



Planning Proposal 17/013

» Roadside Stalls

February 2018 (V1. Gateway) 17/103498

ballina
shire council



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Contents

1.	Introduction.....	4
1.1	Summary of Planning Proposal	4
1.2	Land to Which the Planning Proposal Applies	4
1.3	Council Resolutions.....	4
1.4	Gateway Determination	5
2.	Objectives & Intended Outcomes.....	5
3.	Explanation of Provisions.....	5
3.1	The Proposal.....	5
3.2	Mapping Overview.....	7
4.	Justification	7
4.1	Section A – Need for the Planning Proposal.....	7
4.2	Section B – Relationship to Strategic Planning Framework	7
4.3	Section C – Environmental, Social and Economic Impact.....	8
4.4	Section D – State and Commonwealth Interests.....	8
5.	Mapping.....	8
6.	Community Consultation	9
7.	Timeline.....	9
	Appendices	10
	Appendix 1 – Gateway Determination	11
	Appendix 2 – Maps.....	12
	Appendix 3 – Section 117 Direction Checklist	13
	Appendix 4 – Reports and Resolutions.....	16

1. Introduction

1.1 Summary of Planning Proposal

This planning proposal seeks to provide for small scale roadside stalls as exempt development, subject to proponents obtaining an approval under section 138 of the Roads Act 1993.

The planning proposal seeks to include a provision within Schedule 2 of the Ballina Local Environmental Plan 2012 to identify roadside stalls as exempt development subject to a number of criteria. The criteria proposed relate to land use zoning, location, activity, size and safety aspects of a proposed roadside stall. It is anticipated that the provision will reflect the following:

Roadside stalls

Roadside stalls to which this clause applies must comply with the following:

- a. Be located on land zoned RU1 Primary Production zone or RU2 Rural Landscape zone;*
- b. Must be located wholly on private land;*
- c. Must be only for the sale of primary produce;*
- d. Must not exceed an area of 4m² in relation to the area from which produce is sold; and*
- e. Must have a relevant approval for works within the road reserve, under the provisions of section 138 of the Roads Act 1993 with respect to the roadside stall.*

The required approval for works within the road reserve (s138 of the Roads Act 1993) will consider road safety criteria and works. Further information regarding these safety considerations is provided in Section 3.1 of this planning proposal.

This planning proposal is to apply to all land to which the Ballina Local Environmental Plan 2012 applies.

1.2 Council Resolutions

Council considered this planning proposal at its Ordinary Meeting held on 14 December 2017. The Council resolved as follows [Minute No. 141217/15]:

- 1. That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.*
- 2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.*
- 3. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*

4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
5. *That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.*

A copy of the report considered by the Council is contained in Appendix 4.

1.3 Gateway Determination

To be completed following the Gateway determination. Include in Appendix 1.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to:

- Provide for low impact roadside stalls, located in rural parts of Ballina Shire, as exempt development subject to obtaining approval under Section 138 of the Roads Act 1993.

The intended outcomes of this planning proposal are to:

- Facilitate alternative means for rural landholders to sell on-farm produce in a low impact manner and reduce food waste.
- Support rural food tourism in the region by enhancing visitor experiences associated with tourist drives.
- Provide a balanced regulatory approvals process that does not unnecessarily burden landholders with regulatory requirements, whilst ensuring that road safety is not compromised.

3. Explanation of Provisions

3.1 The Proposal

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

It is anticipated that the exempt development outcome sought will be achieved through the following provision or a similar provision.

Roadside stalls

Roadside stalls to which this clause applies must comply with the following:

- a. Be located on land zoned RU1 Primary Production zone or RU2 Rural Landscape zone;*
- b. Must be located wholly on private land;*
- c. Must be only for the sale of primary produce;*
- d. Must not exceed an area of 4m² in relation to the area from which produce is sold; and*
- e. Must have a relevant approval for works within the road reserve, under the provisions of section 138 of the Roads Act 1993 with respect to the roadside stall.*

This planning proposal does not propose any map changes.

