



BELLINGEN SHIRE COUNCIL

PLANNING PROPOSAL 10

(Version 1 – September 2015)

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 BLEP 2010.

THE PLANNING PROPOSAL

Pursuant to Section 55(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), a planning proposal must be prepared before a draft Local Environmental Plan (LEP) amendment is made. The proposal must explain the intended effect of the draft LEP amendment and provide justification for the amendment. The proposal must address those matters identified by Section 55(2) of the EP&A Act, which is considered below. Council must then determine whether or not to proceed with the proposal.

History

A recent amendment of NSW State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 (the SEPP) by the NSW State Government included outdoor dining as a new category of “exempt” development. When a development is categorised as “exempt”, this allows for the activity to proceed without the need to lodge a Development Application and obtain development consent, provided that it complies with certain pre-determined standards that are specified in the exemption.

This has created a situation where, arguably, the activity with the greatest potential to impact upon other users of the footpath (relative to an A-frame sign or trading table) is subject to the least amount of assessment. It has also created an additional layer of complexity in the approval process whereby different consent pathways must be followed for different parts of the same business.

Council has therefore identified a need to amend Bellinggen Local Environmental Plan (BLEP) 2010 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 BLEP 2010.

Council resolved to support the proposal at its meeting of 23 September 2015. The report to Council and the relevant resolution is included as Attachment 1.

Objectives

The objectives of the proposed LEP amendment are as follows:

1. To implement a single regulatory process for the use of footpath areas by making the display of goods and the display of A-frame signs on footpaths a category of exempt development, as is currently the case for outdoor dining.

Proposed provisions

The provisions of the proposed LEP amendment will include:

1. Include the following item in Schedule 2 Exempt Development:

Footpaths – Display of goods & A-frame signage

The standards specified for the development are that the development must:

1. *Be associated with a lawful use on the adjoining land.*
2. *Be displayed in accordance with the Footpath Activities Policy adopted by Council on _____, as amended from time to time.*
3. *Be carried out in accordance with an approval granted under Section 138 of the Roads Act 1993*
4. *Be carried out in accordance with an approval granted under Section 68 of the Local Government Act 1993.*

An Information Checklist, Project Timeline & Delegation Request Checklist are included as Attachments 2-4 in accordance with the requirements of 'A Guide to preparing planning proposals'.

SPECIFIC JUSTIFICATION FOR PLANNING PROPOSAL

A. Need for Planning proposal

Is the planning proposal a result of any strategic study or report?

The planning proposal is not the direct result of any strategic study or report, however Councils Operational Plan for 2015-16 includes an action that the LEP is amended in the terms proposed by this amendment, and a Footpath Activities Policy is adopted that will work in conjunction with the LEP amendment.

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

State Environmental Planning Policy (Exempt & Development Codes) 2008 recently made Outdoor Dining a category of exempt development. The planning proposal aims to implement a single approval process for any use of the Council footpath. In order to implement a single regulatory process, the only option is to also make A-frame signage and the display of goods as a category of exempt development.

Is there a net community benefit?

It is considered that the simplification of the approval regime for goods placed on footpaths will reduce the amount of time that business operators and Council staff need to allocate towards the regulatory process. This will allow for time to be invested into other activities associated with business growth. The expected improvements in compliance will also result in a reduced risk to Council and business operators in terms of potential insurance claims arising from goods placed on the footpath.

A more consistent policy with respect to display of goods on the footpath will improve its useability for the general public and engender a level of confidence that a minimum width pedestrian corridor will be available at all times. This will become increasingly important as the community ages and use of mobility aids increases.

Aesthetically, it is expected that improved levels of compliance will result in a reduced amount of visual clutter associated with excessive and poorly positioned signage and that the local environment will benefit from this outcome.

Having regard to these factors, it is expected that the planning proposal will have a net community benefit.

B. Relationship to strategic planning framework

Is the proposal consistent with the objectives and actions contained within the Mid North Coast Regional Strategy?

