



Planning Proposal 18/001

**» Residential Flat Buildings
and Active Frontages in
the B3 Zone**

March 2019 (V3 - Exhibition)

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.....	5
1.3 Council Resolutions	6
1.4 Gateway Determination	6
2. Objectives & Intended Outcomes	7
3. Explanation of Provisions	7
3.1 The Proposal	7
3.1.1 Plain English Version.....	7
3.1.2 Draft LEP Clauses	8
4. Justification.....	10
4.1 Section A – Need for the Planning Proposal	10
4.2 Section B – Relationship to Strategic Planning Framework.....	11
4.3 Section C – Environmental, Social and Economic Impact	12
4.4 Section D – State and Commonwealth Interests	13
5. Mapping.....	13
6. Community Consultation	14
7. Timeline	14
8. Appendices	15
Appendix 1 – Maps.....	15
Appendix 2 – Section 9.1 Direction Checklist.....	17
Appendix 3 – Council Reports	21
Appendix 4 – Gateway Determination	29

1. Introduction

1.1 Summary of Planning Proposal

This planning proposal seeks to broaden the range of uses upon which dwellings are permitted to be erected in the Ballina CBD without undermining the primary purpose of the zone. Currently, residential accommodation is restricted to “shop top” housing [dwelling(s) above retail or business premises]. This planning proposal will allow dwelling(s) above a range of other uses typically found within a B3 zone. It will also allow dwellings at ground level in some circumstances.

The mechanism for achieving this is to permit Residential Flat Buildings (a building containing three or more dwellings) on certain sites within the B3 zone and require sites to maintain active frontages.

The planning proposal will achieve this by:

1. adding an item to Schedule 1 of Ballina LEP 2012 to permit Residential Flat Buildings as a permitted use on certain B3 zoned land identified on a map; and
2. inserting a new clause that defines active frontage and references a map showing where Council would like to see it implemented; and
3. adding a new objective to the B3 zone that references active frontages.

1.2 Land to Which the Planning Proposal Applies

This planning proposal relates to certain land zoned B3 Commercial Core under *Ballina Local Environmental Plan 2012*, in the Ballina CBD, as shown by red edging on the maps contained within Appendix 1 (Additional Permitted Use Residential Flat Building Sites Map and Active Frontages Map).

1.3 Council Resolutions

At its Ordinary Meeting held on 27 September 2018, the Council resolved as follows [Minute No. 270918/14] following consideration of the report, *Residential Development – B3 Commercial Core Zone*:

1. *That Council endorses the planning proposal, as per Attachment 2 to this report, which proposes to permit Residential Flat Buildings (a building containing 3 or more dwellings) on certain sites within the B3 zone and require these sites to maintain at least two active frontages.*
2. *That the planning proposal not include the Ramada site for the reasons outlined within this report.*
3. *That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.*
4. *That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
5. *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.*
6. *That following the completion of the public exhibition of the planning proposal, Council receive a briefing prior to the matter being reported back to Council.*

A copy of the report considered by the Council is provided in Appendix 3.

1.4 Gateway Determination

A Gateway determination allowing the planning proposal to proceed to public exhibition subject to conditions was issued on 6 November 2018.

A copy of the Gateway determination is contained within Appendix 4.

2. Objectives & Intended Outcomes

The objective of this planning proposal is to:

- Permit Residential Flat Buildings on certain land zoned B3 in the Ballina CBD while maintaining active frontages on those sites.

The intended outcomes of this planning proposal are to:

- Encourage increased residential development and investment in the Ballina CBD,
- Promote uses that attract pedestrian traffic along certain ground floor street and public domain frontages (parks and waterfront) in the Ballina CBD,
- Permit residential development (or other uses) along certain ground floor frontages where they are not nominated as requiring activation, and
- Support business and social activity through the provision of an additional housing type in the Ballina CBD.

3. Explanation of Provisions

3.1 The Proposal

3.1.1 Plain English Version

A new type of residential land use (Residential Flat Buildings) is proposed to be permitted with Council consent on key sites identified on a map. Due to the location of these sites, it is important that the ground floor of any new development is substantially retained as a commercial type use consistent with the main purpose of the CBD. A map will be used to show where Council expects the ground floor to be substantially used for commercial purposes.