As part of addressing item (e) above, Council intends to give consideration to the following when assessing the granting of s138 approvals for small scale roadside stalls:

There must be adequate space within the road verge to allow parking for at least two vehicles and must:

- i. be sufficient to enable vehicles to enter and exit the roadway in a forward direction;*
- ii. be of consistent vertical alignment and grade with the roadway;*
- iii. have an all-weather gravel sealed shoulder with sufficient width to allow vehicle occupants to enter and exit vehicles in a safe manner, being a minimum area of 3.5m x 15m; and*
- iv. have adequate unimpeded minimum sight distances in both directions (in accordance with AS2890.1.2004) as outlined in the following table:*

<i>Speed zone</i>	<i>Minimum sight distance</i>
<i>60km/hr</i>	<i>65m</i>
<i>80km/hr</i>	<i>105m</i>
<i>100km/hr</i>	<i>160m</i>

The above road safety considerations will be incorporated into an information sheet for the information of landholders and for the guidance of staff.

Property owners who wish to provide a roadside stall which exceeds or does not satisfy the above criteria may lodge a development application and have this considered in accordance with the relevant LEP and DCP provisions for roadside stalls.

3.2 Mapping Overview

The proposal does not involve changes to the LEP map sheets.

4. Justification

4.1 Section A – Need for the Planning Proposal

Q1 Is the planning proposal a result of any strategic study or report?

No. The amendments are a result of a general review of the function and operation of the LEP with respect to roadside stalls.

Q2 Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

An LEP amendment is the best way of achieving the proposed outcomes as the proposal directly relates to exempt development criteria.

4.2 Section B – Relationship to Strategic Planning Framework

Q3 Is the planning proposal consistent with the objectives and actions of the applicable regional, sub-regional or district plan or strategy (including any exhibited draft plans or strategies)?

The planning proposal is generally consistent with the objectives and actions set out in the North Coast Regional Plan as they seek to ensure efficient operation of the Ballina LEP 2012.

The planning proposal supports the objectives of the North Coast Regional Plan that relate to supporting regional tourism (Direction 8) and the viability of agriculture (Directions 11 & 12).

Q4 Is the planning proposal consistent with a council's local strategy or other local strategic plan?

The planning proposal is consistent with the elements and specified outcomes contained within Council's Community Strategic Plan 2017 – 2027 (CSP) as its objectives align with the principles of good governance and ensuring that planning instruments are operating optimally. The planning proposal also supports the CSP objectives relating to attracting new businesses and visitors and improving liveability in the shire.

Q5 Is the planning proposal consistent with applicable State Environmental Planning Policies?

No inconsistencies with applicable State Environmental Planning Policies (SEPPs) have been identified. The amendments constitute minor changes to the exempt development schedule and as such, a detailed assessment relative to each SEPP is not included in this planning proposal.

Q6 Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

A Section 117 Direction checklist for the planning proposal is provided at Appendix 3.

4.3 Section C – Environmental, Social and Economic Impact

Q7 Is there any likelihood that critical habitat or threatened species, population or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. The amendments proposed are of a minor nature.

Q8 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. The amendments proposed are of a minor nature.

Q9 Has the planning proposal adequately addressed any social and economic effects?

There are no significant social or economic outcomes likely to result from the planning proposal as the amendments are of a minor nature.

An overall benefit associated with efficiency in the implementation of the plan is expected.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

The amendments proposed are of a minor nature and do not have implications for the provision of public infrastructure. The proposal provides for appropriate protections for road safety and infrastructure maintenance.

Q11 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

Consultation will be undertaken with relevant agencies as required by the Gateway determination during the public exhibition stage of the LEP amendment.

5. Mapping

This planning proposal does not involve the amendment of any LEP maps.

6. Community Consultation

This proposal will be exhibited in accordance with the Gateway determination and the terms of the *Environmental Planning and Assessment Act 1979*.

7. Timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan Making Step	Estimated Completion (Before)
Gateway Determination	March 2018
Government Agency Consultation	April 2018
Public Exhibition Period	May 2018
Public Hearing	N/A
Submissions Assessment	June 2018
RPA Assessment of Planning Proposal and Exhibition Outcomes	June 2018
Submission of Endorsed LEP to DP&I for Finalisation	N/A
RPA Decision to Make the LEP Amendment (if delegated)	July 2018
Forwarding of LEP Amendment to DP&I for Notification (if delegated)	August 2018

Council is seeking delegation of planning functions for the processing of this LEP amendment.

Appendices

Appendix 1 – Gateway Determination

To be inserted following Gateway determination

Appendix 2 – Maps

This planning proposal does not involve the amendment of any LEP maps.

