

Planning Services

Gateway Determination Report

LGA	Ballina
PPA	Ballina Shire Council
NAME	Roadside stalls as exempt development (Nil dwellings, nil jobs)
NUMBER	PP_2018_BALLI_002_00
LEP TO BE AMENDED	Ballina LEP 2012
ADDRESS	All land in the RU1 Primary Production and RU1 Rural Landscape zones in Ballina LEP 2012
DESCRIPTION	Various properties
RECEIVED	23 February 2018
FILE NO.	IRF18/1017
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The proposal seeks to make small scale roadside stalls exempt development subject to meeting certain standards, by listing them in Schedule 2 of Ballina LEP 2012.

Site description

The proposal will apply to all land in the Ballina local government area (LGA) which is zoned RU1 Primary Production or RU2 Rural Landscape.

Existing planning controls

The Ballina LEP 2012 currently lists roadside stalls as permitted with consent in the RU1 and RU2 zones. Roadside stalls are also permitted with consent in the R2, R3, B2, B3, B4 and IN1 zones. Clause 5.4 of the Ballina LEP 2012 requires that roadside stalls not exceed 8m² in size.

Roadside stalls are not listed as exempt development in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the 'Codes SEPP').

Summary of recommendation

It is recommended that the planning proposal proceed with conditions for the following reasons:

1. the proposal will simplify the approval process for the establishment of small scale roadside stalls in rural areas of Ballina LGA. This will benefit rural landowners who sell produce from their land;
2. the establishment of a roadside stall will still require an approval under the Roads Act 1993 where work in the road reserve is required; and
3. the proposal is not inconsistent with the strategic planning framework for Ballina LGA.

PROPOSAL

Objectives or intended outcomes

The statement of objectives adequately describes the intention of the planning proposal. The proposal seeks to enable small scale roadside stalls in rural areas of Ballina LGA as exempt development subject to obtaining approval under the Roads Act 1993.

Explanation of provisions

The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The proposal seeks to amend the LEP by including provisions in Schedule 2 Exempt Development of Ballina LEP 2012 which will make roadside stalls exempt development if they meet certain development standards.

Mapping

The proposed amendment to the LEP does not require the preparation or amendment of any maps.

NEED FOR THE PLANNING PROPOSAL

The proposal is not the result of any finalised strategic study or report. The proposal is the result of a general review of the provisions of the Ballina LEP 2012 that relate to roadside stalls. Road side stalls have also been identified in Councils draft economic development strategy.

Council identified that its current provisions, which require development consent for roadside stalls, may be overly onerous for low impact roadside stalls on land where safe roadside locations exist. Council therefore resolved to allow some roadside stalls as exempt development.

Roadside stalls will be exempt development if they satisfy the following standards:

1. must be located on land zoned RU1 Primary Production or RU2 Rural Landscape;
2. must be located wholly on private land;
3. must only be for the sale of primary produce;
4. must not exceed an area of 4m² in relation to the area from which produce is sold; and
5. must have a relevant approval for any necessary works in the road reserve under the provisions of the Roads Act 1993

Simplifying the approval process for low impact roadside stalls will have the following benefits:

1. it will facilitate alternative means for rural landholders to sell on-farm produce in a low impact manner and thereby reduce food waste; and
2. it will support rural food tourism in the region by enhancing visitor experiences associated with tourist drives.

The proposal is the best means of achieving the intended outcomes of the planning proposal as it will specify development standards for exempt roadside stalls which are appropriate for the Ballina LGA.

Council has also identified standards which will be necessary to provide suitable vehicular access to the roadside stall while maintaining the safety and efficiency of the road network. Council intends to make this information available as an information sheet for proponents wishing to establish a roadside stall. This information will also guide the proponent in the requirements for providing appropriate vehicular access and the standard of work that will be required under any Roads Act approval. This approach is considered to be appropriate.

It is noted that there is an inconsistency between the definition of *Roadside stalls* within the Standard Instrument and the proposal clause. This inconsistency relates to the ability to sell handmade goods as well as produce, it is recommended Council be asked to consider this issue prior to exhibition.

It is also noted that there is no limitation on the number of roadside stalls per property. It is also recommended this issue be considered prior to exhibition. A condition has been drafted to require this consideration.

STRATEGIC ASSESSMENT

State

NSW State Priorities

The proposal is not inconsistent with any of the eighteen State priorities being actioned by the State Government.

Regional / District

North Coast Regional Plan 2036

The proposal is consistent with the directions and actions of the North Coast Regional Plan 2036 (NCRP). The proposal contributes to the direction to grow agribusiness across the North Coast region by providing an alternative outlet for the sale of on-farm produce and supporting agricultural / food tourism.

The low impact nature of roadside stalls which satisfy the exempt development standards will ensure that they do not create land use conflict issues with other nearby rural land uses.

Local

The proposal is not inconsistent with Ballina Council's Community Strategic Plan 2017-2027. The proposal does not propose the release of land or significant intensification of development on land and therefore is not inconsistent with the Ballina Shire Growth Management Strategy 2012.