The Additional Permitted Use Residential Flat Building Sites Map and the Active Frontages Map does not show intended building envelopes. These maps show the lots that are affected by the proposed additional permitted use and active frontage provisions.

Building envelopes for future residential flat building development proposals are required to be determined in accordance with the requirements of *State Environmental Planning Policy No 65 Design Quality of Residential Apartment Development* and the associated *Apartment Design Guide* as well as relevant controls contained within the *Ballina Shire Development Control Plan*. In some cases individual lots may be able to be developed and in other cases several lots may be required to be consolidated to achieve compliance with applicable design controls.

3.1.2 Draft LEP Clauses

The following clauses taken from other LEPs show how *Ballina Local Environmental Plan 2012* might be amended:

A) Add a new clause to Ballina LEP 2012

In order to encourage active frontages in parts of the Ballina CBD where Residential Flat Buildings are proposed to be permitted, a new clause is required. It is envisaged that the clause will be similar to the following:

7.11 Active frontages

- (1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor frontages in Zone B3 Commercial Core.
- (2) This clause applies to land identified as “Active frontage” on the Active Frontages Map.
- (3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active frontage after its erection or change of use.
- (4) Despite subclause (3), an active frontage is not required for any part of a building that is used for any of the following:
 - (a) entrances and lobbies (including as part of mixed use development),
 - (b) access for fire services,
 - (c) vehicular access and parking.
- (5) In this clause, a building has an active frontage if all premises on the ground floor of the building facing the street, park or waterfront are used for the purposes of Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Public administration buildings; Recreation facilities (indoor); Registered clubs; or Respite day care centres.

Note: Nothing in this clause permits a use that is otherwise prohibited in Zone B3 Commercial Core

B) Add a new item to Schedule 1 (Schedule 1 lists additional permitted uses on certain land that are not otherwise permitted within the zone applying to the land)

In order to permit Residential Flat Buildings with Council consent in parts of the Ballina CBD, an amendment to Schedule 1 will be required. It will be similar to the following:

7 Use of certain land at Ballina

- (1) This clause applies to land at River Street, Tamar Street, Kerr Street, Grant Street, Moon Street, Cherry Street, and Martin Street, Ballina, identified as “Area I” on the Additional Permitted Use Map.
- (2) Development for the purpose of a residential flat building is permitted with development consent.
- (3) Development consent may only be granted for the erection of a residential flat building on land to which this clause applies if it complies with the active frontages clause 7.11.

C) Amend the Additional Permitted Use Map

The map referred to in Schedule 1 needs to show the sites on which Council will permit a Residential Flat Building. This can be done by adding the 17 nominated sites to map sheet APU_006C and identifying them as “Area I”.

A draft map is included at Appendix 1.

D) Add a new Active Frontages Map

The map referred to in proposed clause 7.11 is a new map to add to the map sheet index – AFM_006C. It will show frontages where clause 7.11 will apply.

A draft map is included at Appendix 1.

E) Add a new Objective to the B3 zone

As it is proposed to add a new clause and map on active frontages that apply to parts of the B3 zone, it is appropriate to add an objective to the B3 zone that references the concept. A new objective relating to active frontages is proposed, similar to the following:

- To promote uses with active frontages.

4. Justification

4.1 Section A – Need for the Planning Proposal

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

Yes. Ballina was identified in 2006 as an emerging regional centre through the New South Wales State Government's Far North Coast Regional Strategy. The North Coast Regional Plan released in 2017 identified Ballina as a *strategic centre* that has strong links to the *regional centres* of Lismore and Tweed Heads. Significant growth is predicted for Ballina as transport links to the north, south and west continue to be improved.

Ballina Shire Council prepared the *Ballina Major Regional Centre Strategy* (BMRCS) in 2015/16 to guide growth in a way that maximises opportunities, whilst at the same time preserving the things about Ballina that are important to the community. The focus for the strategy is the identification of key policy and planning related initiatives that can define and drive Ballina as a regional centre into the future.

In relation to housing, the BMRCS has two objectives that are addressed in this planning proposal. These are:

F1.1 To encourage increased residential development in Ballina CBD

F1.2 To ensure suitable and adequate housing opportunities are available to cater to the diverse needs of our community

Site Selection

The following criteria were used to select the sites in the B3 zone that are the subject of this planning proposal.

