



Item: 6.1

Subject: PLANNING PROPOSAL 10 - TO INCLUDE THE DISPLAY OF A-FRAME SIGNAGE AND GOODS ON FOOTPATHS AS A CATEGORY OF "EXEMPT" DEVELOPMENT.

File/Index: Planning Proposal 10 (Land Use & Planning)

Presented by: Daniel Bennett, Senior Strategic Planner

ALIGNMENT WITH DELIVERY PROGRAM

(RE) RESILIENT ECONOMY

(RE.1) We have meaningful work and vibrant businesses within our community.

(RE.1.1) Our community has a diversity of businesses and new industries.

(RE.1.1.2) An overall improvement in business's perception and satisfaction of Council's outdoor dining policy from 2014 to 2016.

RECOMMENDATION

That Council:

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 Manager to make the Local Environmental Plan.

EXECUTIVE SUMMARY

Recent changes to NSW State Government legislation have prompted the need for Council to review its processes regarding the placement of goods on the footpath by business owners. A revised policy is under development that will reduce the complexity of this process and streamline approvals for business owners. Council needs to amend its Local Environmental Plan to implement the new process. This report recommends that Council resolves to make the necessary amendment.

REPORT DETAIL

Background

There are a range of uses that are made of footpath areas by business operators in association with the operation of their business from the adjoining private property. This commonly includes;

- outdoor dining
- display of goods for sale
- display of A-frame signage



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.

This can act as a disincentive to obtaining the necessary approvals and leaves Council (and the business operators) exposed to the risk of insurance claims arising from inappropriate placement of goods. The complexity of the approval process has also resulted in a level of dissatisfaction with Council's existing policies on outdoor dining (see Alignment with Delivery Program - RE 1.1.2) and in order to address this, the Delivery Plan for 2015-2016 includes the following activity

LEP amended & footpath activities policy adopted

It is necessary for Council to prepare a Planning Proposal to amend the Local Environmental Plan (LEP) and this report represents the first step in that process.

Councillors will recall a workshop held on 22 October 2014 where issues with the existing approval regime were discussed and options for an alternative approach were presented. At this workshop, general support was expressed for amendment of the approval regime in order to simplify the process for business operators and Council.

What is proposed?

It is proposed to amend Bellingen 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.

This means that a Development Application will no longer be required for these activities if they meet the criteria for exemption. This will also mean that they will be treated in the same way as outdoor dining, thereby creating a more equitable regulatory process for business operators and Council.

The proposed criteria for exemption will be based around those that are currently specified for outdoor dining in the SEPP, but will also reference a policy that will be developed by Council to regulate footpath activities.

The proposed draft criteria for both A-frame signs and the display of goods are included below.

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.*

How will the display of these items be regulated in the absence of a development application?

As detailed for in the draft exemption criteria, it is proposed to develop a Footpath Activities Policy that will provide clear standards for the use of the footpath or the display of items. This policy will also provide Council with standards to regulate outdoor dining, noting that these have not existed since the SEPP was amended to remove the requirement for development consent for this use.

This policy is currently under development and will be the subject of a further report to Council in the near future. The policy will address matters such as those listed below:

- Delineating a 1.8m wide walkway zone that must remain unobstructed by goods placed on the footway at all times.
- Specifying an appropriate kerbside zone (0.4-0.6m) that must remain unobstructed by goods placed on the footway in order to allow for access to and from vehicles parked on the adjoining road.
- Requiring appropriate clearances to street furniture & infrastructure.
- Confirming that public liability insurance must be in place and providing options to obtain this insurance.
- Proposing means to ensure that approved items are easily identifiable by regulatory officers in Council.
- Detailing appropriate procedures that will be implemented to ensure compliance.

Two other pieces of legislation regulate activities within the footpath area, The Roads Act 1993 and The Local Government Act 1993. The policy will effectively prescribe the circumstances in which Council is prepared to issue the necessary approvals under those Acts.

What does Council need to do to commence the process of amending the LEP?

Council needs to resolve to prepare a planning proposal to include the display of A-frame signage and goods on footpaths as a category of exempt development, in order to proceed with an amendment of BLEP 2010.

Should Council resolve to prepare a planning proposal, Council Officers will prepare an explanation of, and justification for the proposed instrument under the provisions of Sections 55(1) and (2) of the Environmental Planning and Assessment Act 1979 (the Act). This requires Council to address the following key matters.

- a statement of the objectives or intended outcomes of the proposed instrument,
- an explanation of the provisions that are to be included in the proposed instrument,
- the justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117),
- if maps are to be adopted by the proposed instrument, such as maps for proposed land use zones; heritage areas; flood prone land—a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument,
- details of the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.



Once completed, the planning proposal will be forwarded to the Department of Planning and Environment (DP&E) under the provisions of Section 56 of the Act, requesting that the Minister issue Council with a "Gateway determination". The issuing of a Gateway determination by the DP&E would recognise that there are no fundamental policy objections to the planning proposal, confirm any necessary consultation that is required and allow Council to place the planning proposal on public exhibition. Should the DP&E have concerns with the planning proposal then they would not issue a Gateway determination and Council would be required to address those concerns in order for the proposal to proceed. Conversations to date with the DP&E suggest that there will be no fundamental problem with the planning proposal given that similar LEP amendments have been approved in other local government areas.