The Mid North Coast Regional Strategy (MNCRS) provides a broad outline for the direction of future development in this region for the next 2 decades. Relevant outcomes and actions of the Mid North Coast Regional Strategy include:

6. Economic development & employment growth

Actions

- *Local environmental plans (and other planning provisions) will facilitate employment growth in the major regional centres and major towns, as well as facilitate appropriate local jobs in towns and villages and recognise appropriate home-based employment opportunities.*

Comment:

The broad intent of the planning proposal is to simplify the approval process for business owners wishing to add to the profitability of their businesses through use of the Council footpath area. This will facilitate appropriate local jobs in towns and villages.

Is the proposal consistent with Council's strategic plans?

Employment Lands Strategy:

There are no specific provisions within the ELS that relate to use of footpath areas for trading purposes. The ELS does however advocate for the ongoing vitality of centres and protecting their role as generators of economic activity in the Shire. The planning proposal is expected to make a positive contribution towards these ends.

Is the proposal consistent with applicable state environmental planning policies?

The planning proposal does not directly contradict any relevant SEPP, however it does provide an additional category of exempt development beyond those included within State Environmental Planning Policy (Exempt & Development Codes) 2008. This is considered acceptable as it does not propose an alternative regime for dealing with the same type of development, but deals with a unique matter that has not been already addressed in the SEPP.

Notwithstanding this, the proposed exemption is consistent with the approach adopted by the NSW Government for making outdoor dining a category of exempt development under the SEPP. This can be seen in the following comparison between the proposed exemption category for *Display of goods & A-frame signage* and the existing exemption for *Footpath Activities – Outdoor Dining* in the SEPP.

EXISTING EXEMPTION

SUBDIVISION 20A FOOTPATHS—OUTDOOR DINING

2.40A Specified development

The use of a footway or public open space within the meaning of the [Roads Act 1993](#) as an outdoor dining area associated with lawful food and drink premises is development specified for this code.

2.40B Development standards

The standards specified for that development are that the development must:

- (a) not be associated with a pub or a small bar, and*
- (b) be carried out in accordance with an approval granted under section 125 of the [Roads Act 1993](#), including in accordance with any hours of operation to which the approval is subject, and*
- (c) be carried out in accordance with any approval granted under section 68 of the [Local Government Act 1993](#).*

PROPOSED EXEMPTION

FOOTPATHS – DISPLAY OF GOODS & A-FRAME SIGNAGE

The standards specified for the development are that the development must:

- 1. Be associated with a lawful use on the adjoining land.*
- 2. Be displayed in accordance with the [Footpath Activities Policy](#) adopted by Council on ____, as amended from time to time.*
- 3. Be carried out in accordance with an approval granted under Section 138 of the [Roads Act 1993](#)*
- 4. Be carried out in accordance with an approval granted under Section 68 of the [Local Government Act 1993](#).*

Is the proposal consistent with applicable Section 117 directions?

Section 117 directions are issued by the Minister for Planning and relate to various planning matters that must be considered when preparing a planning proposal. The directions relevant to the subject proposal are considered below.

Direction 1.1 Business and Industrial Zones

The objectives of this direction are to:

- a) encourage employment growth in suitable locations,
- b) protect employment land in business and industrial zones, and
- c) support the viability of identified strategic centres.

This direction applies as the planning proposal will affect land within an existing industrial zone. A relevant planning proposal must:

- a) give effect to the objectives of this direction,
- b) retain the areas and locations of existing business and industrial zones,
- c) not reduce the total potential floor space area for employment uses and related public services in business zones,
- d) not reduce the total potential floor space area for industrial uses in industrial zones, and
- e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

Comment:

As previously mentioned, the planning proposal aims to facilitate additional employment opportunities through permitting the responsible use of the footpath area by business owners. Most of the businesses that will take this opportunity are established within the B2 Local Centre Zone. The planning proposal is therefore considered to be consistent with Direction 1.1.

Directions 1.2 (Rural Zones), 1.5 (Rural Lands, 2.1 (Environment Protection Zones) & 3.1 (Residential Zones)

These directions apply because provided the goods or A-frame sign are associated with a lawful use on the adjoining land, they may be installed on land within the abovementioned zones.

