titled *SEPP (Vegetation in Non-Rural Areas) 2017*

²² Agreements between landholders and Local Land Service representatives in accordance with the LLS Code.

²³ The Biodiversity Trust is responsible for administering the new private land conservation program

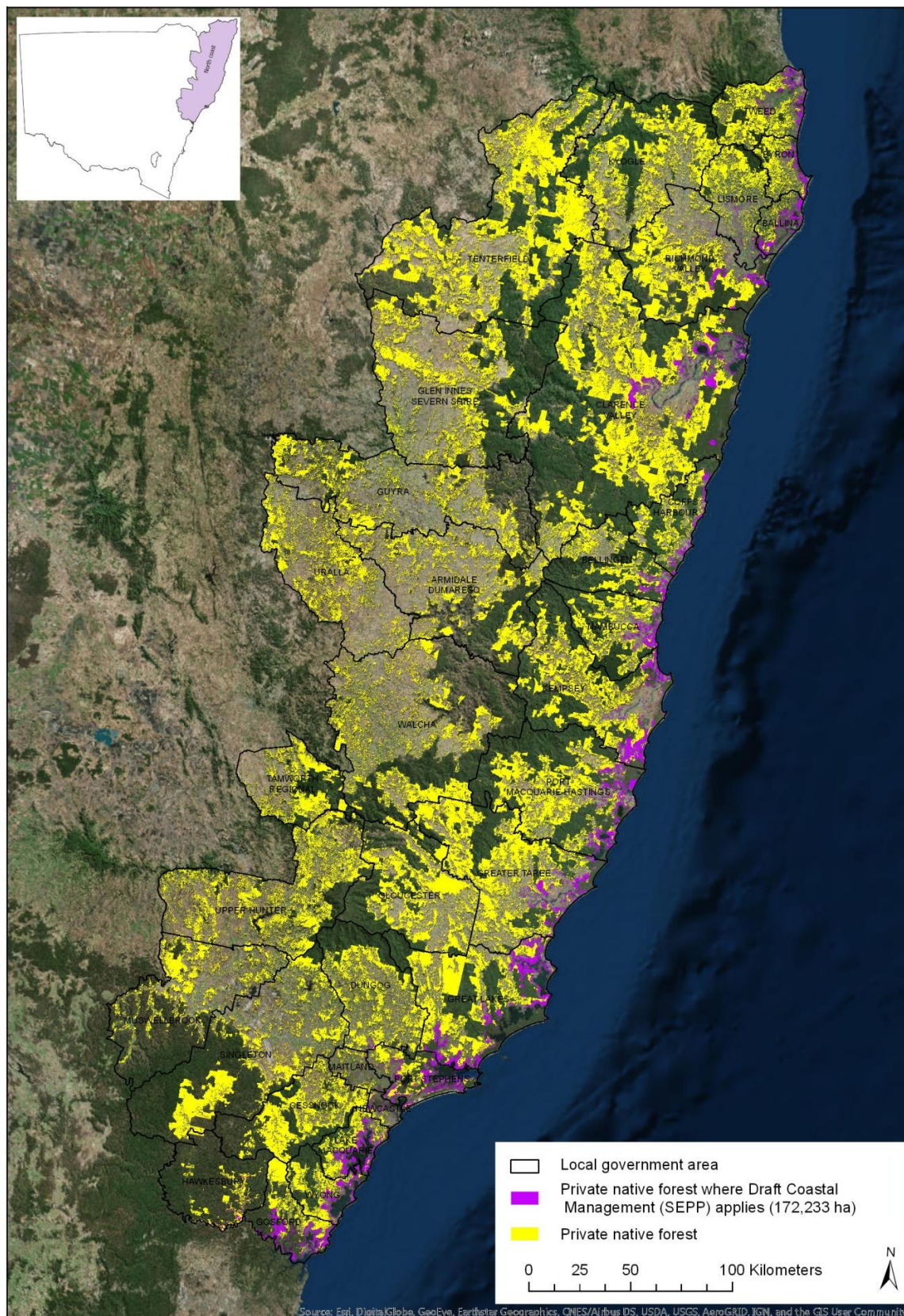


Figure 7 – NSW north coast private native forests subject to the draft Coastal Management State Environment Planning Policy.

SEPP = State Environment Planning Policy.

8. Council Local Environment Plan survey method

Analysis of the interaction between council LEPs and PNF involved three key steps:

- 1) Correlation of the area of private native forest on the NSW north coast with council LEP zoning
- 2) Analysis of council LEP zoning and development controls that apply to PNF
- 3) A survey of the councils to ascertain how they treat PNF that requires development consent under their LEPs.

Correlation of private native forest with LEP zoning

The NSW north coast study area is defined as the area of land covered by the NSW North East Regional Forest Agreement Area²⁴. The private native forest estate within the study area was calculated at 2.778 million ha.

A layer of local council zoning supplied by NSW Planning and Environment was applied over the private native forest estate and the area within each zone in each council area was calculated. Urban and industrial zones were not assessed, leaving 2.673 million ha.

Council Local Environment Plan zoning and development controls on PNF

The 34 councils (LGAs) within the study area were identified and analysed using an LGA data layer held by NSW Planning and Environment.

The impact on PNF of the following planning zones within each LGA was assessed:

- E2 Environmental Conservation
- E3 Environmental Management
- E4 Environmental Living
- RU1 Primary Production
- RU2 Rural Landscape
- RU3 Forestry
- RU4 Primary Production Small Lots

The area of private native forest and the planning status of forestry was recorded in each of the zones in each LGA.

The planning status of forestry was defined as one of the following:

²⁴ <http://www.agriculture.gov.au/forestry/policies/rfa/regions/nsw-northeast>

- prohibited development, (stated in the LEPs as 'Prohibited – Any other development not specified in item 2 or 3')
- development permissible with consent of the council
- development permitted without consent of the council.

Council survey of development controls on PNF

A survey was undertaken to assess what councils required of private forest landowners for them to gain development consent for native forestry activities.

Councils with over 1,500 ha of private native forest where forestry was prohibited or required council consent via development consent, were contacted by an emailed letter. Within the north coast study area there are 34²⁵ local councils, of which 24 were surveyed for the study. The 24 councils covered over 90% of the region's private native forest.

The councils were asked to state what planning requirements over and above those under the Native Vegetation Act for PNF Plans would be placed on landowners.

In addition, data on the length of council roads and the number of bridges with weight restrictions were requested. The survey questionnaire is detailed in Appendix 3.

The survey was initially not worded well, and should have specifically sought what controls would be placed on private native forest operators who had a PNF Plan from the EPA under the Native Vegetation Act. As a consequence, councils were re-contacted and asked to respond to a more tightly framed questionnaire (Appendix 4).

Council responses (Appendix 5) were interpreted for PNF for each council into 'Yes, require a DA/Forestry prohibited', 'No, a DA is not required', 'Unclear from answer and clarification request' and 'No response or N/A'. The N/A was applied to councils who had less than 1,500 ha of private native forest where forestry was prohibited or required council consent via a DA.

²⁵ Following recent council amalgamations

9. Council survey results

Local Environment Plan analysis results

Of the 2.67 million ha of private native forest on the NSW north coast, 25% or 602,597 ha, according to the council LEPs, requires development consent for forestry activities to be undertaken (Table 1, Figure 8 and Figure 10). A further of 6% or 167,217 ha has PNF prohibited (Table 1, Figure 9 and Figure 10).

Of the 1.54 million ha of private native forest on the NSW north coast zoned RU1 Primary Production, 87% or 1.34 million ha has no LEP restriction on forestry. However, of the 0.84 million ha zoned RU2 Rural Landscape, 46% requires council consent for forestry activities according to the LEPs.

Within the private native forest areas zoned RU4 Primary Production Small lots, 35% was reported to require council development consent and in 14% forestry is prohibited.

Environmental zoning occurs on 240,258 ha or 9% of the private native forest estate. Within E zones forestry was prohibited on 169,102 ha (70%), permitted with council consent on 63,180 ha (26%) and permitted without consent on 7,976 ha (3%). In relation to land zoned RU, forestry was permitted without council consent on 1,824,584 ha (75%) and permitted with council consent on 602,597 ha (25%).

The vast majority of NSW EPA issued PNF Plans are on land zoned RU1 (57% by area) and RU2 (32% by area). From the council survey responses received, it is estimated that development consent would be required on 13% of the forests zoned RU1 and 46% of the forests zoned RU2.

Table 1 – Council Local Environment Plans zoning extent and planning status by private native forest area.

