

## **SECTION 59 PLANNING REPORT**

### **Planning proposal details:**

DPE Reference: PP\_2018\_BALLI\_001\_00

BSC Reference: BSCPP 17/010 (Amendment No. 38)

### **Land to which planning proposal applies:**

This planning proposal applies to Lot 6 of DP1225206.

### **Planning proposal summary:**

This planning proposal proposes to amend the Ballina LEP 2012 to relocate and expand neighbourhood commercial zoning and include medium density zoning to parts of the site by amendment to the Land Zoning Map. The proposal also proposes to amend the Floor Space Ratios Map to apply floor space area controls to the neighbourhood commercial zone and introduce a local clause to further limit the amount of commercial floor space within the neighbourhood centre.

**Date of Gateway determination:** 15 February 2018

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## **1.0 SUMMARY**

### **1.1 Council Resolutions**

The Council considered this planning proposal at its Ordinary Meeting held on 14 December 2017. At this meeting the Council resolved to endorse the proposed amendments to Ballina LEP 2012 and to submit the planning proposal to the Department of Planning & Environment for Gateway determination [Minute No. 141217/11].

Following public exhibition of the planning proposal the Council at its Ordinary Meeting held on 22 November 2018 resolved to finalise and implement this planning proposal under delegated authority [Minute No. 221118/5].

A copy of the reports to Council and adopted resolutions are contained in the final Planning Proposal submitted to PCO and Plan Making Monitoring via email on 9 January 2019.

### **1.2 Planning Proposal**

The planning proposal seeks to amend Ballina LEP 2012 as summarised in Table 1 below.

**Table 1 BSCPP 17/010 Amendment Summary**

Map Sheets Affected	Amendment Summary	Primary Reason
LZN Map – Land Zoning	Apply neighbourhood commercial zoning (B1 Neighbourhood Centre zone) to an area of approximately 13,200m <sup>2</sup> ;	To provide for expanded neighbourhood commercial facilities to service the day to day needs of residents.
	Apply medium density zoning to parts of the site with a total combined area of 29,250m <sup>2</sup> .	To provide housing choice for residents and make efficient use of residential zoned land.
FSR Map – Floor Space Ratio	Apply a floor space ratio of 0.8:1 to the area subject to the neighbourhood commercial zoning.	To limit the scale of buildings within the neighbourhood centre.

In addition to the above map amendments, the proposal seeks to introduce a new local clause to limit the extent of commercial floor space within the Neighbourhood Centre zone on the land to be no greater than an FSR of 0.4:1.

The purpose of the combined FSR Map amendment and local clause FSR control is to limit the extent of commercial floor space within the neighbourhood centre to no greater than an FSR of 0.4:1 and provide for non-commercial floor space (including residential and community uses) up to a maximum FSR of 0.8:1 for the site.

## **2.0 GATEWAY DETERMINATION**

The Gateway determination was issued on 15 February 2018. It required that the planning proposal be completed within 12 months following the date of the Gateway determination.

The Gateway determination required that prior to community consultation a review of the Retail Demand and Impact Analysis report was be undertaken to confirm that the maximum commercial floor area that could be achieved within the proposed area of B1 Neighbourhood Centre zoned land will not result in an adverse impact on neighbouring commercial centres. If the review identified that there will be an adverse impact on neighbouring commercial centres then details of the maximum commercial floor area at which an impact does not occur was to be provided.

This review was undertaken by an independent third party consultant engaged by Council. The review concluded that the commercial floor space should not exceed a floor space ratio of 0.4:1 in this case. The planning proposal was amended to reflect the conclusions of this review and was endorsed by the Council.

The Gateway determination required consultation with the NSW Roads and Maritime Service (RMS), NSW Rural Fire Service (RFS), Air Services Australia (ASA) and the Civil Aviation Safety Authority (CASA) as discussed in section 4.0 of this report.

The Department of Planning and Environment has agreed the planning proposal's inconsistencies with S9.1 (formerly S117) Directions 1.1 Business and Industry Zones, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulphate Soils and



4.4 Planning for Bushfire Protection are justified in accordance with the terms of the Direction and no further approvals are required.

Subject to the LEP being made by 15 February 2018 all requirements of the Gateway determination have been complied with.

### **3.0 COMMUNITY CONSULTATION**

The planning proposal was publicly exhibited for a period of 51 days from 8 August 2018 until 29 September 2018. The exhibition period was extended from the original 28 days due to the level of public interest in the matter. Notification included an advertisement in the Ballina Shire Advocate and the planning proposal being displayed on Council's website, at the Customer Service Centre and at all shire libraries.

Three hundred and ten (310) landholders of affected and adjoining properties were advertised of the public exhibition. This involved written notification and included copies of maps indicating the proposed map changes relating to the landholder/adjoining owner's property.

Eighty one (81) submissions were received during the public exhibition period. These submissions were reported to the elected Council at its Ordinary Meeting held on 25 October 2018. The submissions, along with staff response to the matters raised in those submissions, were included in the Council business paper report (included in Appendix 1 of the planning proposal).

### **4.0 VIEWS OF PUBLIC AUTHORITIES**

Consultation was undertaken with the NSW Roads and Maritime Service (RMS), NSW Rural Fire Service (RFS), Air Services Australia (ASA) and the Civil Aviation Safety Authority (CASA) as required by the Gateway determination. The above authorities did not raise any objections to the planning proposal proceeding. A copy of the agency submissions is provided in the final planning proposal document (Appendix 4).

### **5.0 CONSISTENCY WITH S9.1 (FORMERLY S117) DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS**

This matter is addressed in the planning proposal. The proposed amendment is consistent with all relevant S9.1 (formerly S117) Directions or inconsistencies have been justified and agreed by the Department of Planning and Environment.

The Gateway determination confirmed that the inconsistency with Section 117 Direction 4.1 Acid Sulphate Soils is justified in accordance with the terms of the Direction. No further approval was required in relation to the Direction. By correspondence dated 19 December 2018, Jeremy Gray, Director Regions, Northern Planning Services, as a delegate for the Secretary Department of Planning and Environment, advised that he has agreed the proposal's inconsistency with Directions 1.1 Business and Industry Zones, 3.5 Development Near Licensed Aerodromes and 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.

## **6.0 PARLIAMENTARY COUNSEL OPINION**

The final PCO opinion was received on 30 January 2019. It is the opinion of PCO that the draft plan may legally be made.

## **7.0 OTHER RELEVANT MATTERS**

There are no other matters of relevance to this amendment.

## **8.0 MAPPING**

Replacement map sheets have been prepared as per the details contained within the attached Map Cover Sheet (MCS).

The map sheets referenced in the MCS and within the planning proposal have been checked by the Department of Planning and Environment's GIS team who have confirmed that they have been prepared in accordance with Standard Technical Requirements.

A copy of all maps and the MCS are attached.

## **9.0 RECOMMENDATION**

Having regard to the attached PCO Opinion, the contents of the MCS and the maps which form a part of draft Ballina LEP Amendment No 38 it is now recommended that the delegate sign the LEP and the attached MCS (0250\_COM\_MCS\_20190122).



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