The planning proposal is not considered to be inconsistent with any of those directions as it facilitates only minor additions to businesses that have already been legally established within the relevant zone.

Direction 2.3 – Heritage Conservation

The footpath areas adjoining private property are not typically listed as heritage items in their own right, however much of the Bellingen CBD area is within a Heritage Conservation area. As is the case with the exemption for outdoor dining in the SEPP, it is not proposed to restrict the operation of the exemption having regard to the existence of a heritage item. It is considered that the display of an A-frame sign and goods on the footpath can take place without any significant

adverse impact on the heritage value of the shire. The successful conduct of a business from a heritage listed building (assisted through opportunities to use the footpath area) facilitates the ultimate conservation of the building.

Directions 4.1 (Acid Sulfate Soils) & 4.3 (Flood Prone Land)

The proposal is considered consistent with the direction as it does not permit any significant increase in development on land that is likely to be subject to acid sulphate soils or flooding.

Direction 5.1 – Implementation of Regional Strategies

This direction applies as Bellingen Shire is included in an adopted regional strategy, this being the Mid North Coast Regional Strategy.

The objectives of the direction are to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the regional strategies. Planning proposals must be consistent with the regional strategy. A proposal may be inconsistent if the extent of inconsistency is of minor significance and the proposal achieves the overall intent of the regional strategy.

As noted previously in comments under the Regional Strategy section above, the proposal is considered to be consistent with the Mid North Coast Regional Strategy.

C. Environmental, social and economic impact

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

It is unlikely that the planning proposal will give rise to development that will have an adverse impact upon critical habitat or threatened species, populations or ecological communities, or their habitats.

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

The environmental effects of the planning proposal will be managed through the Footpath Activities Policy to be prepared by Council, and the issuing of the requisite Roads Act & Local Government Act approvals.

How has the planning proposal adequately addressed any social and economic effects?

The planning proposal is not expected to result in any adverse social or economic impacts.

State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

The planning proposal seeks to optimise the use of public infrastructure through permitting the use of the road reserve area for business related purposes. These uses will only be approved after the key functions of pedestrian and vehicle conveyance have been properly provided for in the policy document, the development layout and the approvals to be issued under relevant Acts.

Views of State and Commonwealth authorities

Consultation with relevant state authorities will occur as relevant and where specified as part of the Gateway Determination.

Proposed Community consultation

Having regard to the Department of Planning document “A guide to preparing local environmental plans”, the planning proposal is required to include details as to the proposed form of Community Consultation. In the circumstances, it is considered that the proposed amendment to the LEP would be classified as a “low impact” planning proposal. This requires a 14 day exhibition period that must include;

- Newspaper notification of the amendment.
- Notification on the Council website.
- Notification of adjoining landowners.

In the circumstances, documentation should be placed on public exhibition at the Bellingen Shire Council Administration Centre, Bellingen Library, Dorrigo Library and on Council's website. Notice of the exhibition should be placed in the Bellingen Courier Sun and the Don Dorrigo Gazette.

It is noted though that the gateway determination will ultimately specify the community consultation that must be undertaken on the planning proposal and Council will undertake consultation in accordance with the conditions of the Gateway Determination.

Delegations to make plan

Council recently accepted an offer of Delegation of Ministerial Functions to Council for the making of certain Local Environmental Plans. As such it is prudent at this point in the process to note whether Council intends to use delegations for the making of this Plan.

Given the locally specific and minor nature of this proposed amendment, Council resolved as follows regarding its intention to use its delegation to make the Plan.

“That Council resolves to advise the Minister of Planning & Infrastructure that it considers the proposed amendment to be of minor significance and that it intends to use its delegations to permit the General Manager to make the Local Environmental Plan.”

PLANNING PROPOSAL 10
VERSION 1 ATTACHMENTS INDEX
SEPTEMBER 2015

Attachment 1 - The report to Council of 23 September 2015 and relevant resolution.
Attachment 2 – Information Checklist
Attachment 3 - Project timeline
Attachment 4 – Delegation Request Checklist