



31 January 2020

Gateway Determination Review for 9844 Pacific Highway Bulahdelah (PP_2018_MCOAS_004_00)

1 INTRODUCTION

1. On 18 December 2019, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a referral to review a Gateway determination pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to a planning proposal regarding 9844 Pacific Highway, Bulahdelah (Part Lot 100 DP 1139447) (the **Site**).
2. In November 2018, Lindfield Property Nominee Pty Ltd and NGP Investments (No. 2) Pty Ltd (together, the **Applicant**) lodged a planning proposal with Mid Coast Regional Council (**Council**) seeking to amend the Great Lakes Local Environment Plan 2014 (**GLLEP**) to facilitate the development of a highway service centre at the Site (**Planning Proposal**).
3. On 11 July 2019, as delegate for the Minister for Planning and Public Spaces (**Minister**), the Department issued a Gateway determination that the Planning Proposal should not proceed (the **Gateway determination**).
4. On 20 August 2019, the Applicant lodged a request to review the Gateway determination.
5. The matter was referred by the Minister's delegate to the Commission for advice. The letter accompanying the referral requested that the Commission *"review the planning proposal and prepare advice concerning the merits of the review request. The advice should include a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the planning proposal should proceed past Gateway"*.
6. Professor Mary O'Kane AC, Chair of the Commission, nominated John Hann (Chair) and Dr Peter Williams to constitute the Commission Panel determining the Application.

1.1 Site and Locality

7. The Department's Gateway Review Justification Assessment (**Department's Assessment**), dated 16 December 2019 stated that the Site is a:

"2.6ha portion of a 59.7ha lot adjacent to the Bulahdelah northern interchange of the Pacific Highway, north-east of the Bulahdelah town centre. The site is accessed from Recovery Road, which connects to the interchange.

The site is mostly cleared and adjoins a dwelling and rural infrastructure from a previous hobby farm".

8. The location of the Site is illustrated in **Figure 1** below.

Figure 1 – Location of the Site (Source: Department's Assessment)



9. The Department's Assessment states that:

"The site is primarily zoned RU2 Rural Landscape, with a small portion of R2 Low Density Residential land also affected ...

The entire site has a maximum height limit of 8.5m. A maximum floor space ratio (FSR) of 0.4:1 applies to the site, while a maximum FSR of 0.5:1 applies to the small portion of the site zoned R2 Low Density Residential.

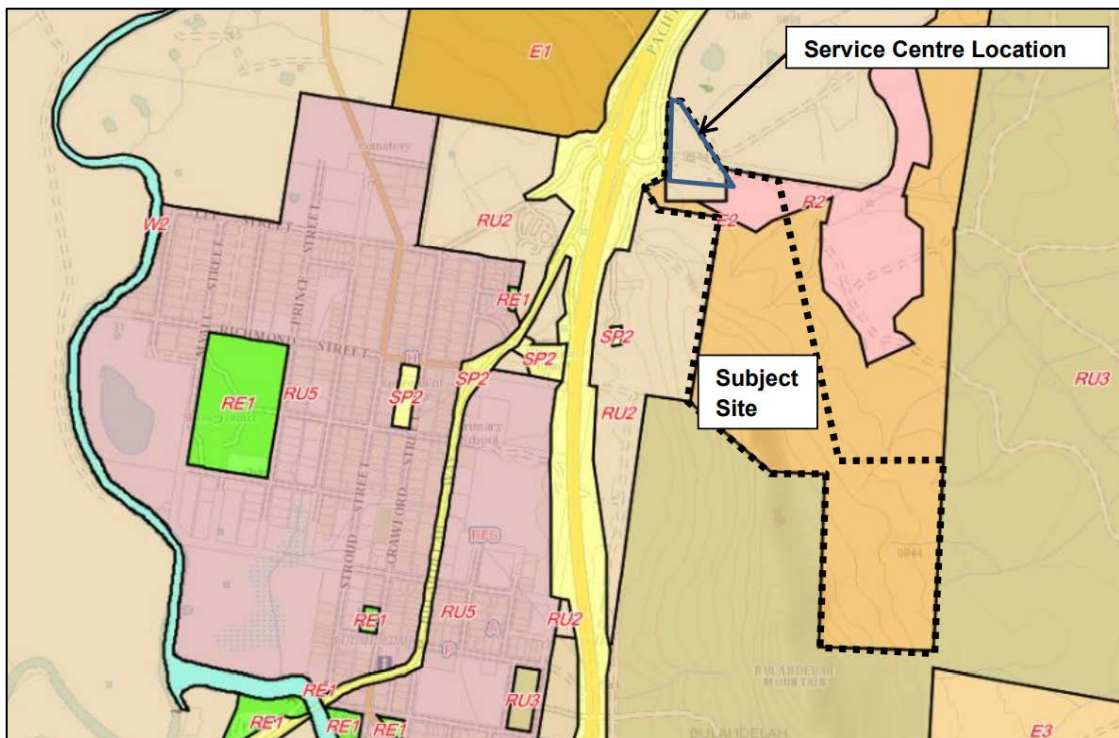
A minimum lot size of 40ha applies to most of the site, with a minimum of 700m² applying to the area zoned R2.