Private native forestry activities regulated by Council LEPs on the NSW north coast by hectares	Forestry prohibited	Forestry permitted with council consent	Forestry permitted without consent	Total
E2 Environmental Conservation	78,130			78,129
E3 Environmental Management	86,106	52,033		138,139
E4 Environmental Living	4,866	11,147	7,976	23,988
RU1 Primary Production	5	201,935	1,339,670	1,541,610
RU2 Rural Landscape	907	389,753	452,502	843,161
RU3 Forestry	1		16,342	16,343
RU4 Primary Production Small Lots	4,518	10,909	16,070	31,497
Total	174,531	665,777	1,832,560	2,672,867

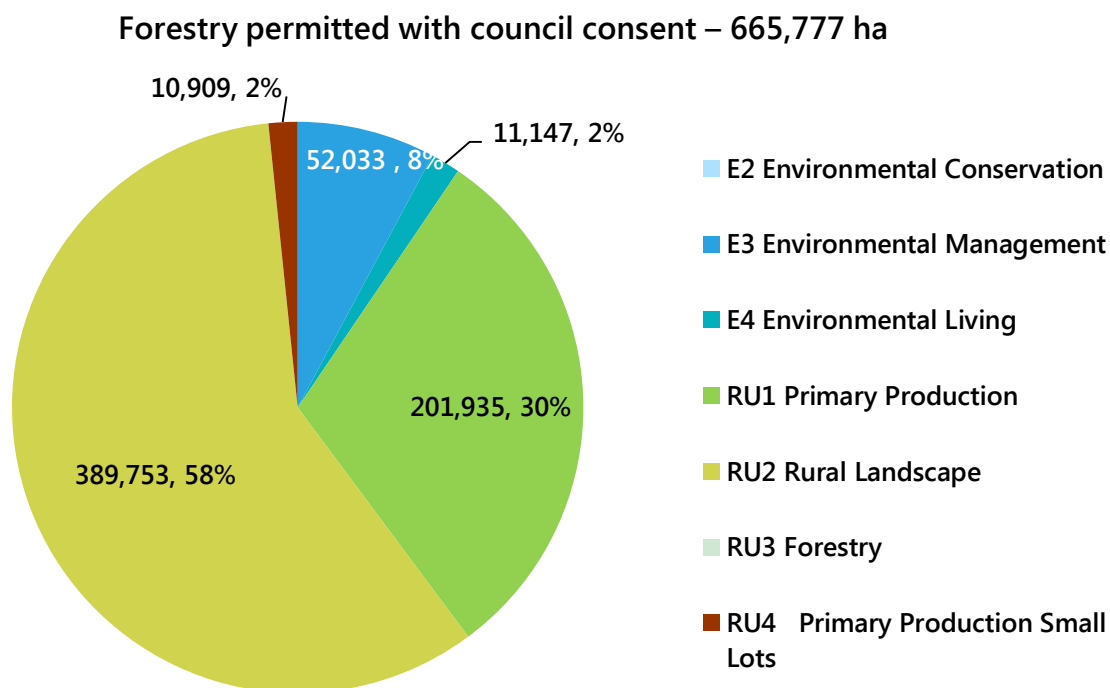


Figure 8 – NSW north coast Local Government Area Local Environment Plan forestry development application consent required by area and zoning.

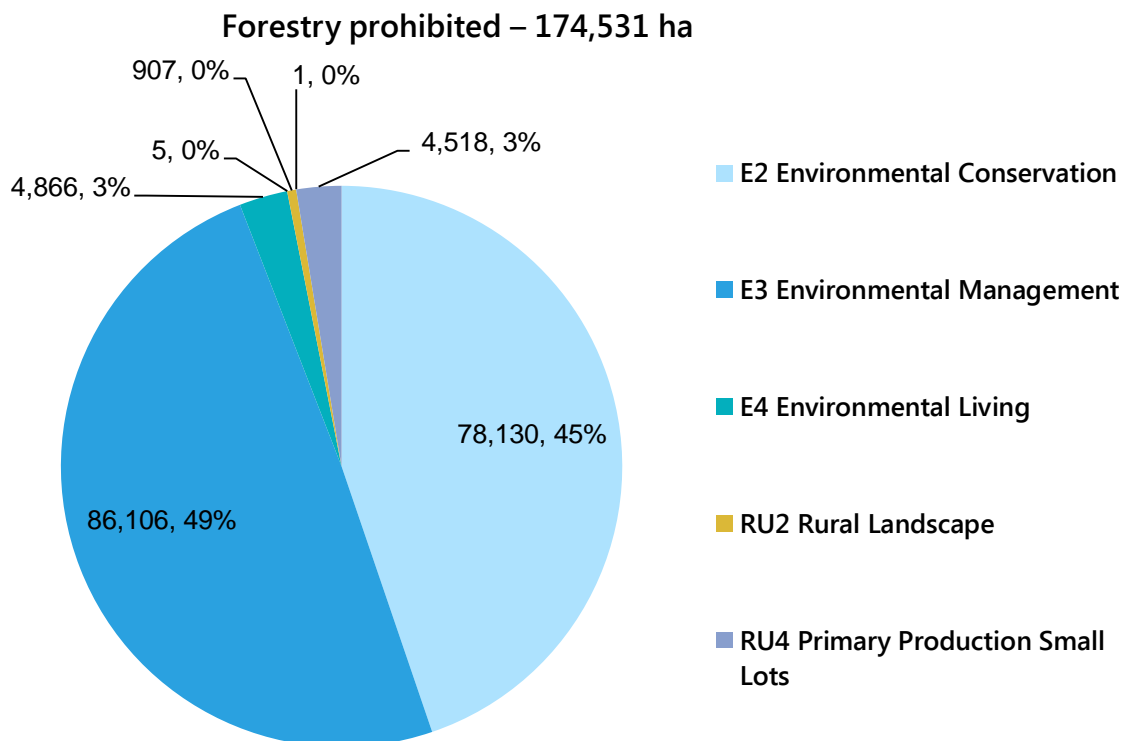


Figure 9 – NSW North coast Local Government Area Local Environment Plan forestry prohibited by area and zoning.

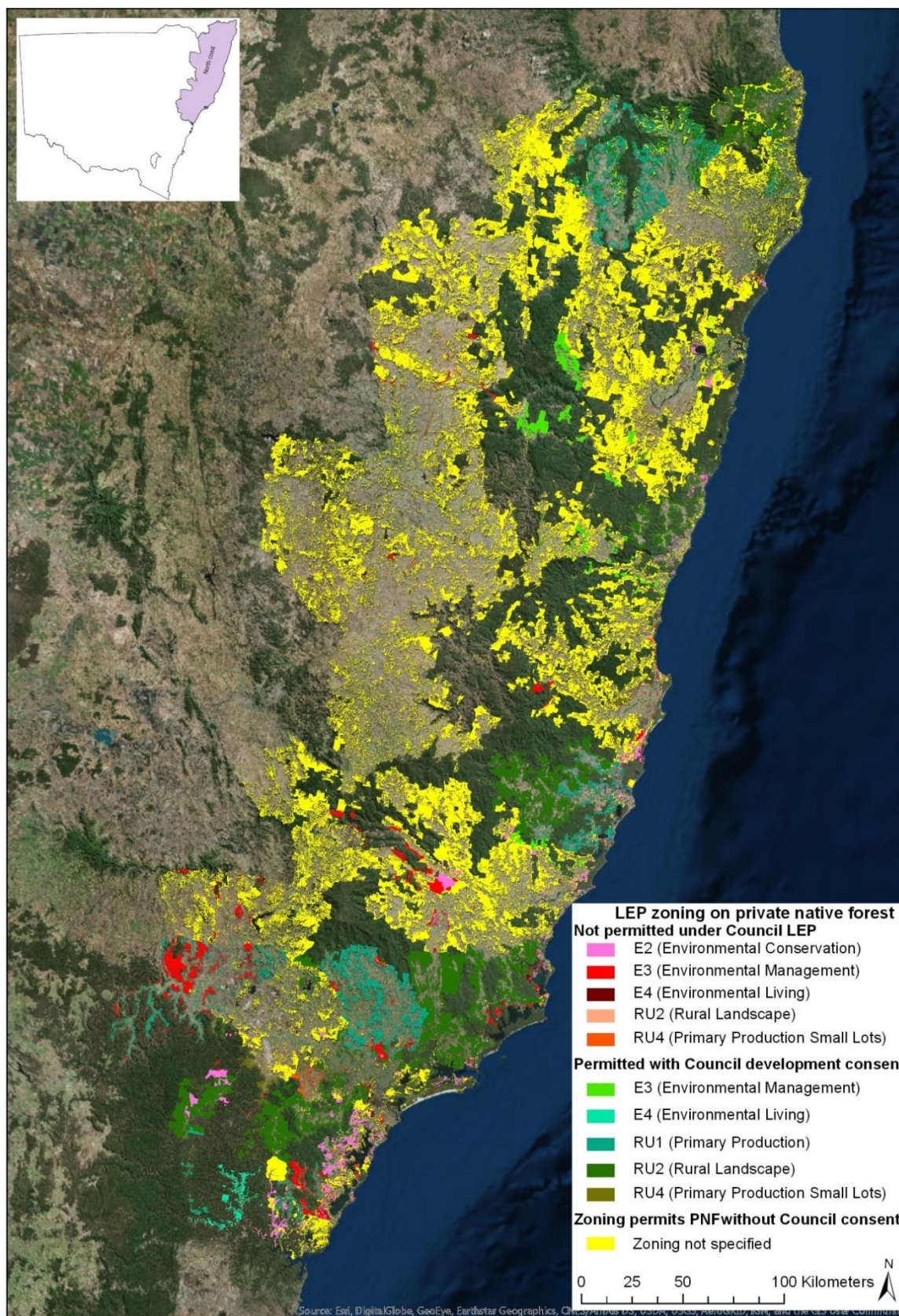


Figure 10 – Local Environment Plan zoning over NSW north coast private native forest that interacts with private native forestry.