Sites that are included:

- Corner sites to promote redevelopment
- Cherry Street, Martin Street and River Street as key corridors
- Sites with older building stock
- Lot clusters near corners that are awkward in shape or small in size

Sites that are excluded:

- Land north of Tamar Street including the northern side of Tamar Street
- Crown land sites
- LEP listed heritage sites
- Approved tourist facility sites

The total area of the B3 zone in Ballina LEP 2012 is approximately 31.1 hectares. The total amount of B3 land identified on mapping in this planning proposal is approximately 6.3 hectares.

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 potential for more residential development in the CBD while maintaining active frontages at ground level in key locations.

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. The planning proposal supports Direction 6 (Develop Successful Centres of Employment) and particularly Action 6.3 “Reinforce centres ... as primary mixed use locations for commerce, housing ...” and Action 6.5 “Promote and enable an appropriate mix of land uses”

It also supports Direction 23 (Increase Housing Diversity and Choice) and particularly Action 23.1 “Encourage housing diversity by delivering 40% of new housing in the form of ... apartments ... by 2036.”

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

Ballina Shire Council prepared the Ballina Major Regional Centre Strategy (BMRCS) in 2015/16 to guide growth in a way that maximises opportunities, whilst at the same time preserving the things about Ballina that are important to the community. The focus for the strategy is the identification of key policy and planning related initiatives that can define and drive Ballina as a strategic centre into the future. This planning proposal is consistent with the BMRCS.

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 improving liveability in the shire (PE3).

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

No inconsistencies with applicable State Environmental Planning Policies (SEPPs) have been identified.

- SEPP 65 – Design Quality of Residential Apartment Development

This Policy aims to improve the design quality of residential apartment development in New South Wales. Its relevance is that future development in the B3 zone that involves Residential Flat Buildings will be required to comply with the SEPP.

The planning proposal is consistent with this SEPP.

- SEPP – Coastal Management (2018)

The aim of this Policy is to promote an integrated and co-ordinated approach to land use planning in the coastal zone.

The Ballina CBD is entirely within the coastal environment area and substantially within the coastal use area as identified by *State Environmental Planning Policy (Coastal Management) 2018*.

The planning proposal is consistent with the objectives of the *Coastal Management Act 2016*.

Residential development is already permitted in some forms on the subject land (eg “shop top” housing). Any development will need to be consistent with existing Council planning controls for development in the floodplain and on land affected by sea level rise in the long term.

The planning proposal is consistent with the applicable coastal planning documents.

The planning proposal is consistent with this SEPP.

Q6 Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 directions)?

A Section 9.1 Direction Checklist for the planning proposal is provided at Appendix 2.

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 only apply to the B3 zone in Ballina CBD.

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 will not result in significant environmental effects.

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

It is anticipated that the social and economic outcomes likely to result from the planning proposal will be positive. Additional residents in the B3 zone, that do not compromise commercial activity at ground floor / street level, should stimulate business and bring life into the CBD.

4.4 Section D – State and Commonwealth Interests

Q10 Is there adequate public infrastructure for the planning proposal?

Public infrastructure such as sewerage and water are adequate to cater for additional residential development in the CBD. Traffic and parking will be assessed on merit to ensure that problems do not arise. It is likely that additional electricity substations will be required on individual sites. The amendments will allow for key sites in the CBD to be redeveloped, which will result in contributions towards public infrastructure.

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 will make two changes to mapping in Ballina LEP 2012:

- (A) Add 17 nominated sites in Ballina CBD to map sheet APU_006C and identify them as “Area I”.

This will identify these sites for an Additional Permitted Use to be specified in Schedule 1 as a Residential Flat Building.

- (B) Add a new map to the map sheet index – AFM_006C.

This will identify a suite of frontages (that relate to the 17 nominated sites in Ballina CBD) to which a new active frontage clause will apply.

Draft maps are included at Appendix 1.

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*. It is anticipated that a minimum public notification period of 28 days will be applied to this planning proposal.