In addition to Council resolving to prepare a planning proposal, it is also necessary for Council to indicate its intention (or otherwise) to exercise delegations for parts of the plan making process that have been issued to the General Manager. By opting to exercise these delegations, Council removes an additional external referral from the plan making process and this leads to improved timeframes for the eventual making of the plan.

Council resolved as follows at the Ordinary Meeting of Council 28 November 2012 regarding the Delegation of Ministerial Functions to Council.

"RESOLVED (Cr Scott/Cr Manning)

That Council advise the Minister for Planning & Infrastructure that it formally accepts the proposed delegations for plan making under the provisions of Section 59 of the EP & A Act 1979.

That, pursuant to Section 381(a) of the Local Government Act 1993, Council approve the delegation of plan making functions to the General Manager.

That Council advise the Minister for Planning & Infrastructure that the nominated Council Officer for the exercising of the proposed delegations for plan making is Liz Jeremy, General Manager."

It is recommended, given the locally specific and minor nature of this proposed amendment, that Council inform the Department of its intention to use its delegation to make the Plan.

Why are we considering an amendment of the LEP before seeing the draft Policy?

As previously mentioned, the first step in the process is Council resolving to prepare a planning proposal. At this stage, Council only needs to be satisfied as to the broad intent of the proposed amendment to the LEP, which is to simplify and improve the regulatory process for placement of goods on the footpath by business operators.

As the draft Policy will in fact contain the key detail of the new approval regime, it would not be intended to exhibit the planning proposal until such time as Council has also considered the policy in detail and resolved to place the draft Policy on exhibition.

Therefore, the benefits of Council resolving to proceed with the planning proposal and obtain a gateway determination are;

- That work can continue on policy development while Council awaits the receipt of a gateway determination from the DP&E.



- That when the policy is ready to exhibit Council will already have completed the requisite preliminary steps to allow for public exhibition of the draft LEP.

It should be noted that should Council not wish to proceed with the draft Policy, it is not compelled to proceed with the amendment of the LEP.

What is the proposed timeframe for commencement of the new approval regime for footpath activities?

Council's Operational Plan for 2015-16 requires the following activity to commence in Q2.

"Design an implementation plan for roll out of new footpath activities policy to ensure commencement with 2016/17 financial year."

An implementation plan will be presented for discussion when the draft Policy is reported to Council in Q2.

What will happen to business operators who have existing development consents and/or approvals under the Roads Act 1993 to use footpath areas?

Transitional arrangements for existing approvals will be documented in the implementation plan to be presented to Council with the draft Policy.

BUDGET IMPLICATIONS

In general terms, the removal of the requirement to obtain development consent will result in a reduction in fees collected from Development Applications. Notwithstanding this, any proposal to place goods on the footpath will still require the issuing of approvals under the Roads Act 1993 and the Local Government Act 1993. Council will have the opportunity to set appropriate fees for these applications when setting the 2016-17 Fees and Charges, and a draft fee structure will be presented for discussion when the draft Policy is reported to Council.

The introduction of a single consent regime is not only geared towards reducing the complexity of the approval process for applicants, but also towards simplifying compliance for the regulatory officers of Council.

Greater levels of voluntary compliance by business owners, and simplified compliance procedures for the regulatory officers of Council, are both likely to result in a larger number of businesses applying for the relevant approvals. This is not expected to result in any overall reduction in application fees, when compared to the current situation.

SUSTAINABILITY ASSESSMENT

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.

ENGAGEMENT

The NSW Government publication "A guide to preparing local environmental plans" categorises planning proposals into "*low impact proposals*" or "*All other planning proposals*" for the purpose of determining the level of community consultation that should be undertaken. A low impact proposal is described as follows.

A low impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination, is:

- *Consistent with the pattern of surrounding land use zones and/or land uses*
- *Consistent with the strategic planning framework*
- *Presents no issues with regard to infrastructure servicing*
- *Does not reclassify public land*

It is submitted that the proposed Planning Proposal meets the criteria for a low impact planning proposal, for which a minimum exhibition period of 14 days is specified.

Notwithstanding this, the Bellingen Shire Council Community Engagement Strategy was adopted by Council at its Meeting 22 February 2012. This strategy is designed to outline the approach Bellingen Shire takes towards engaging with our community. Given that it is intended to exhibit the planning proposal concurrently with the draft Policy, once it is prepared, it is recommended that the planning proposal be exhibited for the full length of time that the draft Policy is exhibited.

An engagement strategy for exhibition of the Policy will be presented when this matter is reported to Council.

ATTACHMENTS

Nil

RESILIENT ECONOMY

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FILE/INDEX: PLANNING PROPOSAL 10 (LAND USE & PLANNING)
PRESENTED BY: DANIEL BENNETT, SENIOR STRATEGIC PLANNER

001/15

RESOLVED (Cr Manning/Cr Scott)

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UNANIMOUS