LEP = Local Environment Plan; PNF = private native forestry.

The amount of private native forest within a LGA was found to vary greatly, ranging from 1,433 ha in Newcastle to 343,602 ha in Clarence Valley. Equally varied were the LEP planning requirements for PNF, with no consent requirements in Tenterfield and all PNF in Kyogle LGA requiring consent (Figure 11).

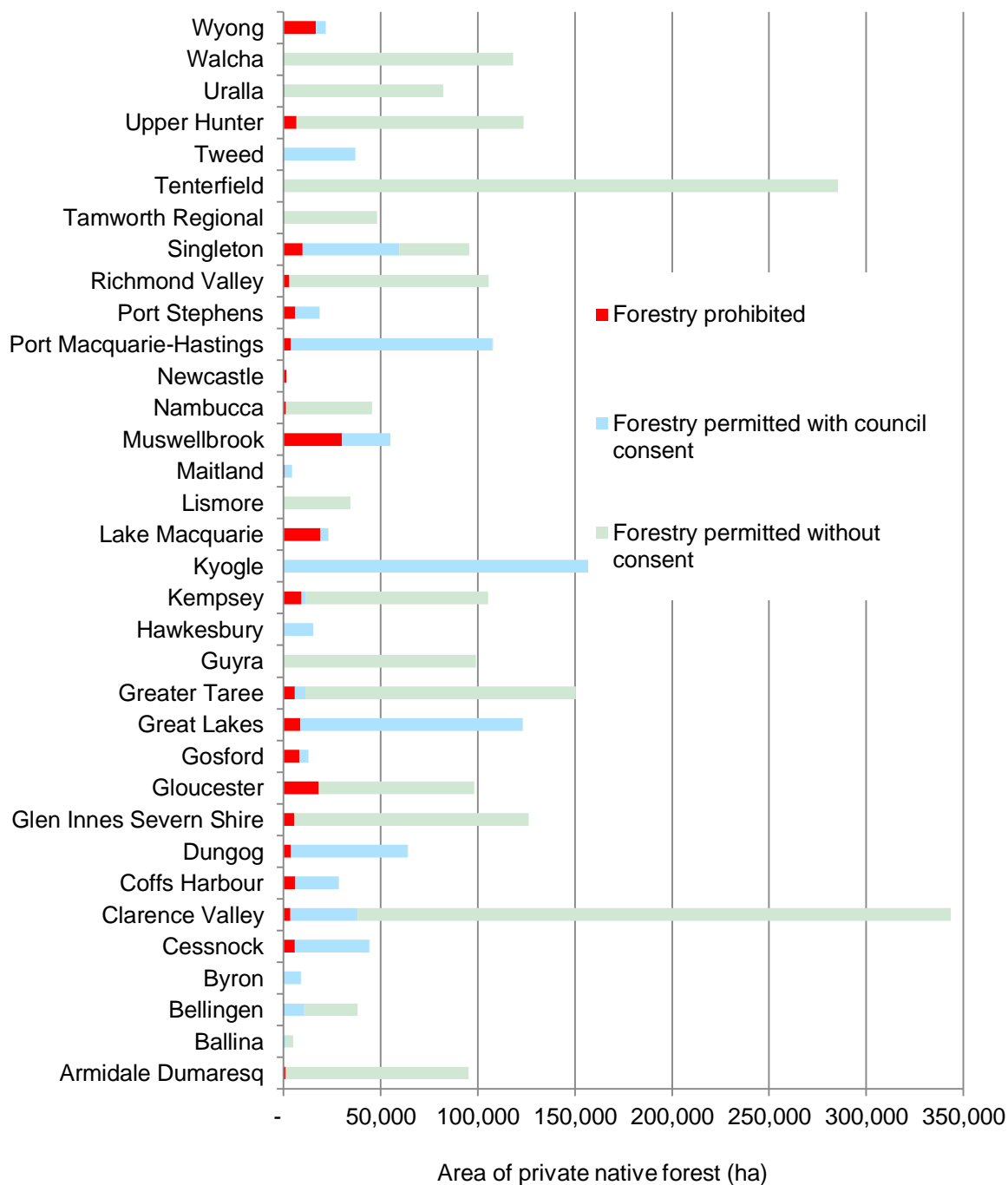


Figure 11 – Local Environment Plan zoning and area of private native forests by Local Government Areas on NSW north coast.

Council LEP survey responses

Local councils were surveyed if they had more than 1,500 ha of private native forest in which their LEPs prohibited or required consent for forestry. 24 councils met this criterion. This group represented 92% of the PNF area where forestry is prohibited and 89% of the PNF area where forestry is permitted with consent.

Of the 24 councils surveyed and followed up with a reminder, 21 responded. They were asked the questions in italics in Table 2. Their answers were at times very complex and difficult to interpret (Appendix 5). However, where possible they were interpreted into the categories used in Table 2.

Table 2 – Council response to survey questions regarding private native forestry that has an approved PNF Plan (results by number of Councils).

Interpreted responses from Councils where LEP states consent is required for forestry or is prohibited	No, a DA is not required	Yes, DA required/forestry prohibited	Unclear from answer and clarification request	No response or N/A	Total
<i>Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by Council to meet any LEP consent conditions?</i>	10 ^a	10	2	2	24
<i>Would an existing use right make any difference?</i> ^b	10	-	11	3	24
<i>Where the Council prohibits forestry in an LEP zoning, would the advice to the questions above change?</i>	2	12	2	6	24

DA = development approval (consent); LEP = Local Environment Plan.

^a on land zoned as with consent, excludes land zoned prohibited.

^b 12 months commonly cited.

Based on the above categorisation, Table 2 shows that equal numbers of councils said that private native forest owners would require development consent on land zoned with consent to undertake forestry activities even if they had separate approval to do so through a PNF Plan, as those who did not.

When the PNF area with consent is assessed (Table 3) there is again a nearly even split, where councils gave a clear answer, between those who did not require a DA (54%, 318,125 ha) and those who did require a DA (46%, 273,637 ha).

When existing use rights were asked about, all councils (Table 2) that gave a clear answer said that in that circumstance they did not require a DA, though a number indicated that it needed to be demonstrated that use had occurred in the last 12 months.

Of those councils that gave a clear answer, 86% by number said that where a LEP prohibits forestry, either all forestry is prohibited or a DA would be required (Table 2). When looked at by area the percentage is similar at 93% (135,640 ha) (Table 3).

Table 3 – Council response to survey questions regarding private native forestry that has an approved PNF Plan (results by area of private native forest).

Interpreted responses from Councils where LEP states consent is required for forestry or is prohibited	No, a DA is not required (ha)	Yes, DA required/forestry prohibited (ha)	Unclear from answer and clarification request (ha)	No response or N/A (ha)	Total (ha)
<i>Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by Council to meet any LEP consent conditions?</i>	318,125 ^a	273,637	12,500	60,234	664,497
<i>Where the Council prohibits forestry in an LEP zoning, would the advice to the questions above change?</i>	9,772	135,640	9,368	-	154,821
Total	327,897	409,318	21,868	60,234	819,318

DA = development approval (consent); LEP = Local Environment Plan.

^a on land zoned as **with consent**, excludes land zoned **prohibited**.

Table 4 – Council responses to survey questions regarding private native forestry that has an approved PNF Plan (summarised results by Council Local Environment Plan).

Private Forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by Council to meet any LEP consent conditions? ^a	Would existing use right make any difference?	Where the Council prohibits forestry in an LEP zoning, would the advice to the questions above change?
Bellingen Local Environmental Plan 2010	No response	No response	No response
Byron Local Environmental Plan 2014	No DA	No DA	N/A
Cessnock Local Environmental Plan 2011	Yes, DA required	No DA	Yes, DA required/forestry prohibited
Clarence Valley Local Environmental Plan 2011	No DA	No DA	No DA
Coffs Harbour Local Environmental Plan 2013	No DA	No DA	N/A
Dungog Local Environmental Plan 2014	No response	No response	No response
Glen Innes Severn Local Environmental Plan 2012	No response	No response	No response
Gloucester Local Environmental Plan 2010	Yes, DA required	Unclear	Yes, DA required/forestry prohibited
Gosford Local Environmental Plan 2014	Yes, DA required	Unclear	Yes, DA required/forestry prohibited
Great Lakes Local Environmental Plan 2014	Yes, DA required	Unclear	Yes, DA required/prohibited
Greater Taree Local Environmental Plan 2010	Yes, DA required	Unclear	Yes, DA required/forestry prohibited

Hawkesbury Local Environmental Plan 2012	Yes, DA required	No DA	Unclear
Kempsey Local Environmental Plan 2013	No DA	Unclear	Unclear
Kyogle Local Environmental Plan 2012	No DA	No DA	N/A
Lake Macquarie Local Environmental Plan 2014	Yes, DA required	Unclear	Yes, required/forestry prohibited DA
Maitland Local Environmental Plan 2011	No DA	No DA	Yes, required/forestry prohibited DA
Muswellbrook Local Environmental Plan 2009	No DA	Unclear	Yes, required/forestry prohibited DA
Port Macquarie-Hastings Local Environmental Plan 2011	No DA	No DA	Unclear
Port Stephens Local Environmental Plan 2013	Unclear	Unclear	Unclear
Richmond Valley Local Environmental Plan 2012	No DA	Unclear	No response
Singleton Local Environmental Plan 2013	Yes, DA required	No response	Yes, required/forestry prohibited DA
Tweed Local Environmental Plan 2014	Yes, DA required	No DA	N/A
Upper Hunter Local Environmental Plan 2013	Yes, DA required	No DA	Yes, required/forestry prohibited DA
Wyong Local Environmental Plan 2013	Unclear	No DA	Yes, required/forestry prohibited DA

DA = development approval (consent); LEP = Local Environment Plan.