The site is part of the Bulahdelah Mountain Heritage Conservation Area (local significance).

The site is mapped as bushfire-prone land, with the northern part of the site being primarily Vegetation Category 2 or buffer."

10. The zoning of the Site under the GLLEP is shown in **Figure 2** below.

Figure 2 – Zoning of the Site under the GLLEP (Source: Department’s Assessment)



1.2 The Planning Proposal

11. The Planning Proposal seeks to allow for the development of a portion of the Site for a highway service centre and subdivision. The service centre location is demonstrated in **Figure 3**.
12. The Department’s Assessment states that the Planning Proposal seeks to “*deliver the highway service centre through an amendment to Schedule 1 Additional permitted uses of the Great Lakes LEP 2014 to allow the proposed use on a portion of the site. The planning proposal also seeks to ensure that on redevelopment, the site can be subdivided to excise the lot containing the highway service centre, despite the existing minimum lot size of 40ha.*”
13. The Applicant’s Request for Gateway Determination Review Report dated 20 August 2019 states that the Planning Proposal will have the following economic benefits:
 - “*In construction, provide 14 direct job years and 24 flow-on job years.*”
 - “*Provide an additional 60 jobs for the area in retail operations.*”
 - “*Provide a further 48 flow-on jobs in the area.*”
 - “*Contribute \$2.2 million per annum to gross regional product.*”
 - “*Provide an opportunity for Bulahdelah to capture trade that otherwise bypasses the town.*”

Figure 3 – Proposed Service Centre Location (Source: Department’s Assessment)



1.3 History of the Planning Proposal and Gateway Determination

14. **Table 1** provides a history of the Planning Proposal.

Table 1 – History of the Planning Proposal

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|------------------|---|
| 8 November 2017 | Planning Proposal lodged with Council. |
| 18 December 2017 | Formal request to Roads and Maritime Services (RMS) to provide advice on the Planning Proposal. |
| 11 April 2018 | RMS provided advice to Council that it did not support the planning proposal. |
| 13 June 2018 | Council resolves to review the Great Lakes Highway Service Centre Strategy following representations at a meeting held by the Applicant and representatives of the Bulahdelah community |
| 2 August 2018 | Revised Planning Proposal lodged by Applicant |
| 31 October 2018 | Council resolved at its Ordinary Meeting to support the revised Planning Proposal |
| 29 November 2018 | Lodgment of Planning Proposal for Gateway Determination |
| 23 June 2019 | RMS requested to provide advice to Department |
| 11 July 2019 | Department determined that the Planning Proposal should not proceed. |
| 20 August 2019 | Request for Gateway determination review submitted by Applicant |
| 16 December 2019 | Department’s request to Commission to review the Gateway determination decision. |
| 18 December 2019 | The Commission received the request to review the Gateway determination decision. |

15. The Applicant is permitted 42 days to request a review of the Gateway determination if the decision is that the Planning Proposal should not proceed or there are conditions the Applicant does not agree with. As demonstrated in **Table 1**, the Applicant requested the Gateway determination review within the required timeframe.

1.4 The Department's Decision

16. The Department's decision that the Planning Proposal should not proceed past Gateway was made for the following reasons set out in the Gateway determination:
1. *the planning proposal is inconsistent with the RMS Pacific Highway Service Centre Policy and Council's Great Lakes Highway Service Centre Strategy;*
 2. *the planning proposal is inconsistent with the Hunter Regional Plan 2036, specifically Direction 4 Enhance inter-regional linkages to support economic growth and Direction 20 – Revitalise existing communities; and*
 3. *the planning proposal is inconsistent with section 9.1 Direction 5.4 Commercial and Retail Development along the Pacific Highway, North Coast and Direction 5.10 Implementation of Regional Plans, and the inconsistency is not justified.*

2 THE COMMISSION'S MEETINGS AND SITE INSPECTION

2.1 Meeting with Transport for NSW (formerly RMS)

17. On 16 January 2020, the Commission met with Transport for NSW (TfNSW) via teleconference. A copy of the meeting transcript was made available on the Commission's website on 24 January 2020.