Appendix 3 – Section 117 Direction Checklist

Section 117 Direction Checklist (Updated Directions Dated 15 May 2017)	
Planning Proposal – Roadside Stalls	
Direction No.	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Does not apply to planning proposal.
1.2 Rural Zones	Consistent. The planning proposal does not seek to rezone land or introduce provisions that would increase the permissible density of the land.
1.3 Mining, Petroleum Production and Extractive Industries	Does not apply to planning proposal.
1.4 Oyster Aquaculture	Does not apply to planning proposal.
1.5 Rural Land	Consistent. The planning proposal is consistent with the Rural Planning Principles of State Environmental Planning Policy (Rural Lands) 2008.
2. Environment and Heritage	
2.1 Environment Protection Zones	Justifiably inconsistent The planning proposal does not adversely impact on environmentally sensitive areas and is of minor significance.
2.2 Coastal Protection	Consistent. Some parts of land affected by the planning proposal are located within the coastal zone. The proposal does not create significant inconsistency with the applicable coastal planning documents.
2.3 Heritage Conservation	Consistent. Ballina LEP 2012 contains provisions (clause 5.10 and Schedule 5) which are consistent with this direction.
2.4 Recreation Vehicle Areas	Consistent. The planning proposal does not involve the development of land for the purpose of a recreation vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Does not apply to planning proposal.
3. Housing, Infrastructure and Urban Development	
3.1 Residential Zones	Does not apply to planning proposal.
3.2 Caravan Parks and Manufactured Home Estates	Consistent. The planning proposal does not relate to planning for caravan parks or manufactured home estates.
3.3 Home Occupations	Consistent. The proposal will not affect any existing permissibility or exemptions for home occupations.
3.4 Integrating Land Use and Transport	Does not apply to planning proposal.
3.5 Development Near Licensed Aerodromes	Does not apply to planning proposal.

Section 117 Direction Checklist (Updated Directions Dated 15 May 2017)	
Planning Proposal – Roadside Stalls	
Direction No.	Compliance of Planning Proposal
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Justifiably inconsistent. The planning proposal may affect land identified as being subject to the presence of acid sulfate soils. However the enabling of roadside stalls is of minor significance in this regard.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Does not apply to planning proposal.
4.4 Planning for Bushfire Protection	Justifiably inconsistent. Council will consult with the NSW Rural Fire Service in relation to the proposed LEP amendment.
5. Regional Planning	
5.1 Implementation of Regional Strategies	Consistent. The planning proposal is generally consistent with the North Coast Regional Plan 2036.
5.2 Sydney Drinking Water Catchments	Does not apply to Ballina Shire.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Consistent.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
5.5 Development in the vicinity of Ellalong Paxton and Millfield (Cessnock LGA).	Revoked.
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Revoked.
5.8 Second Sydney Airport: Badgerys Creek	Does not apply to Ballina Shire.
5.9 North West Rail Link Corridor Strategy	Does not apply to Ballina Shire.
5.10 Implementation of Regional Plans	Consistent. The planning proposal is generally consistent with the North Coast Regional Plan 2036.
6. Local Plan Making	
6.1 Approval and Referral Requirements	Consistent. The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.
6.2 Reserving Land for Public Purposes	Consistent. The planning proposal does not create, alter or reduce existing zonings or reservations of land reserved for public purposes that are not in Council ownership.

Section 117 Direction Checklist (Updated Directions Dated 15 May 2017) Planning Proposal – Roadside Stalls	
Direction No.	Compliance of Planning Proposal
6.3 Site Specific Provisions	Consistent. The planning proposal does not introduce any site specific provisions.
7. Metropolitan Planning	
7.1 Implementation of the Metropolitan Strategy	Does not apply to Ballina Shire.
7.2 Implementation of Greater Macarthur Land Release Investigation	Does not apply to Ballina Shire.
7.3 Parramatta Road Corridor Urban Transformation Strategy	Does not apply to Ballina Shire.
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.5 Implementation of Greater Parramatta Priority growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Does not apply to Ballina Shire.

Appendix 4 – Reports and Resolutions

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
ON 14/12/17 AT 9.00 AM**

Cr Eoin Johnston declared an interest in Item 9.5 and left the meeting at 11:53 am.

9.5 Economic Development - Roadside Stalls Policy

A Motion was moved by Cr Nathan Willis and seconded by Cr Sharon Cadwallader

1. That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

A Motion was moved by Cr Nathan Willis

That the Motion be put to the vote.