7. Timeline

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

Plan Making Step	Estimated Completion (Before)
Gateway determination	October 2018
Government agency consultation	N/A
Public exhibition period	April – May 2019
Public hearing	N/A
Submissions assessment	May 2019
PPA assessment of planning proposal and exhibition outcomes	June 2019
Submission of endorsed LEP to D&PE for finalisation	July 2019
PPA decision to make the LEP amendment (if delegated)	July 2019
Forward LEP amendment to DP&E for notification (if delegated)	July 2019

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

8. Appendices

Appendix 1 – Maps



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Additional Permitted Use Residential Flat Building Sites Map

ballina shire council
geographical information system

Projection GDA94 / MGA zone 56



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Active Frontages Map

ballina shire council
geographical information system

Projection: GDA94 / MGA zone 56

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Appendix 2 – Section 9.1 Direction Checklist

Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)	
Planning Proposal – Residential Flat Buildings and Active Frontages in the B3 Zone	
Direction No	Compliance of Planning Proposal
1. Employment and Resources	
1.1 Business and Industrial Zones	Consistent. The planning proposal will not reduce the areas and locations of existing business zones in Ballina. It will not reduce the total potential floor space area for employment uses and related public services in business zones. The active frontage provisions will ensure this does not happen. It will support the viability and primacy of Ballina CBD.
1.2 Rural Zones	Does not apply to planning proposal.
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	Does not apply to planning proposal.
2. Environment and Heritage	
2.1 Environment Protection Zones	Consistent. The planning proposal does not involve or affect environmentally sensitive land or land in an environmental zone.
2.2 Coastal Protection	Consistent. The Ballina CBD is entirely within the coastal environment area and substantially within the coastal use area as identified by <i>State Environmental Planning Policy (Coastal Management) 2018</i> . The planning proposal is consistent with the objectives of the <i>Coastal Management Act 2016</i> . Residential development is already permitted in some forms on the subject land (eg “shop top” housing). Any development will need to be consistent with existing Council planning controls for development in the floodplain and on land affected by sea level rise in the long term. The proposal is consistent with the applicable coastal planning documents.
2.3 Heritage Conservation	Consistent. Ballina LEP 2012 already contains provisions (clause 5.10 and Schedule 5), which are consistent with this direction. LEP listed heritage items have been excluded from the mapped areas to which this planning proposal applies, to avoid pressure for redevelopment of these sites.
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.

Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)

Planning Proposal – Residential Flat Buildings and Active Frontages in the B3 Zone

Direction No	Compliance of Planning Proposal
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	Consistent. The proposal will not alter the B3 zone boundary. It reinforces the primacy of the B3 CBD in Ballina LGA by increasing options for residential development in the CBD that will allow for the better utilisation of the existing public transport infrastructure. Residents in the CBD will be walking distance to existing shopping, education and medical/social services. Car reliance would be eliminated or reduced for short work related trips. The proposal is consistent with the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).
3.5 Development Near Licensed Aerodromes	Inconsistent. Ballina /Byron Gateway Airport Obstacle Height Limit Surfaces mapping applies to the Ballina CBD. It is not proposed to alter the existing Building Height Limits that apply to the B3 zoned land. The B3 zone has a BHL of 18 metres, which is well below the 46.5 metre Obstacle Height Limit Surfaces mapping that applies to most of the locality. The land is not affected by ANEF noise contour mapping from the airport. Council has not consulted with the relevant Commonwealth authorities as required by the Direction. Having regard to the fact that the planning proposal does not seek to alter permissible height limits, and seeks only to introduce an additional land use and design considerations, it is considered that consultation with Commonwealth authorities should not be required in this instance. The inconsistency was determined to be justifiable requiring no further approval, by the delegate of the Secretary of the Department of Planning and Environment, as detailed in the letter dated 6 November 2018 contained in Appendix 4. .
3.6 Shooting Ranges	Does not apply to planning proposal.
4. Hazard and Risk	
4.1 Acid Sulfate Soils	Consistent. The land the subject of the proposed LEP amendment is mapped as containing Class 2 Acid Sulfate Soils. Ballina LEP 2012 already includes controls that deal with this issue at the development stage. No additional controls are warranted.
4.2 Mine Subsidence and Unstable Land	Does not apply to planning proposal.
4.3 Flood Prone Land	Consistent. The B3 zone is flood affected. However, it already has significant development potential. Existing flood related LEP and DCP provisions will apply. No land will change zone as a result of this planning proposal. The planning proposal will not: <ul style="list-style-type: none"> • permit development in floodway areas, • permit development that will result in significant flood impacts to other properties, • permit a significant increase in the development of that land, • permit development that is likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or • permit additional development to be carried out without development consent.

Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)

Planning Proposal – Residential Flat Buildings and Active Frontages in the B3 Zone

Direction No	Compliance of Planning Proposal
4.4 Planning for Bushfire Protection	Does not apply to planning proposal.
5 Regional Planning	
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	Does not apply to planning proposal.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Does not apply to planning proposal.
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	<p>Consistent.</p> <p>The planning proposal is generally consistent with the objectives and actions set out in the <i>North Coast Regional Plan 2036</i>. The planning proposal supports Direction 6 (Develop Successful Centres of Employment) and particularly Action 6.3 “Reinforce centres ... as primary mixed use locations for commerce, housing ...” and Action 6.5 “Promote and enable an appropriate mix of land uses”</p> <p>It also supports Direction 23 (Increase Housing Diversity and Choice) and particularly Action 23.1 “Encourage housing diversity by delivering 40% of new housing in the form of ... apartments ... by 2036.”</p>
6. Local Plan Making	
6.1 Approval and Referral Requirements	<p>Consistent.</p> <p>The planning proposal does not introduce any new concurrence or consultation provisions or any additional designated development types.</p>
6.2 Reserving Land for Public Purposes	<p>Consistent.</p> <p>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.</p>
6.3 Site Specific Provisions	<p>Consistent.</p> <p>The planning proposal introduces site specific provisions affecting 17 CBD sites nominated on a map and linked to Schedule 1. For each of these sites, Residential Flat Buildings will be permitted with consent. Active frontage provisions will apply to certain locations in the CBD associated with the 17 sites.</p> <p>The suite of controls proposed will allow more residential development in the CBD without undermining the primary purpose of the B3 zone. Residential uses at ground level will be restricted to certain locations.</p> <p>The planning proposal is consistent with this Direction because it does not include specific development standards and does not contain or refer to drawings that show details of the development.</p>
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.

Section 9.1 Direction Checklist (Updated Directions dated 2 April 2018)

Planning Proposal – Residential Flat Buildings and Active Frontages in the B3 Zone

Direction No	Compliance of Planning Proposal
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 3 – Council Reports

9.1 Residential Development - B3 Commercial Core Zone

9.1 Residential Development - B3 Commercial Core Zone

Delivery Program Strategic Planning

Objective To assess support for a planning proposal that seeks to broaden the range of dwelling types that are permitted to be erected in the Ballina Central Business District without undermining the primary purpose of the B3 Commercial Core zone.

Background

Council prepared the *Ballina Major Regional Centre Strategy* (BMRCS) in 2015/16 to guide growth in a way that promotes development opportunities, whilst at the same time preserving the things about Ballina that are important to our community. The focus for the strategy is the identification of key policy and planning related initiatives that can define and drive Ballina as a regional centre into the future.

In relation to housing, the BMRCS has two objectives that are addressed in this planning proposal. These are:

F1.1 To encourage increased residential development in Ballina CBD

F1.2 To ensure suitable and adequate housing opportunities are available to cater to the diverse needs of our community

A Discussion Paper, prepared on Council's behalf by Mike Svikis Planning, to canvas issues related to residential accommodation in business zones, is included as Attachment 1 to this report. It contains more detail on a range of matters relevant to this planning proposal.

Key Issues

- Increasing residential opportunity in Ballina CBD
- Maintaining commercial primacy in Ballina CBD

Information

The planning proposal (Attachment 2) seeks to broaden the range of dwelling types that are permitted to be erected on certain sites within the Ballina CBD without undermining the primary purpose of the B3 Commercial Core zone.

Currently, residential accommodation is restricted to "shop top" housing (dwelling(s) above retail or business premises). This planning proposal will allow dwelling(s) above a range of other uses typically found within a B3 zone. It will allow dwellings at ground level in some circumstances.

The mechanism to achieve this is to permit Residential Flat Buildings (a building containing three or more dwellings) on certain sites within the B3 zone and require these sites to maintain at least two active frontages.

The planning proposal will achieve this by:

9.1 Residential Development - B3 Commercial Core Zone

- adding an item to Schedule 1 of Ballina LEP 2012 to permit Residential Flat Buildings as a permitted use on certain B3 zoned land identified on a map and
- inserting a new clause that defines active frontage and references a map showing where Council would like to see it implemented and
- adding a new objective to the B3 zone that references active frontages.