^a on land zoned as with consent, excludes land zoned prohibited.

Four councils explicitly mentioned that their LEPs did not have effect on properties 'authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003' (Appendix 5). Those requiring a DA on land zoned with consent had no real pattern in their answers.

The surveyed councils were also asked 'How would the Council advise a private landowner without a PNF Property Vegetation Plan, if asked how to get permission to harvest native timber from their forest?'

This question was widely interpreted by different councils. The most common answers were Council planning (to seek a DA/check if a DA is needed/pre-planning meeting) with 10 mentions in 24 responses, and EPA with 11 mentions. The next most common response was LLS with five mentions. At the time of sending the questions to councils, a NSW DPI email address with an NSW DPI letterhead attachment was used. Therefore, the four mentions of DPI are potentially biased (Table 5).

Table 5 – Interpreted answers from Councils on who they would advise private native forestry landowners to approach to harvest timber.

Interpreted answer	Number of LEPs
EPA	3
No response	4
Council planning, EPA	4
NSW DPI	3
Council planning	2
EPA, LLS or DPI	1
Council planning, LLS	1
Council planning, EPA and Forestry Corporation NSW	1
Council planning & LLS	1
OEH	1
EPA, LLS, Forestry Corporation NSW	1
Council planning, OEH, LLS & EPA	1
Total	24

DPI = Department of Primary Industry; EPA = Environment Protection Agency; LEP = Local Environment Plan; LLS = Local Land Services; OEH = Office of Environment and Heritage.

The effect of Council LEP zoning on PNF Plans is shown in Figure 12²⁶.

The PNF Plan area approved by the NSW EPA includes areas subject to regulatory exclusions which on average reduce the actual area that can be harvested by 27%. Therefore, as a rule of thumb, all areas of PNF Plan quoted here should be reduced by at least a quarter to understand the area which could be harvested in accordance with the *PNF Code of Practice for Northern NSW* 27.

The zoning data that applies to PNF Plans has not been cross-checked with the data received from the LGA survey on the application of LEPs to PNF Plans. Comparison of these data could not occur because the start date of the PNF Plans was not known. Such analysis would have allowed the number of PNF Plans requiring either council consent or prohibited by council to be calculated. This would have provided further insight into how aware councils are of PNF Plans in their jurisdiction.

²⁶ Note, at the time of writing this report, data were only available for the period to February 2016. Figure 12 excludes PNP Plans which expired prior to 1 September 2017 and the 98,472 ha zoned RU2 in Clarence Valley LGA. The PNF Plan area assessed in this report excludes any land not zoned as in the list in Table 6.

²⁷ <http://www.environment.nsw.gov.au/resources/pnf/0837copnorth.pdf>

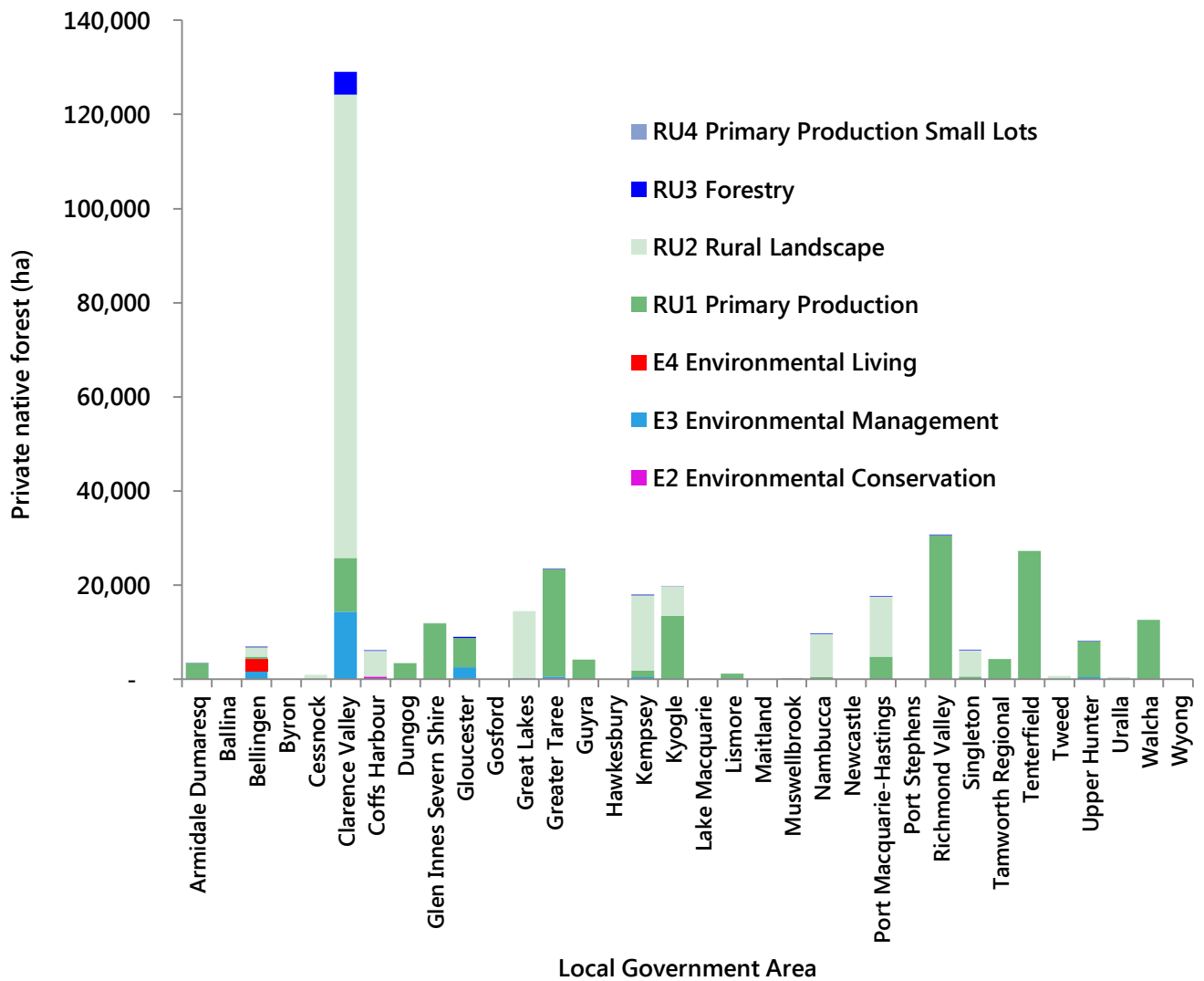


Figure 12 – Local Environment Plan zoning by Local Government Area of current PNF Plan approvals to February 2016 on NSW north coast, excluding expired at 1 September 2017 and 98,472 ha RU2 in Clarence Valley.

Forty-five per cent of PNF Plans are over land zoned RU1 and 47% are over land zoned RU2. These zones are less likely to have forestry prohibited or require development consent than E and RU4 zones. However, Table 1 shows that 25% (590,000 ha) of the total private native forest in RU1 and RU2 zones requires forestry to have council development consent. The remaining 6.3% or 23,860 ha of PNF Plans are over land zoned E (i.e. E2, E3 and E4) (Table 6).

Table 6 also shows that at the time of the study 14% of all private native forest in the north coast region is covered by a PNF Plan. It also shows that RU2 is one of the zones with the largest proportion of PNF Plans in it at 20%, when the small area of RU3 is excluded. Perhaps surprising, the zone with the biggest proportion of private native forest in it, RU1 at 58%, only has 11% of its area covered by an approved PNF Plan, similar to E3 and E4.

Table 6 – Local Environment Plan zoning of current PNF Plan approvals to February 2016 on NSW north coast (excluding expired at 1 September 2017) and total private native forest.

LEP zoning in NSW north coast	Approved PNF Plan area in zone (ha)	Approved PNF Plan area in zone (%)	Total private native forest area in zone (ha)	Proportion of total private native forest with an approved PNF Plan (%)
E2 Environmental Conservation	989	0.3%	78,129	1.3%
E3 Environmental Management	20,324	5%	138,139	15%
E4 Environmental Living	2,546	1%	23,988	11%
RU1 Primary Production	168,135	45%	1,541,610	11%
RU2 Rural Landscape	172,068	47%	843,161	20%
RU3 Forestry	5,138	1%	16,343	31%
RU4 Primary Production Small Lots	509	0.1%	31,497	1.6%
Total	369,710	100%	2,672,867	14%

LEP = Local Environment Plan; PNF = private native forest.

Council roads and bridge survey response

Councils were asked about the road length, number of bridges and number of bridges with weight restrictions within their LGA. Only 12 councils responded to the questions on roads and bridges. A further seven councils had information on their websites, though often only partial information.

All the council websites were searched for information on roads and bridges. The results of both sources of information are presented in Table 7.

