

SECTION 59 PLANNING REPORT

Planning Proposal Details:

PP_2018_BALLI_002_00

Planning proposal to include low-scale roadside stalls as exempt development.

Land to which planning proposal applies (the site):

The planning proposal applies to all land in Ballina Shire subject to the following zones under the terms of the *Ballina Local Environmental Plan 2012*:

- RU1 Primary Production zone; and
- RU2 Rural Landscape zone.

Planning Proposal Summary:

The planning proposal seeks to amend the Ballina Local Environmental Plan to identify roadside stalls in certain circumstances as Exempt Development in Schedule 2.

Date of Gateway Determination:

16 March 2018 (Required completion within 6 months from the week following the date of the Gateway determination or by 16 September 2018).

1.0 SUMMARY

At its Ordinary Meeting held on 14 December 2017 the Council resolved to prepare a planning proposal to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire [Minute No. 141217/15].

The Council at its Ordinary Meeting held on 26 October 2017 resolved to finalise this planning proposal [Minute No. 240518/7]. The resolution is reproduced below:

1. That Council endorses the finalisation of planning proposal BSCPP 17/013 *Roadside Stalls to enable certain roadside stalls as exempt development under the Ballina Local Environmental Plan 2012 subject to the following amendment:*
 - Remove land located adjacent to classified roads from eligibility for exempt development for the purpose of low impact roadside stalls.
2. That Council approves the public notice of a new fee (being a s138 Roads Act approval application fee of \$80 for 2018/19) in accordance with Section 610F of the Local Government Act and the inclusion of the fee in Council's Fees and Charges document for the 2018/19 financial year.
3. That Council include a clause in any approvals that it reserves the right to revoke the approval.
4. On approval, the applicant is provided with a fact sheet on their duties and responsibilities regarding the safe operation of the roadside stall.

2.0 GATEWAY DETERMINATION

The Department of Planning and Environment issued a Gateway determination on 16 March 2018 which permitted the planning proposal to proceed subject to conditions.

Matters of relevance contained within the Gateway determination and the accompanying letter from the Department of Planning and Environment are summarised below:

- The planning proposal's inconsistency with Section 9.1 Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast was determined to be justified in accordance with the terms of the Direction and no further approval was required.
- The agreement of the Secretary may be required to comply with the requirements of Section 9.1 Direction 4.4 Planning for Bushfire Protection.
- Plan making powers are delegated to Council. An authorisation for Council to exercise delegation accompanied the Gateway determination.
- The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the week following the date of the Gateway determination.
- Prior to community consultation the planning proposal is to be updated to ensure consistency with the standard instrument definition and clarify that only one roadside stall is permitted per landholding.
- The planning proposal must be publically exhibited for a minimum period of 14 days.
- Consultation is required with the following public authorities under section 56(2)(d) of the Act:
 - NSW Rural Fire Service; and
 - NSW Roads and Maritime Services.

By letter dated 13 June 2018, the Director of Northern Regions Planning Services, Department of Planning and Environment, advised Council that as a delegate of the Secretary, he has agreed that the proposal's inconsistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is justified in accordance with the terms of the Direction.

It was also advised that Council may proceed to finalise the planning proposal once it receives a Parliamentary Counsel (PC) opinion confirming that the LEP may be legally made. A PC opinion indicating that the proposed LEP amendment may be legally made was received on 9 July 2018.

3.0 COMMUNITY CONSULTATION

The planning proposal was publicly notified from 4 April 2018 until 4 May 2018. The public notification and exhibition process consisted of an advertisement in the Ballina Shire Advocate and copies of the planning proposal being made available at Council's Customer Service Centre, shire libraries and on Council's website.

At the end of the exhibition period one submission was received from a landholder. A summary of the issues raised in the submission, together with comments appear in the table below.