This planning proposal is to apply only to certain land zoned B3 Commercial Core under Ballina Local Environmental Plan 2012 in Ballina CBD.

The land zoned B3 to which the planning proposal applies is outlined in red on Diagram 1 below:

Diagram 1 – Sites (outlined in red) proposed to permit residential flat buildings as an additional permitted use within the B3 zone



The frontages required to be activated are shown by the red outline on the extract from the proposed activation map in Diagram 2 as follows.

Diagram 2 – Extract from proposed Active Frontage Map (activated frontages outlined in red line)

9.1 Residential Development - B3 Commercial Core Zone



Why more residential development in the Ballina CBD?

Residential development is already permitted in the B3 zone in the form of shop top housing. However, take up rates for shop top housing have been low and very little new residential development has occurred.

Council records show that only one development (*Reside* in River Street) including residential accommodation has been approved in the B3 zone since Ballina LEP 2012 commenced in February 2013.

The objective of the planning proposal is to encourage increased residential development in the B3 zone in order to create a more active and vibrant Ballina CBD and to create greater housing choice.

Can we change the definition of Shop Top Housing to get more residential development?

The definition of shop top housing has been in the standard instrument since the outset, but it has changed over time. The current definition is:

"shop top housing means one or more dwellings located above ground floor retail premises or business premises."

In 2014, a Land and Environment Court judgment (*Hrsto v Canterbury City Council*) found on the current definition that:

...to qualify as 'shop top housing' the relevant part of the building must be truly "above" the relevant retail or commercial parts...in order to be characterised as "shop top housing" a dwelling must be: "in the same building as the ground floor retail premises or business premises and on a floor of that

9.1 Residential Development - B3 Commercial Core Zone

building that is at a level higher than the top most part of the ground floor retail premises or business premises."

However, a broad interpretation of the word "above" in the definition should be given which would suggest that the dwellings need only be at a floor level that is higher than the top of the ground floor retail or business premises. It does not need to be contained in an envelope on the higher floor level that would be intersected by a line drawn vertically from within the envelope of the ground floor retail or business premises.

Gadens Lawyers in 2014 made the following comments in relation to this court decision:

This clarification of the meaning of shop top housing is timely, but it will have a significant impact on some sites, particularly where there is simply insufficient market demand for a full floor of retail or commercial uses. Arguably requiring retail or commercial at the rear of the site will not serve any particular planning purpose because it will not activate the street. Moreover, where there is a lack of market demand, the ground floor may sit empty for quite some time. Interestingly, it may not actually reflect what some councils had in mind when making shop top housing permissible in some areas.

There has been some discussion about changing the definition of Shop Top Housing, but this can only come from the Department of Planning and Environment (DPE) and would then apply to all of New South Wales.

Discussion with DPE locally indicates it is not being considered. Council should assume it will not be changed in the foreseeable future.

What is an active frontage and why is it important?

Active frontage is a general planning term that refers to development that provides interest to the public and presents as a working or operational building. It is characterised by continuous business or retail land uses that open directly to the footpath and provide active, people-oriented frontages to a street, park or other public domain area (for example, a waterway). Expanses of blank walls or dark obscured glass are not appropriate.

It enhances public security and passive surveillance and improves the amenity to the public domain by encouraging pedestrian activity. It can also assist in supporting the economic viability of the centre where it applies.

An active frontage is provided generally at a similar level to the footpath, boardwalk or park and typically has a minimum 50% clear glazing. It typically consists of one or more of the following:

- i. a shop front,
- ii. commercial and residential lobbies,
- iii. a café or restaurant if accompanied by an entry from the street, or
- iv. a public building if accompanied by an entry from the street.

How were the sites on the planning proposal map selected?

The NSW DPE issued the following advice on where an active street frontage clauses should apply:

9.1 Residential Development - B3 Commercial Core Zone

"Activity areas are usually formed along streets or as a node around, for example, major transport infrastructure. For that reason it is recommended that this provision does not apply across any one zone, but only along the streets (or parts of a street or streets) and pedestrian links where a concentration of business and/or retail is encouraged. This clause must be justifiable and applied only where it will not constrain uses able to respond to changing economic drivers."

The following criteria were used to select the sites in the B3 zone that are the subject of this planning proposal.