Table 7 indicates that an average of 8% of council-maintained bridges in the north coast region have weight restrictions, ranging from 26% in Wyong LGA to 0% in Lake Macquarie and Muswellbrook. Noticeable is also the variation in the number of bridges between LGAs, with Tweed, Clarence Valley and Kyogle all having over 200 bridges and seven LGAs having less than 100.

Table 7 – Road length, number of bridges and number of bridges with weight restrictions.

LGA	LGA road length (km)	Number of bridges	Number of bridges with weight restrictions	% of bridges with weight restrictions
Byron	614	39	9	23%
Cessnock	1,021	72	11	15%
Clarence Valley	2,457	281	2	1%
Coffs Harbour	858	186	1	1%
Glen Innes Severn	1,167	108	3	3%
Gosford	1,134	56	2	4%
Kyogle	1,217	325	40	12%
Lake Macquarie	1,297	78	-	0%
Muswellbrook	690	23	-	0%

LGA	LGA road length (km)	Number of bridges	Number of bridges with weight restrictions	% of bridges with weight restrictions
Port Macquarie-Hastings	1,340	121	10	8%
Singleton	818	61	3	5%
Wyong	1,056	34	9	26%
Bellingen	N/A	136	12	9%
Tweed	1,097	236	9	4%
Dungog	N/A	N/A	5	
Kempsey	1,052	168	Aiming for less than 10%	
Nambucca	N/A	N/A	10	
Tenterfield	1,691	150	N/A	
Upper Hunter	1,749	124	N/A	
Total	19,258	2,198	126	
Number of LGAs	16	17	16	
Average	1,204	129	8	8%
Maximum	2,457	325	40	26%
Minimum	614	23	-	0%

LGA = Local Government Area.

Local councils are responsible for about 90% of the NSW road network by length²⁸.

Road funding for councils is provided by:

- The Australian Government, through the Identified Local Roads component of Financial Assistance Grants, the Roads to Recovery grants program and the Black Spots program
- The NSW Government through Block Grants for regional roads and other special purpose grants
- Councils' own funding.

Weight restrictions on bridges can be an issue for log trucks hauling from private property, sometimes making forestry operationally or financially unviable.

As noted by the Kempsey council, 'Good bridges that can handle heavy vehicles allow landowners to minimise their freight cost, maximising their profitability. Bridges also provide access allowing people and goods to be moved around the local government area. Unrestricted transport across bridges reduces travel times and maintains efficient levels of production'.

A six axle semi-trailer log truck has a gross vehicle mass limit of 42.5 tonnes²⁹, with trucks typically carrying about 25 tonnes of logs.

²⁸ <https://www.lgnsw.org.au/policy/roads-and-transport/road-funding-and-management>

²⁹ <http://www.vicforests.com.au/static/uploads/files/2014-loghaulagemanual-web-compressed-wfbajsqafhyt.pdf>

10. Discussion

Analysis of the NSW legislative planning and regulatory instruments that interact with PNF reveals that they have a major influence on where and how PNF is conducted.

When compared with other agricultural activities the regulation of PNF is highly complex with 44 different types of regulatory and planning exclusions and 350 operating conditions (one third of which relate to the protection of individual plant and animal species). The effect of regulatory exclusions is great with PNF currently prohibited on 26% of all private native forest land. Where PNF occurs, strict operating conditions apply which limit the type and proportion of trees that may be harvested. Many operating conditions include mechanisms that trigger further exclusions if a particular landscape feature or threatened plant, animal or ecological community is identified in the field.

The EP&A Act was found to heighten the complexity of the PNF approval process with a quarter of private native land subject to a dual consent process. Under the local council approval process rules applying to PNF are variable and unpredictable. Interpretation of LEPs and PNF Plans (Table 5 and Appendix 5) revealed approval inconsistencies for private landowners wishing to harvest their native forest. The responses of council planners to questions regarding PNF also suggest that gaining development consent may in some circumstances be difficult and expensive.

It is clear from the NSW EPA public register of approved PNF Plans³⁰ that all councils have EPA approved PNF Plans in their LGA. When surveyed, however, many councils advised that they had not had any applications for private forestry (Appendix 5), suggesting that landowners are not aware that they may need council consent³¹ in addition to their PNF Plan approval. The following calculations support this deduction:

- Fourteen per cent (14%) of the private native forest area on the NSW north coast had a PNF Plan as at February 2016 (excluding PNF Plans which had expired prior to 1 September 2017).
- 92% of these PNF Plans are on land zoned either RU1 or RU2 (derived from Table 4).
- The survey of councils found that 46% of RU2 zones and 13% of RU1 may require council development consent (derived from Table 3) to undertake PNF;
- 4% (14,182 ha) of the PNF Plan area falls into council “forestry prohibited” zones (Table 3 is applied to the data in Table 6).
- 30% of the PNF plan area (110,578ha) is in zoning where “forestry requires development consent” (Table 3 is applied to the data in Table 6).

The assessment of bridges with weight restrictions suggests this may either physically prohibit or be a challenge for landowners gaining good financial returns for their timber harvest. With an average of 8% of bridges having weight restrictions in an often-sparse road network, the extra kilometres of travel

³⁰ <http://www.epa.nsw.gov.au/pnf/approvedpnfpvps.htm>

³¹ landowners concerned about this should consult Table 5 and Appendix 5 in this document as the council may interpret this differently.

created by a bridge with weight restrictions may mean the difference between a landowner gaining a financial return from forestry operation or not.

The effect of SEPP 44 on PNF is currently limited. Koalas are found in all north coast council areas, however, most north coast councils do not have approved koala plans of management and have not mapped the location of 'core koala habitat'. Mapping of 'core koala habitat' is an onerous and difficult task that may be imposed on a landholder as a condition of a PNF development consent application. Under the proposed changes to the definition of koala habitat and koala browse trees the impact on PNF may become significant. The effect will not be quantifiable until the review of SEPP 44 and implementation of the NSW Koala Strategy are complete.

Links

Environment Protection Authority (EPA) Public register of approved private native forestry property vegetation plans <http://www.epa.nsw.gov.au/pnf/approvedpnfpvps.htm>

Environment Protection Authority (EPA) Private native forestry field guide for Northern NSW <http://www.epa.nsw.gov.au/resources/pnf/09761PNFFldGdNthnNSW.pdf>

LGA Local Environmental Plans

[Bellingen Local Environmental Plan 2010](#)

[Byron Local Environmental Plan 2014](#)

[Cessnock Local Environmental Plan 2011](#)

[Clarence Valley Local Environmental Plan 2011](#)

[Coffs Harbour Local Environmental Plan 2013](#)

[Dungog Local Environmental Plan 2014](#)

[Glen Innes Severn Local Environmental Plan 2012](#)

[Gloucester Local Environmental Plan 2010](#)

[Gosford Local Environmental Plan 2014](#)

[Great Lakes Local Environmental Plan 2014](#)

[Greater Taree Local Environmental Plan 2010](#)

[Hawkesbury Local Environmental Plan 2012](#)

[Kempsey Local Environmental Plan 2013](#)

[Kyogle Local Environmental Plan 2012](#)

[Lake Macquarie Local Environmental Plan 2014](#)

[Maitland Local Environmental Plan 2011](#)

[Muswellbrook Local Environmental Plan 2009](#)

[Port Macquarie-Hastings Local Environmental Plan 2011](#)

[Port Stephens Local Environmental Plan 2013](#)

[Richmond Valley Local Environmental Plan 2012](#)

[Singleton Local Environmental Plan 2013](#)

[Tweed Local Environmental Plan 2014](#)

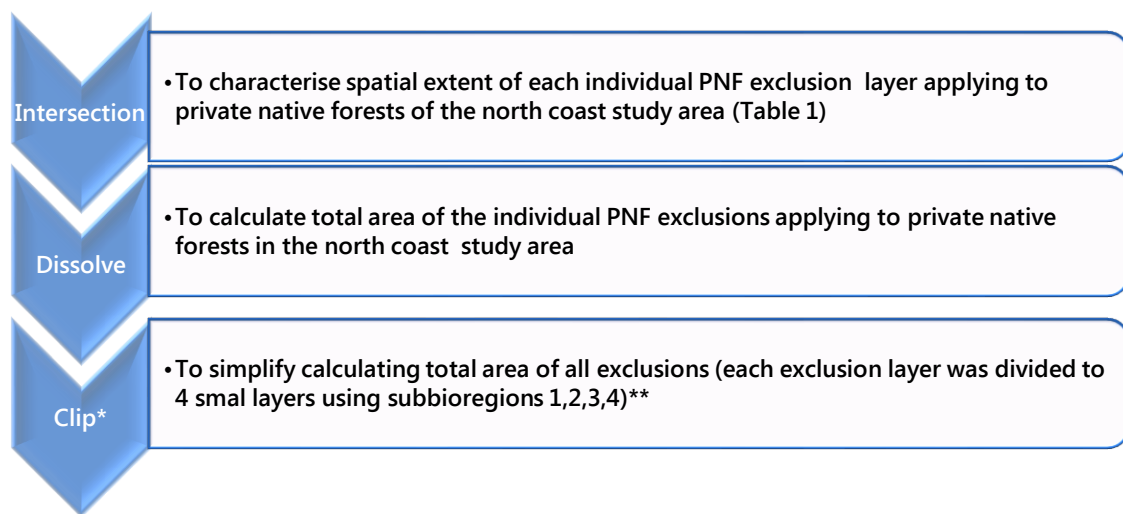
[Upper Hunter Local Environmental Plan 2013](#)