The Motion was LOST.

FOR VOTE - Cr Sharon Parry, Cr Nathan Willis, Cr Keith Williams and Cr Sharon Cadwallader

AGAINST VOTE - Cr David Wright, Cr Phillip Meehan, Cr Jeff Johnson, Cr Stephen McCarthy and Cr Ben Smith

ABSENT. DID NOT VOTE - Cr Eoin Johnston

The Motion was CARRIED.

141217/14 RESOLVED

(Cr Nathan Willis/Cr Sharon Cadwallader)

1. That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
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2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
 3. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
 4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
 5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Eoin Johnston

Paul Hickey, General Manager, Cr Jeff Johnson and Cr Sharon Cadwallader declared an interest in Item 9.6 and left the meeting at 12:03 pm.

Cr Eoin Johnston returned to the meeting at 12:03 pm.

9.5 Economic Development - Roadside Stalls Policy

9.5 Economic Development - Roadside Stalls Policy

Delivery Program Strategic Planning

Objective To outline the Council's current planning policy relating to roadside stalls and seek direction regarding potential changes to the policy.

Background

Council considered its approach to roadside stalls at the Ordinary Meeting held 27 October 2016 and resolved as follows:

1. *That Council receive a report on options and case studies of how councils have allowed safe roadside street stalls to operate to provide benefits such as the sale of local produce, less miles travelled for the distribution of produce and an enhanced social fabric.*
2. *That this proposal be considered as part of the preparation of Council's Economic Development Strategy.*

This matter has been considered, at a broad policy level, in the context of the draft Economic Development Strategy which was presented to Council at the October 2017 Ordinary meeting.

The draft strategy includes an action to facilitate low scale commercial activities in rural areas such as roadside stalls and rural food tourist activities through changes to the land use planning regime (item C6).

Having regard for the content of the draft Economic Development Strategy, this report seeks to action point one of the Council's October 2016 resolution.

Key Issues

- Rural activity
- Regional food tourism
- Road safety

Information

Existing requirements for roadside stalls

Roadside stalls are defined as follows under the terms of the Ballina Local Environmental Plan 2012:

***roadside stall** means a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.*

Clause 5.4 of the LEP requires that the gross floor area of roadside stalls not exceed eight square metres.

9.5 Economic Development - Roadside Stalls Policy

Under Council's current LEP, roadside stalls are permitted, with consent, on land zoned RU1 Primary Production and RU2 Rural Landscape, meaning a development application is required to be lodged, assessed and determined.

Chapter 7 (Rural Living and Activity) of the Ballina Development Control Plan (DCP) 2012 requires that:

Roadside stalls must be erected within the property boundary with no part of the roadside stall, other than access, to be located in the road or road reserve.

Chapter 2 of the Ballina DCP 2012 requires the provision of four car parking spaces per roadside stall (located on private land).

A key rationale for the current planning requirements in the assessment of roadside stall applications is road safety, with the need for safe sight distances (in both directions) and access being a basic requirement for approval.

In summary, the existing planning provisions require that roadside stalls be located entirely on private land, be limited in area to eight square metres and that four car parking spaces be provided on site. Additionally, engineering requirements may also require the property access to be upgraded, depending on the circumstances. These provisions seek to support road safety within the public road network.

Currently, Council receives very few applications for roadside stalls. Possible reasons include:

- Scarcity of safe roadside stall locations (having regard to sight distances and access)
- Low return on investment for landholders from selling produce at a roadside stall considering the costs associated with compliance with Council's standards and requirements (and payment of DA fee) and
- Low level of compliance activity by Council resulting in illegal operation of roadside stalls.

There may be circumstances where road conditions are suitable for access to be provided within the road reserve (with the stall located on adjacent private land), making Council's current requirements onerous under the circumstances.

To the extent that this may be case, this report considers whether less onerous regulatory arrangements could be introduced to facilitate low risk roadside stalls and improve any existing levels of non-compliance.

In terms of existing compliance activities, Council staff respond to reports of unsafe roadside stalls typically where road users accessing the stall are engaging in dangerous road manoeuvres.

