

SECTION 59 PLANNING REPORT – PLANNING PROPOSAL 10

Planning proposal details:

Council Reference - Planning Proposal 10

Departmental Reference –PP-2015_BELLI_001_00

PCO Reference – e2017-259.do7

Planning proposal summary:

To amend Bellingen LEP 2010 to list the display of goods and A-frame signs on footpaths as exempt development

Date of Gateway determination:

8 October 2015 (revised Gateway Determinations issued 14 July 2016 and 28 March 2017 for extensions of time)

1.0 SUMMARY

At its meeting of 23 September 2015, Council resolved to amend Bellingen Local Environmental Plan 2010 as follows:

- 1. Resolve to prepare a planning proposal to make the display of goods and the display of A-frame signs on footpaths a category of exempt development in Schedule 2 – Exempt Development of Bellingen Local Environmental Plan 2010.*
- 2. Resolve to forward the planning proposal to the Department of Planning & Environment in accordance with Section 56(1) of the Environmental Planning and Assessment Act 1979 and request the issuing of a Gateway Determination to allow for the exhibition of the proposed amendment.*
- 3. Resolve to advise the NSW Minister for Planning that it considers the proposed amendment to be of minor significance and that it intends to use its delegations to permit the General Manger to make the Local Environmental Plan.*

A Draft Planning proposal was accordingly prepared and submitted to the Department of Planning and Infrastructure with a request to issue a Gateway Determination. A Gateway Determination was issued by the Department on 8 October 2015.

The planning proposal has been exhibited in accordance with all relevant legislative requirements. The matters raised in submissions were not considered to warrant any amendment to the planning proposal as exhibited.

Council resolved to proceed with the LEP at its meeting of 27 September 2017 and an opinion was obtained from the Parliamentary Counsels Office (PCO) that the plan could legally be made on 16 November 2017.

2.0 GATEWAY DETERMINATION

A copy of the Gateway determination, issued by the Department on 8 October 2015, is included as Attachment 1 to this report.

The Planning Proposal was required to be completed by 8 July 2016. Due to resourcing constraints and other priorities the proposal was delayed. An extension of

time was issued on 14 July 2016 for completion by 15 April 2017 (Attachment 2). An additional extension was granted on 28 March 2017 for the proposal to be completed by 15 October 2017 (Attachment 3).

The conditions of the Gateway Determination have been complied with as the proposal was exhibited in accordance with “5.5.2 of a Guide to preparing LEPs” authored by the Department of Planning and Environment and in excess of the required 14 days (the exhibition period extended over 26 days).

Consultation with the NSW Rural Fire Service was also carried out in accordance with the Gateway requirements. The RFS raised no objections to the proposal.

3.0 COMMUNITY CONSULTATION

The draft Planning Proposal and accompanying draft Footpath Activities Policy was publicly exhibited from 3 July – 31 July 2017.

Nine (9) written submissions were received from community members/business owners. Many verbal comments were also received during doorknocking of businesses on 11,13 and 18-19 July 2017. These submissions are discussed in detail in the attached Council Report. The main concerns raised were in relation to implementation of the approvals process and related to the charging of fees for applications. It is noted that an approvals process is already in place but is rarely complied with and that the Planning Proposal should simplify this process for businesses and will hopefully encourage businesses to obtain appropriate approvals and comply with Council’s requirements for access.

There were no submissions that opposed the Planning Proposal and no changes were made to the Planning Proposal following exhibition. Council resolved to proceed with the LEP without modification.

4.0 VIEWS OF PUBLIC AUTHORITIES

The NSW Rural Fire Service was consulted and provided a response which is attached. No objections to the proposal were raised.

The Gateway Determination did not require consultation with additional agencies however the Roads and Maritime Services were recognised as a key stakeholder and were also consulted. The response of the RMS is attached. The RMS were supportive of the Planning Proposal and stated the approval of A-frame signage and display of goods on footpaths (on classified and non-classified roads) should be considered under section 68 of the Local Government Act 1993.

No changes to the Planning Proposal were made in response to agency submissions.

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

The Gateway Determination highlighted that the proposal contained a minor inconsistency with Direction 4.4 Planning for Bushfire Protection and required

consultation with the Rural Fire Service. Due to the minor nature of the proposal and the comments of the RFS, the proposed inconsistency is considered minor. The proposal will only enable the temporary display of goods on Council's footpaths and the goods will need to be packed away each day after close of business, therefore not creating additional bushfire risk. The proposal is not inconsistent with any other s117 directions.

The Secretary of the Department of Planning has issued agreement that the proposal's inconsistency with the Section 117 Direction 4.4 Planning for Bushfire Protection is minor and does not prevent the LEP from being made.

The proposal is not inconsistent with any SEPPs. The proposal complements SEPP (Exempt and Complying development Codes) 2008 as it seeks to simplify the approvals process for footpath activities such as outdoor dining and the retail display of goods.

The Planning proposal is consistent with all relevant s117 Directions, SEPPs and other strategic planning documents, as documented in Version <<#>> of the Planning Proposal attached to this report.

6.0 PARLIAMENTARY COUNSEL OPINION

An Opinion was sought from Parliamentary Counsel on 29 September 2017 and given on 16 November 2017. A copy of the opinion is included as Attachment 4 to this report. The final drafted instrument differs in wording to the version originally proposed by Council, however still achieves the strategic intent of the amendment.

7.0 OTHER RELEVANT MATTERS

The Planning Proposal is considered minor in nature, and there are no other relevant matters.

8.0 MAPPING

The Amendment will not result in any mapping changes.

9.0 RECOMMENDATION

It is recommended that the General Manager, as delegate of the Minister for Planning, make the plan by signing the relevant cover sheet for LEP Amendment No 10.

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ATTACHMENTS:

- 1 Gateway Determination from the Department of Planning & Infrastructure – 8 October 2015
- 2 Revised Gateway Determination from the Department of Planning & Infrastructure – 14 July 2016
- 3 Gateway Determination from the Department of Planning & Infrastructure – 28 March 2017
- 4 Parliamentary Counsel Opinion