[Wyong Local Environmental Plan 2013](#)

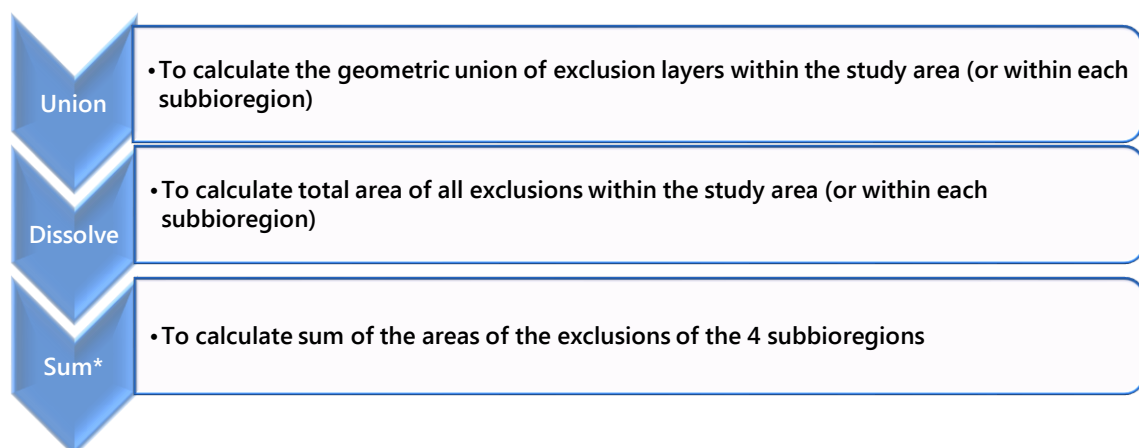
Appendix 1 – Methodology for calculating regulatory and planning exclusions

Modelbuilder in ArcGIS Pro2.0 was used to demonstrate and calculate the total area of PNF exclusions which apply to north coast private native forests. Two models were designed and applied to the exclusion layers, one for intersection and the other for union, as shown below.

Intersection Model:



Union Model:



* These steps were undertaken to making processing easier due to the large size of the input layers and low processing capacity of the computer. In case of applying the models to small regions or using strong and powerful computers, the steps could be ignored and the model could be run only once.

** Depending on the spatial extent of the exclusions within the study area, this step may produce some empty output layers.

The Union Model could also be used for calculating total area of a group of exclusions (e.g. all swamp and wetland layers).

Appendix 2 – Regulatory exclusions

We used GIS analysis to calculate the area of each individual exclusion type, the area of each exclusion category (being the union of the intersected types within that category) and the combined area of all exclusions (being the union of all of the intersected exclusion categories).

Category	Name	Size (ha)
Aboriginal	Indigenous protected areas of Australia	4,560
	Aboriginal places	155
	Union of the exclusion	4,715
Conservation agreement area	Wildlife refuges	37,476
	Conservation agreements	13,957
	Conservation Land Covenants NCT	9,726
	Registered Property Agreement	3,774
	Nature Conservation Trust	3,241
	Union of the exclusion	64,409
Heathlands	Heathlands	2
Heritage	Heritage SILEP	30,359
	Heritage State	969
	Union of the exclusion	30,535
Local Environmental Plan	Land zoned Environmental (E3)	86,158
	Land zoned Environmental (E2)	78,254
	Land zoned Environmental (E4)	4,864
	Land zoned Rural (RU4)	4,408
	Land zoned Rural (RU2)	881
	Union of the exclusion	174,561
Offset	PNF Plan approved area	49,038
	Property vegetation plan offset incentive conservation	24,041
	Plantation retained	4,353
	Biodiversity certified	1,123
	Biobanking sites	1,112
	Union of the exclusion	79,657
Old Growth Forest	Old Growth	139,542

Category	Name	Size (ha)
Rainforest	Rainforest	97,743
	SEPP 26 Littoral Rainforest	295
	Union of the exclusion	97,917
Remedial action	Remedial action	551
Riparian	Strahler all 5 m riparian exclusion	112,485
	Prescribed streams	66,003
	Union of the exclusion	178,488
Rock	Rock	685
Soil conservation	Steep slopes (>30)	94,688
	Mass movement	2,295
	Coastal sand dune protection	111
	Union of the exclusion	97,091
Swamps & wetlands	Wetlands NC	29,703
	SEPP 14 Coastal Wetlands	28,442
	Wetlands North AOI	22,298
	Ramsar Wetlands	151
	Union of the exclusion	48,288
Threatened species – animals	Koala core habitats	11,102
	Threatened fauna category 18 (buff 200 m)	9,978
	Threatened fauna category 17 (buff 100 m)	1,008
	Threatened fauna category 15 (buff 50 m)	860
	Threatened fauna category 16 (buff 60 m)	726
	Flora and fauna protection	458
	Threatened fauna category 19 (buff 300 m)	298
	Threatened fauna category 14 (buff 30 m)	35
	Union of the exclusion	23,996
Threatened species – plants	Critically endangered ecological communities	2,835
	Critically endangered plants	19,428
	Threatened flora (buff 50 m)	531
	Union of the exclusion	22,792

Appendix 3 – Letter sent to Councils requesting information



Dear

Planning Zones and private native forestry

The NSW Department of Industry-Lands is undertaking an assessment of private native forests on the north coast of NSW. Private native forestry (PNF) activities must comply with the *Native Vegetation Act 2003*, and may be subject to Local Environmental Plan (LEP) zoning under the *Environmental Planning and Assessment Act 1979*.

Advice from Council is sought to understand how the LEP(s) within its Local Government Area affect private native forestry activities.

Within the *Local Environmental Plan 2014* there are an estimated hectares of private native forest zoned andhectares in zoned

The LEP specifies that Council consent is required for forestry activities within these zones.

Division 10 of the Environmental Planning and Assessment Act recognises that landowners who have lawfully used their land for a purpose (such as PNF) immediately before an LEP came into force may not be prevented from continuing that use.

Please advise (using the attached form), where an existing PNF use right is claimed by a landowner or where they do not, the consent conditions (if any) that may apply (excluding conditions contained within a PNF Plan approval issued under the Native Vegetation Act).

Private native forestry activities also rely upon Council to maintain local government roads. Using the form attached, please advise the total length of roads, the number of bridges and the number of bridges with weight restrictions within Council's Local Government Area.

Please complete the attached form and return by email to john.samuel@dpi.nsw.gov.au by 28 February 2017. For further information about the assessment or for assistance in completing the attached form please contact Mr John Samuel on (02) 9842 8589.

Yours sincerely,

John Samuel

Project Manager

NSW Forest Science

21/12/2016



Local Environment Plan
(LEP) Name:

..... Local Environmental Plan 2014

LEP Zone

Additional LEP consent conditions (if any) applying to
private native forestry

Local Government Area:

Length of council roads
(km):

No. of bridges:

No. of bridges with weight
restrictions:

Prepared by:

Date:

Appendix 4 – Follow up questions emailed to councils

To councils who had responded

Thank you for your response and advice. In reviewing your answers and those from other councils I realise that my questions may not have been as clear as they could have been. To ensure consistency and to assist me to clarify your response could you kindly answer the following further questions:

1. Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan)¹ be required by council to meet any Local Environment Plan (LEP) consent conditions? Would existing use right² make any difference?

If the answer to this question is different to the previous advice, please change this advice.

2. How would the council advise a private landowner without a PNF Plan, if asked how to get permission to harvest native timber from their forest?

Only to those councils who prohibit forestry:–

3. Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?

Cheers

John

¹ Private Native Forestry Property Vegetation Plans (PNF Plans) are authorised by the Environmental Protection Authority, currently under the *Native Vegetation Act 2003* <http://www.epa.nsw.gov.au/pnf/index.htm>.

² Division 10 of the Environmental Planning and Assessment Act <http://www.legislation.nsw.gov.au/#/view/act/1979/203/whole#/part4/div10>

To councils who had not responded

Further to my request for information, in reviewing answers from some councils, I realise that my first question in the letter may not have been as clear as it could have been. So I have a clear response that I can consolidate across the 38 councils in the region, could you kindly answer the following questions:

1. Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan)¹ be required by council to meet any Local Environment Plan (LEP) consent conditions? Would existing use right² make any difference?
2. How would the council advise a private landowner without a PNF Plan, if asked how to get permission to harvest native timber from their forest?
3. Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?

Cheers

John

¹ Private Native Forestry Property Vegetation Plans (PNF Plans) are authorised by the Environmental Protection Authority, currently under the *Native Vegetation Act 2003* <http://www.epa.nsw.gov.au/pnf/index.htm>.