Issue	Submission	Staff response
Fees and charges	<p>Calls for the waiver of all fees on the basis that:</p> <ul style="list-style-type: none"> Financial returns to stall owners are low, thus making fees a significant deterrent; and Roadside stalls make a positive contribution to the community through supporting rural tourism and reducing food waste. 	<p>The proposed application fee set down for small scale roadside stalls (s.138 <i>Roads Act</i> approvals) of \$165 was based on partly offsetting staff costs associated with assessment and site inspections.</p> <p>Introduction of this fee is recommended, however, the setting of fees in this instance is at the discretion of the elected Council.</p>
Provision of gravel shoulder	<p>Objects to the requirement that an all-weather gravel shoulder be provided at the applicant's cost.</p> <p>The submission argues that road users should be responsible for ensuring road conditions are safe when using the road and that this requirement imposes an unreasonable impost on landowners.</p>	<p>Whilst road users are expected to take reasonable care when using the road, Council should avoid encouraging road users to act in an unsafe manner.</p> <p>The requirement for an all-weather gravel surface is included to ensure that patrons of roadside stalls can enter and exit the roadside in a safe manner.</p> <p>On this basis, removing this requirement was not supported.</p>
Insurance	<p>Notes that the Adelaide Hills Council provides insurance coverage for roadside stalls and calls on Ballina Shire Council to do the same.</p>	<p>It is envisaged that having appropriate public liability insurance in place will be a condition of Council granting of <i>Roads Act</i> approvals for roadside stalls.</p> <p>Council's insurers have been contacted regarding whether such activities could be covered by Council's insurance arrangements.</p> <p>Whilst it appears there may be some scope for such an arrangement that could apply to a range of similar activities impacting public areas, the scope of application, terms and administrative arrangements for such an approach requires more detailed consideration.</p> <p>At this time it is recommended that the provision of public liability insurance be the responsibility of the owner of the roadside stall as originally envisaged.</p>

Issue	Submission	Staff response
Roadside stalls in urban areas	Calls for Council to also exempt roadside stalls located in urban areas from requiring development consent.	The proposed approach to exempting rural roadside stalls from requiring development consent does not easily translate to the urban environment due to the greater complexity of structures, road conditions and other land uses within urban areas. As a consequence, the application of the proposed exempt development criteria to urban zones was not supported.

Council considered the above submission at its meeting on 25 May 2018, however no changes were made to the planning proposal as a result of the submission. A change was made, however, with respect to Council's setting of its fees and charges in relation to the matter (with respect to s.138 Roads Act approvals).

4.0 VIEWS OF PUBLIC AUTHORITIES

The Gateway determination dated 16 March 2018 required consultation to be undertaken with the NSW Rural Fire Service and NSW Roads and Maritime Services.

The table below provides a summary of the issues raised in agency submissions together with comments. It is noted that there are no outstanding agency matters that require resolution at the planning proposal / LEP amendment stage.

Name	Issues Raised	Staff Comments
NSW Rural Fire Service	Raise no objection to the planning proposal proceeding.	Noted.
NSW Roads and Maritime Services	1. It is unclear if Council has considered the requirements of Section 139A-F of the Roads Act or the requirements of the Street Vending Guidelines referred to under Section 139F.	The requirements of the Street Vending Guidelines will be applied with respect to Roads Act approvals to be obtained in association with exempt roadside stalls.
	2. Street Vending is generally not supported in high speed rural locations (80km/h or higher) unless safety and efficiency is not compromised.	The need for landholders to obtain appropriate Roads Act approvals as a condition of meeting the exempt development criteria will ensure that appropriate road safety standards are met.
	3. Roads and Maritime is unlikely to support street vending as exempt development on classified roads in high speed rural environments.	The planning proposal has been amended to remove the application of exempt roadside stalls on land adjacent to classified roads.

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

The Gateway determination dated 16 March 2018 noted that inconsistencies with Section 9.1 Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast was determined to be justified in accordance with the terms of the Direction and no further approval was required.

In addition, the Section 9.1 Direction 4.4 *Planning for Bushfire Protection* was noted as needing the agreement of the Secretary prior to the plan being made.

By correspondence dated 13 June 2018, Jeremy Gray, Director of Northern Regions Planning Services, as a delegate for the Secretary Department of Planning and Environment, has advised that he has agreed that the proposal's inconsistency with Section 9.1 Direction 4.4 *Planning for Bushfire Protection* is justified in accordance with the terms of the Direction and that Council can now proceed to finalise the proposal once it receives a Parliamentary Counsel opinion confirming that the LEP can legally be made.

6.0 PARLIAMENTARY COUNSEL OPINION

The final PCO opinion was received on 9 July 2018. It is the opinion of PCO that the draft environmental planning instrument may legally be made.

7.0 OTHER RELEVANT MATTERS

There are no other matters considered relevant to this planning proposal.

8.0 MAPPING

The subject amendment does not include any map changes.

9.0 RECOMMENDATION

Having regard to the attached PCO Opinion which relates to draft Ballina LEP Amendment No. 35 it is recommended that the delegate sign the LEP.



Simon Scott
Strategic Planner

Noted



11/7/2018