2.2 Meetings with the Applicant, Department and Council

18. On 21 January 2020, the Commission separately met with the Applicant, the Department and Council. Copies of these transcripts were made available on the Commission's website on 24 January 2020.

2.3 Site Inspection

19. On 21 January 2020, the Commission conducted an inspection of the Site. A copy of the Site inspection notes was made available on the Commission's website on 24 January 2020.

3 THE COMMISSION'S CONSIDERATION

3.1 Material considered by the Commission

20. In this review of the Gateway determination, the Commission has carefully considered the following material (**material**):
- Great Lakes Council's Great Lakes Highway Service Centre Report, dated May 2004;
 - the RMS Highway Service Centres along the Pacific Highway Policy Review, dated May 2014;
 - the RMS Highway Service Centres along the Pacific Highway Policy Review, Summary Feedback Report, dated June 2015;
 - RMS comments to Council, dated 11 April 2018;
 - the Applicant's Economic Impact Assessment, prepared by HillPDA Consulting (HillPDA), dated July 2018;
 - the Council Planning Proposal Assessment, dated 11 September 2018;
 - the Applicant's Planning Proposal prepared by Coastplan Group Pty Ltd (Coastplan), dated November 2018, and attachments;

- the Department’s Gateway Determination Report, dated 11 July 2019;
- the Applicant’s Request for Gateway Determination Review Report, dated 20 August 2019;
- Council comments to the Department on the Review of the Gateway determination dated 14 October 2019;
- the Department’s Gateway Review Justification Assessment, dated 16 December 2019;
- response to questions on notice from Transport for NSW (RMS) received 25 January 2020; and
- response to questions on notice from Midcoast Council received 28 January 2020.

3.2 Strategic Context

21. In reviewing the Gateway determination, the Commission has identified and considered the following key strategic planning documents:

3.2.1 Roads and Maritime Services’ Pacific Highway Service Centre Policy and Mid Coast Council’s Great Lakes Highway Service Centre Strategy

Applicant’s Comments

22. In relation to the RMS Pacific Highway Service Centre Policy the Applicant stated in the Request for Gateway Determination Review Report that:

“Bulahdelah is identified as a Highway Service Town in the Policy, and has always been recognised as a strategic location being located approximately 3 hours from Sydney along the highway. Since the bypass, and the downturn in trade, the town does not provide a high level of highway service and does not include any truck parking facilities, etc. As evidenced in the Planning Proposal and Economic Assessment, the town is not capturing the retail trade from the highway and is not providing a high level of services to the highway. The proposal creates an opportunity for the creation of a centre which is connected with the town, providing economic benefits to the community while delivering services at the strategic location identified along the highway within the policy. This outcome is considered consistent with the stated aim of the RMS policy.”

23. In relation to Council’s Highway Service Centre Strategy, the Applicant stated in the Request for Gateway Determination Review Report that:

“the strategy seeks to reinforce the provision of highway service functions at Bulahdelah. The site is part of the Bulahdelah township area and enables Bulahdelah to continue to provide its highway servicing function which has been significantly lost as a result of the highway bypass of the town. The proposal will enable the township to recapture lost trade and will meet the aims of the strategy by reinforcing the function of Bulahdelah in providing highway service functions whilst mitigating the loss of highway trade that has arisen from the Bulahdelah bypass”.

Council’s Comments

24. In reference to the RMS Pacific Highway Service Centre Policy and Council’s Great Lakes Highway Service Centre Strategy, Council in its letter to the Department dated 14 October 2019 stated that:

“The intent of these documents in regard to Bulahdelah was to encourage highway traffic to enter the town to access fuel and fast-food outlets. This has not occurred in Bulahdelah (two service stations have closed, and no traditional fast-food outlets have opened). Instead, the town has reorientated itself to cater for ‘grey nomads’ and the travelling public who want a

longer break and are willing to spend time at the pub and cafes.

A highway service centre on the outskirts of Bulahdelah would therefore not directly compete with the target market of the Bulahdelah township, but would instead provide much-needed employment opportunities for its local population. This will provide an economic advantage to the township of Bulahdelah.

Department's Comments

25. The Department's Assessment states that:

"The proponent has provided additional comment through their request for a Gateway determination review. These comments still highlight the inconsistencies with the RMS policy and Council's strategy.