² Division 10 of the Environmental Planning and Assessment Act <http://www.legislation.nsw.gov.au/#/view/act/1979/203/whole#/part4/div10>

Appendix 5 – Council responses to Local Environment Plan and PNF Plan questions

Private forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by council to meet any LEP consent conditions?		Would existing use right make any difference?		Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?	
		Interpreted		Interpreted		Interpreted
Armidale Dumaresq Local Environmental Plan 2012	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					
Ballina Local Environmental Plan 2012	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					
Bellingen Local Environmental Plan 2010	If a planning officer of Council received an enquiry about a proposed forestry operation on private land, we would firstly check to determine whether or not the use, being forestry as defined by the Bellingen Local Environmental Plan (BLEP) 2010, is prohibited, permitted without consent or with consent in the land-use zone applicable to their property and advise the person accordingly. They would also be advised of the need to obtain a PNF Plan issued under the <i>Native Vegetation Act 2003</i> and would be referred to the LLS office for further information in this regard.	No DA	Private native forestry operations that have been authorised by a development consent issued by Council must comply with the conditions of that development consent, regardless of whether or not existing use rights apply.	Unclear	If a planning officer of Council received an enquiry about a proposed forestry operation on land zoned E2 Environmental Conservation, which prohibits forestry , we would advise the person that the use is prohibited under the BLEP 2010.	Prohibited
Byron Local Environmental Plan 2014	Notwithstanding this, LEP 2014 clause 5.9 Preservation of trees or vegetation does not apply to or in respect of: (a) the clearing of native vegetation: (i) that is authorised by a development consent or property vegetation plan under the <i>Native Vegetation Act 2003</i> , or (ii) that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or (b) the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the <i>Native Vegetation Act 2003</i>) that is authorised by a development consent under the provisions of the <i>Native Vegetation Conservation Act 1997</i> as continued in force by that clause, or (c) trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the <i>Forestry Act 1916</i> .	No DA	In relation to the LEP 2014 zones RU1 Primary Production and RU2 Rural Landscape, your letter requests that Council provide advice about 'where an existing PNF use right is claimed by a landowner or where they do not, the consent conditions (if any) that may apply (excluding conditions contained within a PNF Plan approval issued under the Native Vegetation Act)'. Forestry is not a prohibited use in these zones and therefore no existing use right is triggered under LEP 2014.	Unclear	N/A	N/A
Cessnock Local Environmental Plan 2011	No. For a PNF Plan to be approved, forestry as a land-use would need to have been permitted by Council LEP. Where a PNF Plan has been agreed and registered on the planning certificate the land owner would need to comply with the conditions of the PNF Plan. Should the land that benefits from an agreed PNF Plan be rezoned from (say) RU2 (Forestry permitted) to E2 (Forestry prohibited) then the existing use rights provisions would need to be considered to the extent of the PNF Plan.	Yes, DA required	Should the land that benefits from an agreed PNF Plan be rezoned from (say) RU2 (Forestry permitted) to E2 (Forestry prohibited) then the existing use rights provisions would need to be considered to the extent of the PNF Plan.	No DA	Yes. The key remains the permissible of the land-use, i.e. Forestry. For a PNF Plan to be considered on land which prohibits forestry, an amendment to the LEP would be needed (i.e. a Planning Proposal) to change the land-use zone from one which prohibits forestry to one which permits forestry. However, as you can imagine, this would not be an easy undertaking as the onus is on the person requesting the	Prohibited

Private forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by council to meet any LEP consent conditions?		Would existing use right make any difference?		Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?	
		Interpreted		Interpreted		Interpreted
					amendment to justify why Council should amend its LEP.	
Clarence Valley Local Environmental Plan 2011	Any person who has obtained a PNF Plan for a property both before and after CVLEP 2011 (23/12/11) came in to effect would not require the separate development consent of the Council while that PNF Plan remained in force. Where no PNF Plan (or a development consent under the <i>Native Vegetation Act 2003</i>) is in force for a property the following scenarios maybe applicable: (i) development consent of the Council would be required in the case of the zone E3 if forestry was not carried out prior to CVLEP 2011 coming in to effect. (ii) forestry would be prohibited on land zoned E2 under CVLEP 2011 unless it can be demonstrated (via existing use rights provisions) that it was lawfully carried out and commenced under the previous LEP provisions (or other provisions applicable under another Act) applicable to the property prior to CVLEP 2011 coming into force.	No DA	No – With no PNF Plan or council consent – if started before LEP came in force, yes.	No DA	Refer to part (ii) of the response to question 1. This advice remains the same. Where there is no PNF Plan (or a development consent under the <i>Native Vegetation Act 2003</i>) in force for a property that is zoned E2, forestry is prohibited. Where it is claimed that forestry has been carried out on particular land zoned E2 prior to CVLEP 2011 coming in to effect the onus lies with the landowner/proponent to demonstrate a case for existing use rights by providing documentary evidence of when forestry activities commenced and of how it has been continuously carried out (and not abandoned for any period exceeding 12 months) through the period from commencement to the coming in effect of CVLEP 2011 (23/12/11) and continuously carried out (and not abandoned for any period exceeding 12 months) after the commencement of CVLEP 2011.	Prohibited
Coffs Harbour Local Environmental Plan 2013	No, council would not have any consent conditions as consent from council is not required for veg removal where a PNF Plan is in place – as per 5.9(8)(a)(i) of LEP 2013. Please note that all advice is based on the current legislation not the substantial reforms which are set to take place in a couple of months that will turn all of this on its head.	No DA	Existing use rights are a non-issue as approval from council is not required.	No DA	N/A	N/A
Dungog Local Environmental Plan 2014		No response		No response		No response
Glen Innes Severn Local Environmental Plan 2012	Council has not approved any PNF to date. Council at this point in time has not got a formal response if a DA was lodged in the future.	Unclear		No response		No response

Private forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by council to meet any LEP consent conditions?		Would existing use right make any difference?		Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?	
		Interpreted		Interpreted		Interpreted
Gloucester Local Environmental Plan 2010	In essence, the team have looked at the questions and found that none of the three former Councils: · really deal with private forestry matters; · allow forestry as an activity in environmental (or many other) zones; or · deal with forestry issues that are normally covered by the Forestry Act. Where forestry is a permissible activity in say a rural zone, Council would assess the application and refer the matter to NSW DPI – Forestry for comment and conditions. However, no-one recalls seeing any such application and we would hope that the referral comments from forestry would be consistent with PNF Plan requirements.	Yes, DA required	Allowed 12 months continual activity.	Unclear	By telephone – not allowed.	Prohibited
Gosford Local Environmental Plan 2014	Telephone – Yes	Yes, DA required	Telephone – under the conditions of consent originally issued by Council.	Unclear	Telephone – Council would be required to refuse the application.	Prohibited
Great Lakes Local Environmental Plan 2014	In essence, the team have looked at the questions and found that none of the three former Councils: · really deal with private forestry matters; · allow forestry as an activity in environmental (or many other) zones; or · deal with forestry issues that are normally covered by the Forestry Act. Where forestry is a permissible activity in say a rural zone, Council would assess the application and refer the matter to NSW DPI – Forestry for comment and conditions. However, no-one recalls seeing any such application and we would hope that the referral comments from forestry would be consistent with PNF Plan requirements.	Yes, DA required	Allowed 12 months continual activity.	Unclear	By telephone – not allowed.	Prohibited
Greater Taree Local Environmental Plan 2010	In essence, the team have looked at the questions and found that none of the three former Councils: · really deal with private forestry matters; · allow forestry as an activity in environmental (or many other) zones; or · deal with forestry issues that are normally covered by the Forestry Act. Where forestry is a permissible activity in say a rural zone, Council would assess the application and refer the matter to NSW DPI – Forestry for comment and conditions. However, no-one recalls seeing any such application and we would hope that the referral comments from forestry would be consistent with PNF Plan requirements.	Yes, DA required	Allowed 12 months continual activity.	Unclear	By telephone – not allowed.	Prohibited
Guyra Local Environmental Plan 2012	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					

Private forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by council to meet any LEP consent conditions?		Would existing use right make any difference?		Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?	
		Interpreted		Interpreted		Interpreted
Hawkesbury Local Environmental Plan 2012	Hawkesbury City Council does not have any approved PNF on record. The LEP does not have such a definition it only refers to forestry. If such an application were to be made it would have to meet consent conditions if it were approved.	Yes, DA required	If a person has existing legal use rights such use rights will be protected and would continue to exist.	No DA	<i>PNF is regulated under the Native Vegetation Management Act 2003 and Native Vegetation Regulation 2013 and not under the EP&A Act. It has to be undertaken in accordance with the PNF Code of Practice for Northern NSW.</i>	Unclear
Kempsey Local Environmental Plan 2013	A consent to carry out the PLAN would not be required by Council. There are no LEP consent conditions on PLANs as Council is not the approval authority. Forestry as it is now defined in the KLEP 2013 is the same as is defined in the Forestry Act.	No DA	What would the existing use right be for? A PLAN? Forestry? Forestry is permissible in Rural Zones without consent.	Unclear	The advice would not change. We have not been presented with this issue as far as I am aware so I would not like to comment.	Unclear
Kyogle Local Environmental Plan 2012	Although the LEP says that development consent is required for forestry in rural zones, to my knowledge we have never received an application for forestry (including PNF) nor issued any such development consent. I do not believe we have any specific conditions in our standard conditions. My understanding is that the intent of including forestry as a use that requires consent in the LEP was to require that establishment of new plantations to go through the development consent process.	No DA	No, because it is not a use that requires development consent, therefore existing use rights cannot apply.	No DA	N/A	N/A
Lake Macquarie Local Environmental Plan 2014	I'm unsure about this question – LEP's don't have consent conditions, only Development Consents have consent conditions. Lake Macquarie LEP 2014 doesn't have any additional local provisions regarding forestry – so in that regard has no specified requirements for forestry activities, each proposal would be considered on its merits. This activity is permitted with consent in the RU2 zone and RU3 zone in our LEP.	Yes, DA required	Existing use rights means they would be relying on a prior approval, the conditions of that approval would continue to apply.	Unclear	Yes, they would be told the proposed activity is prohibited and Council is unable to grant approval.	Prohibited
Lismore Local Environmental Plan 2012	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					
Maitland Local Environmental Plan 2011	Forestry including PNF is permitted with consent in both the RU1 Primary Production and RU2 Rural Landscape zones under the Maitland LEP 2011. It is not a permitted in any other zone.	No DA	If existing use rights can be established then consent would generally not be required.	No DA	No, Council would still advise that the LEP determines whether Council can grant consent or not according to the zone.	Prohibited
Muswellbrook Local Environmental Plan 2009	Should Council has received an application for a PNF and if the application was approved, the applicant would need to comply with the conditions of consent issued for the DA.	No DA	It is up to the applicant to prove they have existing use rights. Under the EP&A Act, there is strict criteria for existing use. Should the applicant exceed these criteria, a new application may be required. If that is the case, the applicant would need to show the proposed use complies with the LEP permitted uses for the applicable zone.	Unclear	No	Prohibited
Nambucca Local Environmental Plan 2010	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					
Newcastle Local Environmental Plan 2012	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					