Benefits of roadside stalls

Beyond the obvious financial benefit to rural landholders of having roadside stalls, other benefits (for the shire) include:

9.5 Economic Development - Roadside Stalls Policy

- Tourism – adding value to visitor experiences (particularly tourist drives), and contributing to the local ‘food culture’ experience.
- To local residents – contributing to the local ‘food culture’ and providing interest, activities and connection to place.
- Reduction of waste – providing an alternative outlet for excess (or blemished) fresh produce that might otherwise go to waste.

Alternative approach

Alternatives to the current approach have been considered to provide for small scale roadside stalls with respect to minimising the regulatory requirements whilst maintaining protections for road users.

As part of the review of Council’s approach, the way in which roadside stalls are addressed in other jurisdictions has been examined. The research undertaken did not identify any case studies of particular relevance to the circumstances in Ballina Shire. Given this, the following information concentrates on a planning pathway to reduce the need for development consent for roadside stalls specific to Ballina Shire.

There are few approaches that provide for a suitable balance between the key issues. In this regard, enabling all roadside stalls across the shire without due consideration of potential impacts, particularly in relation to the road network, is not recommended.

An alternative approach that could achieve a reduced regulatory approach for some roadside stall proponents involves the following:

- Council could exempt roadside stalls from requiring development consent in certain circumstances by inclusion of roadside stalls within Schedule 2 of the Ballina Local Environmental Plan 2012.
- The criteria by which roadside stalls would be considered exempt development could include a requirement that an approval for works within the road reserve be obtained (under section 138 of the Roads Act 1993, with Council typically being the roads authority). This would mean Council engineering staff would review the circumstances of the proposed roadside stall to ensure compliance with applicable road safety standards, particularly in relation to site distances and verge widths.

Exempt development is small scale development that has minimal environmental impact and must be undertaken in accordance with specified criteria set out in either the Exempt and Complying Developments Codes SEPP or councils’ local environmental plans (Schedule 2).

Essentially, designation as exempt development “turns off” the consent requirements of the LEP and the planning controls in the development control plan (DCP).

If the above approach is pursued, it is proposed that the following criteria would be included in Schedule 2 of the BLEP 2012:

Roadside stalls to which this clause applies must comply with the following:

9.5 Economic Development - Roadside Stalls Policy

- a. *Be located on land zoned RU1 Primary Production zone or RU2 Rural Landscape zone;*
- b. *Must be located wholly on private land;*
- c. *Must be only for the sale of primary produce;*
- d. *Must not exceed an area of 4m² in relation to the area from which produce is sold; and*
- e. *Must have a relevant approval for works within the road reserve, under the provisions of section 138 of the Roads Act 1993 with respect to the roadside stall.*

The concurrence of the Roads and Maritime Service is required for works within a Classified Road, which include major rural arterial roads (for example, Wardell Road).

This would be addressed as part of the s138 approval process and may limit the potential for roadside stalls to be located on Classified Roads.

Importantly, this change will relax the planning provisions but will not enable all roadside stalls without the need for development consent.

That is, property owners who wish to provide a stall which exceeds or does not satisfy the above criteria may lodge a development application in the normal way.

In addition, it is proposed that an information sheet be prepared to inform applicants of Council's road safety requirements that would form part of the s138 assessment, namely:

There must be adequate space within the road verge to allow parking for at least two vehicles and must:

- i. *be sufficient to enable vehicles to enter and exit the roadway in a forward direction;*
- ii. *be of consistent vertical alignment and grade with the roadway;*
- iii. *have an all-weather gravel sealed shoulder with sufficient width to allow vehicle occupants to enter and exit vehicles in a safe manner, being a minimum area of 3.5m x 15m; and*
- iv. *have adequate unimpeded minimum sight distances in both directions (in accordance with AS2890.1.2004) as outlined in the following table:*

<i>Speed zone</i>	<i>Minimum sight distance</i>
<i>60km/hr</i>	<i>65m</i>
<i>80km/hr</i>	<i>105m</i>
<i>100km/hr</i>	<i>160m</i>

It is acknowledged that costs for works within the road reserve which may be required, such as grading and gravelling the roadside where parking is to be provided, may still be a deterrent to applicants.

However, it is considered reasonable that such costs be borne by applicants and that road safety not be compromised.

9.5 Economic Development - Roadside Stalls Policy

With respect to application fees for an approval (under s138) for works within the road reserve, it is considered that a fee of \$165 (inclusive of GST) be set to offset Council staff time associated with assessment of the application would be appropriate. Council may elect to waive the charging of a fee or set an alternative fee.