The RMS policy mentions that Bulahdelah has long been recognised by RMS and Council as providing a high level of services to passing traffic. The close interchanges north and south of the town make it accessible for light and recreational vehicles, and visitors do not need to backtrack to return to the highway. Directional and service signposting is also provided, and research has found that the travelling public appreciates towns that can cater for their needs.

Allowing a highway service centre in this location undermines the strategic intent of this policy. Given this policy was recently reviewed, it is considered that no compelling new evidence has been provided to support a deviation from the policy and the precedent the proposal would create."

Commission's Consideration

26. The Commission accepts both Council and RMS have long recognised Bulahdelah's service role to passing traffic, as stated by Department in paragraph 25 of the Department's Assessment.
27. The Commission accepts that both the RMS Pacific Highway Service Centre Policy (2014) and Council's Great Lakes Highway Service Centre Strategy (2004) seek to encourage highway traffic to enter Bulahdelah to access fuel and fast-food outlets as stated by Council in paragraph 24.
28. The Commission notes that Bulahdelah has experienced a negative impact as a result of the bypass and in an attempt to redress this, has reorientated itself to cater for the travelling public who may seek a longer break and are willing to spend time in the township, as stated by the Applicant and Council (see paragraphs 22 and 24 respectively).
29. The Commission acknowledges that the Department is of the view that a highway service centre in this location undermines the strategic intent of the RMS Pacific Highway Service Centre Policy and that the Department considers that there is no compelling new evidence provided to support a deviation from that policy, as set out in in paragraph 25.
30. The Commission notes that the RMS Policy Review dated May 2014 acknowledges the importance of the economic well-being of bypass towns. Importantly, this Review was conducted less than 12 months after the bypass of the Bulahdelah town and therefore did not have the benefit of traffic data now available which confirms the sustained negative impact on the town.
31. The Commission further notes that the RMS Policy Review states that *"the sites selected for highway service centres are all close to by-passed towns, so the economic benefits can remain with those centres"*, confirming that highway service centres can have an important positive role in supporting highway service towns. The Commission is of the view that Bulahdelah also has the potential to benefit from a highway service centre, consistent with

the intent of the RMS Policy.

32. The Commission accepts Council's conclusion as stated in paragraph 24, that the intent of the Council Highway Service Centre Strategy (2004) for Bulahdelah to remain a highway service town has not been fulfilled.
33. The Commission is of the view that notwithstanding the intent of the respective policies of Council and the RMS (see paragraph 27) in relation to the highway service function of Bulahdelah, the town continues to be significantly adversely impacted by the bypass and that the objectives of the RMS Policy to protect the Bulahdelah Highway service town have been unsuccessful.
34. The Commission accepts the evidence presented in the HillPDA Economic Impact Assessment report in relation to pre- and post-bypass traffic, where the town continues to experience a 90% reduction in traffic since the bypass in 2013, with associated net negative impacts on businesses and jobs. On this basis, the Commission finds that the strategic intent of the RMS policy to protect Bulahdelah's function as a highway service town has not been met.
35. It is the Commission's view that:
 - the intended highway service town role of Bulahdelah is integral to the RMS policy, particularly in terms of travel distances;
 - strict adherence to the RMS policy will not improve Bulahdelah's prospects of fulfilling the highway service town role; and
 - Bulahdelah is not functioning effectively as a highway service town, undermining the goals of the RMS and Council policies.
36. The Commission finds that there is merit in the Planning Proposal and that permitting development of a Highway Service Centre at the Site has the potential to assist Bulahdelah in providing an enhanced highway service town function, thereby satisfying the intent of the RMS Policy and Council Strategy, both of which acknowledge the importance of preserving the economic future of the Bulahdelah township.

3.2.2 Hunter Regional Plan 2036

37. The Commission has reviewed the Planning Proposal against the following relevant Directions of the Hunter Regional Plan 2036:
 - Direction 4: Enhance inter-regional linkages to support economic growth; and
 - Direction 20: Revitalise existing communities;

Applicant's Comments

38. In relation to Direction 4 of the Hunter Regional Plan 2036, the Applicant stated in the Request for Gateway Determination Review Report that:

“the proposal would provide enhanced facilities to service light and heavy vehicles along the Pacific Highway. The facilities provide a far better offer than existing facilities within the Bulahdelah township, including heavy vehicle parking and 24 hour offer of fuel and food. These would all be provided at a location which has been identified as a key strategic stopping point along the Pacific Highway. The proposal utilises an existing interchange with a large capacity on the highway and does not impact on the safety or efficiency of the highway. The proposal is clearly consistent with Direction 4 in the Hunter Regional Plan.”