Section 9.1 Ministerial Directions

The following Section 9.1 Directions are relevant to the planning proposal: 1.2 Rural Zones, 1.5 Rural Land, 2.1 Environment Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.2 Caravan Parks and Manufactured Homes Estates, 3.3 Home Occupations, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.3 Farmland of State or Regional Significance on the NSW Far North Coast, 5.4 Commercial and Retail Development along the Pacific Highway, North Coast, 5.10 Implementation of Regional Plans, 6.1 Approval and Referral Requirements, 6.2 Reserving Land for Public Purposes, 6.3 Site Specific Provisions.

Of the above directions, the proposal is considered to be inconsistent with directions 4.4 and 5.4.

The proposal does not permit a significant intensification of development potential on land subject to acid sulfate soils or flooding (direction 4.1 and 4.3) as it only permits small scale roadside stalls as exempt development. Larger scale roadside stalls are already permitted with development consent on these lands.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. The proposal will result in making roadside stalls exempt development on land that is bush fire prone. The Direction requires the PPA to consult with the Commissioner of the NSW Rural Fire Service after a Gateway determination has been issued and prior to public exhibition. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast is relevant to the planning proposal. The direction provides that a proposal that permits new retail development on out of town sections of the highway must consider the impact on safety and efficiency of the highway. Roadside Stalls are a form of retail premises in the Standard Instrument LEP.

The proposal seeks to enable small scale roadside stalls as exempt development in the RU1 and RU2 zones in the LGA, which may be located along the Pacific Highway. The proposed development standards for roadside stalls to be exempt development require the proponent to obtain an approval under the Roads Act 1993 where necessary. The requirement for an approval under the Roads Act, and the limited scale of the stalls, will ensure that impacts on the safety and efficiency of the Pacific Highway are considered even though development approval will not be required. The inconsistency of the proposal with the direction is therefore considered to be of minor significance and justified in accordance with the terms of the direction.

The proposal is otherwise consistent with S117 Directions.

State environmental planning policies

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the 'Codes SEPP'). The proposal is not inconsistent with the Codes SEPP. The Codes SEPP does not list roadside stalls as a type of exempt development and therefore there is no inconsistency between the Codes SEPP and the proposed exempt provisions for roadside stalls in the Ballina LEP 2012.

SITE-SPECIFIC ASSESSMENT

Social

The proposal is not expected to have significant adverse social impacts. The proposed listing of low impact roadside stalls as exempt development will provide a small social benefit for rural communities by providing an alternative outlet for land owners to sell produce and thereby promote agricultural pursuits within the community.

Environmental

The proposal is not expected to have any significant environmental impacts. The scale of the roadside stalls which are proposed to be listed as exempt development is small and they are likely to be erected on land which is already used for agricultural purposes.

Economic

The proposal will have a small positive economic impact by providing some land owners with an alternative outlet for the sale of produce. This is likely to contribute to the food tourism sector in Ballina LGA and generate associated multiplier impacts.

Infrastructure

The proposal does not require the provision of significant infrastructure. Some work may be required in road reserves to ensure safe and efficient vehicle access to the roadside stalls. This will be funded by the land owner and regulated through approvals under the Roads Act 1993.

CONSULTATION

Community

The planning proposal does not nominate a community consultation period. It is considered that the proposal is a low impact proposal as it only seeks to enable low impact roadside stalls as exempt development. It is considered that a 14 day community consultation period will be adequate. This does not prevent Council from conducting a longer period of community consultation.

Agencies

The planning proposal does not indicate whether consultation with State agencies is proposed. It is considered that the following agencies should be consulted on the proposal:

- (a) NSW Rural Fire Service; and
- (b) NSW Roads and Maritime Services.

TIME FRAME

The planning proposal includes a timeline for completion of the LEP amendment in August 2018. Given the routine nature of this planning proposal it is considered that the proposed 6 month time frame is appropriate.

LOCAL PLAN-MAKING AUTHORITY

Council has requested that an authorisation be issued to enable it to exercise its delegation to make the LEP amendment. It is considered that an authorisation should be issued in this instance as the proposal to list roadside stalls as exempt development is considered to be a local matter.

CONCLUSION

It is recommended that the planning proposal proceed with conditions for the following reasons:

1. the proposal will simplify the approval process for the establishment of roadside stalls in rural areas of Ballina LGA. This will benefit rural landowners who sell produce they produce on their land;
2. the establishment of a roadside stall will still require an approval under the Roads Act 1993 where work in the road reserve is required, ensuring the safety and efficiency of the road network is maintained; and
3. the proposal is not inconsistent with the strategic planning framework for Ballina LGA.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that the inconsistency with section 9.1 Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast is justified in accordance with the terms of the direction; and
2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved until consultation with the NSW Rural Fire Service has been undertaken.

It is recommended that the delegate of the Minister for Planning, determine that the planning proposal should proceed subject to the following conditions:

1. Consideration should be given to consistency in the definitions of roadside stalls within the standard instrument and the local clause, particularly relating to handcrafted goods and primary produce; and to the number of stalls which may be permitted per holding.
2. The planning proposal should be made available for community consultation for a minimum of 14 days.
3. Consultation is required with the following public authorities:
 - (a) NSW Rural Fire Service; and
 - (b) NSW Roads and Maritime Services.
4. The time frame for completing the LEP is to be 6 months from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be authorised to be the local plan-making authority to make this plan.



8/3/18

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