To progress and implement the changes suggested Council will need to amend the Ballina LEP 2012. Given this, it is recommended that Council prepares a planning proposal to enable roadside stalls as exempt development under the criteria outlined above.

Sustainability Considerations

- **Environment**
The provision for roadside stalls has the potential to reduce food wastage, thereby having positive environmental outcomes.
- **Social**
Roadside stalls contribute to the social values associated with agricultural areas by contributing to sense of place. Maintaining road safety is an important consideration in providing for roadside stalls.
- **Economic**
Roadside stalls provide potential economic benefits associated with rural tourism.

Legal / Resource / Financial Implications

Progress of this matter can be accommodated within existing resources.

Having regard to public safety (and associated legal responsibilities), it is important that Council ensures that appropriate regulatory oversight is maintained when allowing activities, such as roadside stalls, within the shire's road reserves.

Consultation

Should the Council resolve to introduce exempt development criteria for small scale roadside stalls, an amendment to the Ballina Local Environmental Plan 2012 is required.

The LEP amendment process will include a public exhibition phase that will provide an opportunity for stakeholders and the broader community to provide feedback on the proposed approach. Stakeholders could include Council's Local Traffic Advisory Committee.

Options

The Council has the following options with respect to changing the current planning provisions relating to roadside stalls:

1. Maintain existing arrangements in relation to roadside stalls,

9.5 Economic Development - Roadside Stalls Policy

2. Change Council's planning provisions to enable small scale roadside stalls in certain circumstances as exempt development under the terms of the Ballina Local Environmental Plan 2012, or
3. Defer further action in relation to roadside stalls pending further information.

If option one is preferred, this would mean no change to the current approach to roadside stalls in Council's planning instruments. Under this approach, no further action is required although it would be prudent to update the economic development strategy post its exhibition to remove reference to roadside stalls as an area targeted for policy adjustment.

Option two provides a pathway to enable some roadside stalls as exempt development. Exempt development is a considerably easier and less expensive pathway for landholders wishing to have a roadside stall to follow. However, it is important to recognise that not all roadside stall proposals will meet the exempt development criteria and would therefore be subject to the existing requirements for this land use.

If option two is the preferred approach, Council will need to prepare a planning proposal to amend the Ballina LEP 2012. This is the recommended approach as it suggested that it provides for an improved balance between safety and oversight in relation to the public road network and enabling of economic opportunities for rural landholders in relation to roadside stalls.

With respect to the exempt development criteria, the inclusion of a requirement to obtain a s138 Roads Act approval is central to enabling road safety to be adequately considered. It is considered appropriate that Council introduces a modest fee of \$165 (for preliminary assessment purposes only – no annual charge) for applications made in this regard.

The matter of the fee will be further addressed at the conclusion of the planning proposal process. In the meantime, the proposal to introduce a fee will be incorporated into public exhibition documentation associated with the planning proposal.

The recommendation below enables staff to prepare and submit a planning proposal (consistent with the content of this report) to the Department of Planning and Environment for Gateway determination.

In the event of an affirmative Gateway determination allowing the proposal to proceed, staff would then undertake the procedural steps to progress the proposal to finalisation including public exhibition. A further report would be submitted to the Council in relation to the completion of the amendments following the public exhibition phase of the process.

Where Council proceeds to submit a planning proposal for Gateway determination, it has the option of requesting delegation of certain plan making functions from the Department.

Under these delegations, Council performs some of the plan making functions that would otherwise be completed by the Department.

In the subject case it is recommended that Council seeks the delegation.

9.5 Economic Development - Roadside Stalls Policy

Option three provides Council with an opportunity to receive further information about the policy and planning approach to roadside stalls.

If the preferred approach is to adjust the proposed exempt development criteria, wait for the completion of the economic development strategy (expected in the second quarter of 2018) or obtain additional information before deciding on the progress of this matter, deferral to a Councillor briefing is suggested.

Alternatively, if the Council does not wish to alter the current planning provisions relating to roadside stalls in the shire, it is open to Council to cease further work.

RECOMMENDATIONS

1. That Council endorses the preparation of a planning proposal which proposes to introduce exempt development criteria for small scale roadside stalls in zoned rural areas within Ballina Shire as outlined in this report.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.
3. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
4. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
5. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

Attachment(s)

Nil