Sites that are included:

- Corner sites to promote redevelopment
- Cherry Street, Martin Street and River Street as key corridors
- Sites with older building stock
- Lot clusters near corners that are awkward in shape or small in size
- Sites along the Richmond River
- Sites with a park boundary

Sites that are excluded:

- Land north of Tamar Street including the northern side of Tamar Street
- Crown land sites
- LEP listed heritage sites
- Approved tourist facility sites

The total area of the B3 zone in Ballina LEP 2012 is approximately 31.1 hectares. The total amount of B3 land identified on mapping in this planning proposal is approximately 6.3 hectares. These areas correlate with the locations where residential flat buildings will be permitted with consent.

Why exclude approved tourism sites?

Ballina CBD includes sites that have been approved in the past for use as tourist and visitor accommodation. This includes the Ramada development where units are privately owned but managed by a property rental company for short term rental accommodation. Owners are not currently permitted to live in their units full time.

Development applications have been considered multiple times between 2005 and 2012 to permit residential occupation of units as an additional use. The applications have been refused by Council for a range of reasons. It has not been established that permanent occupation of these units is currently permitted under Ballina LEP 2012 (as shop top housing). However, if residential flat buildings are specifically permitted on sites developed for tourist and visitor accommodation then this would be a signal that permanent occupation of these buildings will be considered on merit.

Council received a submission from a unit owner within the Ramada building on 5 August 2018 requesting that they be allowed to live in their unit full time.

9.1 Residential Development - B3 Commercial Core Zone

They do not purport to represent other owners and the submission is only about their unit.

The argument is that the rental return from the unit is insufficient given its capital value as occupancy rates are low and overheads are high. This also makes it difficult to sell.

It is otherwise suitable for use as a self-contained dwelling and they consider that is the best use for it.

It is not possible to apply the planning control changes in this planning proposal to part of an existing building.

If the Ramada site (or any other tourist accommodation site) is included in the mapping to this planning proposal then all units may potentially be able to apply for residential use (assumes all will be found suitable and be able to incorporate kitchen facilities).

This has a number of implications that have been explored in previous applications, none of which have been approved.

Given past decisions by Council on this issue it is recommended that these sites be omitted from this planning proposal.

If they are included it will send a message that Council is prepared to consider applications for residential use of sites overtly approved in the past for use as tourist and visitor accommodation.

Sustainability Considerations

- **Environment**
There are considered to be no additional environmental impacts associated with what is proposed than is likely to be the case under currently permitted development scenarios.
- **Social**
Increased residential development in the Ballina CBD will assist in vitalizing the locality and provide increased housing choice.
- **Economic**
Potential economic benefits should flow from redevelopment of underutilized sites. CBD shops (eg supermarket) should benefit from more residents in walking distance.

Legal / Resource / Financial Implications

The processing of the planning proposal will be undertaken in accordance with the requirements of the Environmental Planning and Assessment Act and Regulation. Processing of the planning proposal can be accommodated within existing Council resources.

Consultation

9.1 Residential Development - B3 Commercial Core Zone

If Council supports a planning proposal it 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 will include CBD property owners, business operators, the Ballina Chamber of Commerce and Industry and relevant government agencies.

A minimum consultation period of 28 days is proposed.

Options

The options available to the Council when considering changes to the current planning provisions so as to broaden the range of dwelling types that are permitted to be erected in the Ballina CBD (B3 zone) include the following:

1. Endorse the planning proposal (Attachment 2) which proposes to enable residential flat buildings in conjunction with active frontages on certain CBD sites specified on a map in Ballina Local Environmental Plan 2012.

This is the preferred option.

Endorsement of the planning proposal will result in a submission to the Department of Planning and Environment (DPE) for a Gateway determination to allow the proposal to proceed to public exhibition. Following Gateway determination the proposal would then be publically exhibited and then resubmitted back to the Council post exhibition for further consideration.

The submission to the DPE will also indicate that Council is seeking delegation of certain plan making functions to enable the further processing of the proposed LEP amendment.

2. Maintain existing arrangements which permit shop top housing as the only form of residential accommodation within the Ballina CBD – B3 zoned areas.

Adoption of this option would result in the status quo being maintained and no changes to Ballina LEP 2012 being made. Staff would then cease further work on this proposal.

This option is not recommended as it would continue to limit the potential for residential accommodation within the CBD and not provide the activation stimulus that might otherwise result.