39. In relation to Direction 20 of the Hunter Regional Plan 2036, the Applicant stated in the Request for Gateway Determination Review Report that:

“Bulahdelah traditionally has a long history of highway service functions and was well known for this function before the bypass occurred. The proposal will assist in restoring this traditional function for the township and will return jobs and economic activity to the community which were lost when the bypass occurred, helping revitalise the town in economic terms. As noted in the Planning Proposal, Bulahdelah has been transitioning to a niche market with longer stays, rather than general highway service functions. The Planning Proposal includes provisions for a planning agreement which would provide for town improvements to assist with this revitalisation, whilst restoring the highway service functions and economic benefits for the town at this key location.”

Council’s Comments

40. In reference to the Hunter Regional Plan 2036, specifically Direction 4 – Enhance inter-regional linkages to support economic growth and Direction 20 – Revitalise existing communities, Council in its letter to the Department dated 14 October 2019 stated that:

“The planning proposal clearly meets Direction 4 of the Hunter Regional Plan 2036 as it provides a service function to the travelling public and supports economic development on the edge of the Bulahdelah township.”

As mentioned above, a highway service centre in this location will provide significant additional employment opportunities to the local population and as such meets Direction 20.”

Department’s Comments

41. In relation to Direction 4 of the Hunter Regional Plan 2036, the Department’s Assessment states that:

“Direction 4 of the regional plan highlights the importance of inter-regional linkages in supporting the economic growth of the region. The management of land uses adjoining key transport corridors must be considered to protect the efficiencies of freight movement. The Pacific Highway is an important transport corridor for freight, tourism and inter-regional connections.”

“The strategic location of highway service centres, as nominated by RMS, provides a solution to balance development, safety and travellers’ rest needs. Allowing highway service centres outside the supported locations undermines the RMS policy and may erode the efficiency of highway movement with the proliferation of signage, highway openings and slowing traffic.”

42. In relation to Direction 20 of the Hunter Regional Plan 2036, the Department’s Assessment states that:

“Direction 20 seeks to revitalise communities by concentrating development in urban areas. The proposal seeks to provide economic benefit by increasing employment in Bulahdelah. However, it may reduce the economic viability of existing operators in the town. The proposal’s assertion that the site is in the town due to the adjoining undeveloped residential-zoned land is not supported.”

“Mitigation measures could meet the objectives of this Direction with the proposed revitalisation of the main street of Bulahdelah and the provision of additional amenities. However, no evidence is provided to quantify benefits, suggest that the measures would be effective, or form part of a broader strategy to guide the town’s economic growth.”

Commission’s Consideration

43. The Commission acknowledges that the Department is of the view that allowing highway

service centres outside the supported locations undermines the RMS policy and may erode the efficiency of highway movement by reason of the proliferation of signage, highway openings and slowing traffic as stated in paragraph 41 and 42.

44. However, the Commission agrees with Council that the Planning Proposal has the potential to provide a service function to the travelling public and supports economic development on the edge of the Bulahdelah township as stated by Council in paragraph 40.
45. The Commission accepts that a highway service centre in this location will provide significant additional employment opportunities to the local population as stated by Council in paragraph 40 and the Applicant in paragraph 13. The Planning Proposal creates the potential for Bulahdelah to recapture its highway service function and economic vitality, lost by the 2013 bypass of the town.
46. For the reasons set out in paragraphs 44 and 45, the Commission finds that the Planning Proposal is consistent with Direction 4 and Direction 20 of the Hunter Regional Plan 2036.
47. The Commission accepts that there is the potential for a negative impact on the economic viability of some existing operators in Bulahdelah as stated by the Department in paragraph 42. However, the Commission is of the view that on balance, there is likely to be a net economic benefit to Bulahdelah and that the Planning Proposal should proceed past Gateway to provide an opportunity for the community to be fully informed and engaged in the application process.

3.2.3 Ministerial Section 9.1 Directions

48. The Commission has reviewed the Planning Proposal against the following relevant directions made by the Minister under section 9.1(2) of the EP&A Act (**Section 9.1 Directions**):
 - Direction 5.4 - Commercial and Retail Development along the Pacific Highway, North Coast; and
 - Direction 5.10 - Implementation of Regional Plans.