Private forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by council to meet any LEP consent conditions?		Would existing use right make any difference?		Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?	
		Interpreted		Interpreted		Interpreted
Port Macquarie-Hastings Local Environmental Plan 2011	Clause 5.9 of Port Macquarie-Hastings LEP 2011 relates to preservation of trees. The clause states that it does not apply in relation to clearing of native vegetation authorised by a Plan under the <i>Native Vegetation Act 2003</i> . In addition, section 17 of the <i>Native Vegetation Act 2003</i> states that the LEP cannot prohibit, restrict or otherwise affect clearing of native vegetation in accordance with a Plan. Accordingly, we would not be applying any consent conditions in relation to removal of trees covered by the Plan.	No DA	DA not required	No DA	The response would depend on whether the land is excluded from the operation of the <i>Native Vegetation Act 2003</i> , by virtue of Schedule 1 of that Act.	No DA
Port Stephens Local Environmental Plan 2013	We do not have any development consents that include PNF or forestry . If a DA was lodged for forestry and the EPA required a PNF Plan as part of the assessment process, it is likely that this would comprise a condition of consent on any approval issued. For both of those questions it would depend on whether they had existing use rights on the land (obligation and onus are on the landowner for existing use rights). Say the landowner did, then it would depend on what the landowner would be seeking to do to the land (i.e. intensification, altered, extended etc) on development consent requirements. Best to speak to our development consent planners on a case by case basis.	Unclear	The obligation and onus are on the landowner for existing use rights. It would depend on what the landowner would be seeking to do to the land, i.e. intensification, altered, extended etc.	Unclear	It is our understanding that a PNF Plan could be established for land management, not directly related to development consent for forestry.	No DA
Richmond Valley Local Environmental Plan 2012	Forestry is permissible without consent in Zones RU1 Primary Production and RU3 Forestry under the Richmond Valley LEP 2012. It is a prohibited land-use in all other zones including the environmental E Zones. No PNF Plan approvals should be issued in zones other than RU1. Zone RU3 covers public forestry operations and would need to be authorised for harvest under the Forestry Act.	No DA	Existing use rights may change the situation but the onus of proof is on the operator to demonstrate that existing use rights prevail, including documentation on previous harvesting of timber (when, where, how, how much, how frequent). The EP&A Act (section 107) enables and requires development consent to alter an existing use. Once again, I would expect that if existing use rights were to be relied upon to obtain a PNF Plan that: the existing use rights should be established first; if the proposed operation is an alteration to those rights, then development consent were obtained; and then a PNF Plan be issued under the Native Vegetation Act.	Unclear	It is a prohibited land-use in all other zones including the environmental E Zones.	Prohibited
Singleton Local Environmental Plan 2013	Under the provisions of the SLEP 2103 forestry is a permitted without consent in RU1. It is exempt from requiring development consent in RU2 where it has approval under the NVA 2003. In the SLEP 2013, uses under the <i>Forestry Act 2012</i> are permitted without consent in RU3. Forestry is permitted with development consent in RU2 and RU4.	Yes, DA required		No response	Forestry is prohibited in the following – E zones and others. The response would depend on whether the land is excluded from the operation of the <i>Native Vegetation Act 2003</i> , by virtue of Schedule 1 of that Act.	Prohibited
Tamworth Regional Local Environmental Plan 2010	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					
Tenterfield Local Environmental Plan 2013	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					

Private forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by council to meet any LEP consent conditions?		Would existing use right make any difference?		Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?	
		Interpreted		Interpreted		Interpreted
Tweed Local Environmental Plan 2014	If forestry was permissible without consent under Tweed LEP 2000 (the LEP prior to Tweed LPE 2014) and the forestry activity had commenced in accordance with the PNF Plan prior to the commencement of Tweed LEP 2014 being 4 April 2014 then development consent would not be required other than for expansion, intensification, etc.	Yes, DA required	Existing and continuing use is a very complicated legalistic part of the planning law, DPI should obtain their own legal advice regarding questions relating to existing and or continuing use. To assist in the meantime, I make the following general comments. If a use has commenced lawfully prior to a planning instrument coming into force prohibiting that use (s. 106 EP&A Act) or requiring consent for that use (s.109) then the use may continue, however, there are significant limitations that go with those rights such as needing development consent for intensification, expansion or enlargement. For example, the Tweed LEP 2014 came into force on 4 April 2014 and in the RU2 Rural Landscape zone forestry requires development consent. If a PNF Plan approval had been given approval prior to this date and had commenced prior to this date development consent would not be required for that activity. Changes to the activity from 4 April 2014 such as intensification or expansion beyond the land actually physically and lawfully used would require development consent.	No DA	N/A	N/A
Upper Hunter Local Environmental Plan 2013	Forestry has the same meaning as forestry operations for the purposes of Part 5A of the <i>Forestry Act 2012</i> . Note. The term forestry operations is defined as follows: (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 and other silvicultural activities i.e. bee-keeping, grazing and bush fire hazard reduction, or (d) ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations. Forestry is permitted in the RU1 Primary Production, RU3 Forestry and RU4 Primary Production Small Lots zones without consent. In this regard they do not need to lodge a Development Application. My understanding is that the proponent must still prepare an REF as it comes under Part 5 of the <i>Environment and Planning Assessment Act 1979</i> . Forestry is prohibited in the all other zones and as such it just cannot be done and any advice would reflect this.	N/A	No, if prior to LEP commencement.	No DA	Forestry is permitted in the RU1 Primary Production, RU3 Forestry and RU4 Primary Production Small Lots zones without consent. In this regard they do not need to lodge a Development Application. My understanding is that the proponent must still prepare an REF as it comes under Part 5 of the <i>Environment and Planning Assessment Act 1979</i> . Forestry is prohibited in all other zones and as such it just cannot be done and any advice would reflect this.	Prohibited
Uralla Local Environmental Plan 2012	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					

Private forestry and LEP interaction	Would a landowner with an approved Private Native Forestry Property Vegetation Plan (PNF Plan) be required by council to meet any LEP consent conditions?		Would existing use right make any difference?		Where the council prohibits forestry in an LEP zoning, would the advice to the questions above change?	
		Interpreted		Interpreted		Interpreted
Walcha Local Environmental Plan 2012	<i>Not surveyed – <1,500 ha of prohibited and with consent combined</i>					
Wyang Local Environmental Plan 2013	<p>Clause 5.9 Preservation of trees or vegetation Requires development consent or a permit from Council for the destruction, etc., of vegetation (note exclusions apply) for vegetation specified within a development control plan. Conditions attached would form part of Council's consent. Council may also impose additional consent conditions. It would be likely that such conditions would relate to implementation of management controls relating to noise, hours of operation, transport routes etc. Provided the PNF Plan from LLS included appropriate conditions relating to protection of endangered species and fauna, it would be unlikely (?) that Council would require further protection measures as part of any consent.</p> <p>Clause 5.9AA Trees of vegetation not prescribed by development control plan.</p> <p>RU3 Forestry prohibited, however, uses authorised under the <i>Forestry Act 2012</i> permitted without consent (i.e. Part 5 assessment required).</p> <p>Permits destruction, etc., of vegetation not specified by development control plan without development consent.</p>	Yes, DA required	An existing forestry use (if it was being lawfully undertaken) would operate under the conditions of consent originally issued by Council. Unless some aspect of the operation was proposed to change, there would be no requirements for revisiting an existing and lawful consent. In the event, however, that the existing use sought modification, the above process would apply.	No DA	Council would be required to refuse the application.	Yes, DA required

DA = development approval (consent); DPI = Department of Primary Industries; EPA = Environment Protection Authority; LEP = Local Environment Plan; LLS = Local Land Services; PNF = private native forestry; REF = review of environmental factors