3. Defer further action in relation to this matter pending further information.

Should Council consider that it requires further information in respect to any aspect of this proposal then the matter could be deferred for a briefing.

The option of a briefing is also available post exhibition and prior to the Council giving consideration to whether the planning proposal warrants finalisation.

RECOMMENDATIONS

1. That Council endorses the planning proposal, as per Attachment 2 to this report, which proposes to permit Residential Flat Buildings (a building

9.1 Residential Development - B3 Commercial Core Zone

- containing 3 or more dwellings) on certain sites within the B3 zone and require these sites to maintain at least two active frontages;
2. That the planning proposal not include the Ramada site for the reasons outlined within this report.
 3. That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.
 4. That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
 5. 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.
 6. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

Attachment(s)

1. Residential Accommodation in Business Zones - Discussion Paper
2. Draft Planning Proposal Residential Flat Buildings and Active Frontages in the B3 Zone

270918/1 RESOLVED

(Cr Ben Smith/Cr Phillip Meehan)

1. *That Council endorses the planning proposal, as per Attachment 2 to this report, which proposes to permit Residential Flat Buildings (a building containing 3 or more dwellings) on certain sites within the B3 zone and require these sites to maintain at least two active frontages.*
2. *That the planning proposal not include the Ramada site for the reasons outlined within this report.*
3. *That the planning proposal be forwarded to the Department of Planning and Environment for a Gateway determination.*
4. *That the Department of Planning and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.*
5. *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.*
6. *That following the completion of the public exhibition of the planning proposal, Council receive a briefing prior to the matter being reported back to Council.*

*FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Eoin Johnston*

Appendix 4 – Gateway Determination



PP_2018_BALLI_004_00/IRF18/5483

Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Mr Hickey

Planning proposal PP_2018_BALLI_004_00 to amend Ballina Local Environmental Plan 2012

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend Schedule 1 in the Ballina Local Environmental Plan 2012 to permit residential flat buildings as an additional permitted use on certain sites within the B3 Commercial Core zone; insert a new clause requiring these sites to maintain active frontages; and add a new objective to the B3 zone.

As delegate of the Minister for Planning, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistency with section 9.1 Direction 3.5 Development Near Licenced Aerodromes is justified in accordance with the terms of the Direction. No further approval is required in relation to this Direction.

It is noted that Council has requested to be authorised as the local plan-making authority. I have considered the nature of Council's planning proposal and have conditioned the Gateway for Council to be authorised as the local plan-making authority.

The amending local environmental plan (LEP) is to be finalised within nine months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office six weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to

meet these commitments, the Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Ms Carlie Boyd to assist you. Ms Boyd can be contacted on 6641 6604.

Yours sincerely



6-11-2018

Jeremy Gray
Director Regions, Northern
Planning Services

Encl: Gateway determination
Authorised plan-making reporting template



Planning & Environment

Gateway Determination

Planning proposal (Department Ref: PP_2018_BALLI_004_00): to amend Schedule 1 in the Ballina Local Environmental Plan 2012 to permit residential flat buildings as an additional permitted use on certain sites within the B3 Commercial Core zone; insert a new clause requiring these sites to maintain active frontages; and add a new objective to the B3 zone.

I, the Director Regions, Northern at the Department of Planning and Environment, as delegate of the Minister for Planning, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Ballina Local Environmental Plan (LEP) 2012 to amend Schedule 1 in the Ballina Local Environmental Plan 2012 to permit residential flat buildings as an additional permitted use on certain sites within the B3 Commercial Core zone; insert a new clause requiring these sites to maintain active frontages; and add a new objective to the B3 zone should proceed subject to the following conditions:

1. Prior to agency or community consultation the proposal is to be amended to clarify that the relevant land parcels shown within the identified 'sites' on the Additional Permitted Use Map and Active Frontages Map are intended to be part of a potential building envelope for possible future redevelopment containing residential flat buildings, rather than as individual redevelopment sites for that land use.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).
3. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

4. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - a. the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - b. the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - c. there are no outstanding written objections from public authorities.
5. The time frame for completing the LEP is to be **9 months** following the date of the Gateway determination.

Dated 6 day of November 2018.



Jeremy Gray
Director Regions, Northern
Planning Services
Department of Planning and
Environment

Delegate of the Minister for Planning