Applicant's Comments

49. The Applicant stated in the Request for Gateway Determination Review Report that the Planning Proposal is consistent with Section 9.1 Directions 5.4 and 5.10.

Council's Comments

50. In reference to the Section 9.1 Directions, Council in its letter to the Department dated 14 October 2019 stated that:

“Ministerial Direction 5.4 provides criteria for the establishment of a highway service centre if its location is not specified. The planning proposal clearly demonstrates how it meets these criteria. Additionally, as specified above, the planning proposal is in alignment with the Hunter Regional Plan 2036 and is consistent with Ministerial Direction 5.10.”

TfNSW Comments

51. In its comments to Council dated 11 April 2018, TfNSW stated that it does not support the Planning Proposal, as its location is contrary to Section 9.1 Direction 5.4 regarding Commercial and Retail Development along the Pacific Highway, North Coast (effective as of 21 August 2015).

Department's Comments

52. The Department's Gateway Determination Report dated 11 July 2019, does not support the Planning Proposal's conclusion that the proposal is consistent with each of the objectives of Section 9.1 Direction 5.4. The Department's Determination Gateway Report states that:

"The planning proposal's consistency assessment is not supported. While the proposal may satisfy objectives (a) to (e), it does not satisfy objective (f). Objective (f) requires proposals to reinforce the retail and commercial function of the centre, and this has not been demonstrated".

53. The Department's Gateway Determination Report further states that:

"The Hunter Regional Plan 2036 applies to the site and its application is discussed in section 4.21 of this report. As noted, there is some inconsistency with Directions 4 and 20 of the regional plan. It is considered that the proposal's inconsistency with Direction 5.10 has not been justified."

54. The Department's Assessment states that:

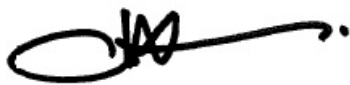
"The need for the proposal has not been adequately justified and so it is not supported. The proposal has not demonstrated that it would reinforce the Bulahdelah town centre are [sic] required by section 9.1 Direction 5.4, which implements RMS's Pacific Highway Service Centre Policy. If the proposal was supported it would undermine the intent of the policy and Direction, which aim to have strategic and considered locations for highway service centres on this nationally significant transport corridor."

Commission's Consideration

55. The Commission agrees with the Department that the Planning Proposal satisfies objectives (a) to (e) of Direction 5.4 as stated by the Department in paragraph 52. In relation to objective (f), the Commission is of the view that the Planning Proposal has the potential to reinforce the role of retail and commercial development in Bulahdelah for the reasons set out in paragraphs 43 to 47. Bulahdelah's ability to meet objective (f) of Section 9.1 Direction 5.4, namely reinforcing *"the role of retail and commercial development in town centres"* – was significantly compromised by the 2013 bypass. The Planning Proposal has the potential to facilitate the economic rejuvenation of the town.
56. The Commission is therefore of the view that the Planning Proposal satisfies the objectives of Section 9.1 Direction 5.4. Further, as set out above at paragraph 46, the Commission is of the view that the Planning Proposal is consistent with the Hunter Regional Plan. Therefore, the Commission considers that the Planning Proposal satisfies the objective of Section 9.1 Direction 5.10, which requires a planning proposal to be consistent with a Regional Plan released by the Minister.

4 THE COMMISSION'S ADVICE

57. The Commission has undertaken a review of the Gateway determination as requested by the Department and provides the following advice on whether the Planning Proposal should proceed past Gateway.
58. Based on its consideration of the Material, the Commission finds that the Planning Proposal has strategic merit and should therefore proceed past Gateway as:
- the Planning Proposal satisfies the intent of the RMS Pacific Highway Service Centre Policy (see paragraph 36);
 - is consistent with Direction 4 and Direction 20 of the Hunter Regional Plan 2036 (see paragraph 46); and
 - satisfies the Ministerial Section 9.1 Directions 5.4 and 5.10 (see paragraph 56).
59. The Commission also considers that the Planning Proposal:
- has the potential to assist Bulahdelah in providing a highway service function (see paragraph 36)
 - will provide additional employment opportunities to the local population (see paragraph 45);
 - has the potential to reinforce the role of retail and commercial development in Bulahdelah (see paragraph 55); and
 - is on balance, likely to provide a net economic benefit to Bulahdelah (see paragraph 47).
60. For the reasons outlined in paragraphs 58 and 59, the Commission recommends that the Planning Proposal proceed past Gateway.



John Hann (Chair)
Member of the Commission



Dr Peter Williams
Member of the Commission