



## Notice of Ordinary Meeting

An Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Thursday 22 June 2017 commencing at 9.00 am.**

### Business

1. Australian National Anthem
2. Acknowledgement of Country
3. Apologies
4. Confirmation of Minutes
5. Declarations of Interest and Reportable Political Donations
6. Deputations
7. Mayoral Minutes
8. Development and Environmental Health Group Reports
9. Strategic and Community Facilities Group Reports
10. General Manager's Group Reports
11. Civil Services Group Reports
12. Public Question Time
13. Notices of Motion
14. Advisory Committee Minutes
15. Reports from Councillors on Attendance on Council's behalf
16. Confidential Session

Paul Hickey  
**General Manager**

**A morning tea break is taken at 10.30 a.m. and a lunch break taken at 1.00 p.m.**

## **Deputations to Council – Guidelines**

Deputations by members of the public may be made at Council meetings on matters included in the business paper. Deputations are limited to one speaker in the affirmative and one speaker in opposition. Requests to speak must be lodged in writing or by phone with the General Manager by noon on the day preceding the meeting. Deputations are given five minutes to address Council.

Any documents tabled or given to Councillors during the meeting become Council documents and access may be given to members of the public in accordance with the requirements of the Government Information (Public Access) Act 2009.

The use of powerpoint presentations and overhead projectors is permitted as part of the deputation, provided that the speaker has made prior arrangements with the General Manager's Office at the time of booking their deputation. The setup time for equipment is to be included in the total time of five minutes allocated for the deputation.

## **Public Question Time – Guidelines**

A public question time has been set aside during the Ordinary Meetings of the Council. Public Question Time is held at 12.45 pm but may be held earlier if the meeting does not extend to 12.45 pm.

The period for the public question time is set at a maximum of 15 minutes.

Questions are to be addressed to the Chairperson. The period is set aside for questions not statements.

Questions may be on any topic, not restricted to matters on the agenda for the subject meeting.

The Chairperson will manage the questions from the gallery to give each person with a question, a "turn". People with multiple questions will be able to ask just one before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, the multiple questions can then be invited and considered.

Recording of the questions will not be verbatim.

The standard rules of behaviour in the Chamber will apply.

Questions may be asked from any position in the public gallery.

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1. Australian National Anthem
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  6. Deputations
  7. Mayoral Minutes
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**1. Australian National Anthem**

The National Anthem will be performed by Holy Family School.

**2. Acknowledgement of Country**

In opening the meeting the Mayor provided an Acknowledgement of Country by reading the following statement on behalf of Council:

I would like to respectfully acknowledge past and present Bundjalung peoples who are the traditional custodians of the land on which this meeting takes place.

**3. Apologies**

**4. Confirmation of Minutes**

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 25 May 2017 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 25 May 2017.

**5. Declarations of Interest and Reportable Political Donations**

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

## 8.1 DA 2016/506 - 37 Converys Lane, Wollongbar

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### 8. Development and Environmental Health Group Reports

#### 8.1 DA 2016/506 - 37 Converys Lane, Wollongbar

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<b>Applicant</b>	Newton Denny Chapelle
<b>Property</b>	37 Converys Lane, Wollongbar Lot 2 DP 577649
<b>Proposal</b>	To Permit Increased Student Numbers (from 100 to 235 students) on a Permanent Basis for an Approved Educational Establishment.
<b>Effect of Planning Instrument</b>	The land is zoned RU1 Primary Production under the provisions of the Ballina LEP 2012.
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached.

#### **Introduction**

Consent is sought to permit an increase in student numbers of the existing Educational from 100 students to 235 students on a permanent basis. The Educational Establishment is to continue to operate for no more than a maximum of two weekends per month and from Friday evening to Sunday, in accordance with the terms of DA 2011/146.

This application was reported to the Council meeting of 27 April 2017. Council resolved the following:

*That this matter be deferred to allow a further report to be submitted to Council with draft conditions of consent for approval.*

This report supplements the Council report of 27 April 2017 (Item 8.1).

#### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

#### **Report**

The key issue in relation to the proposal is the impact the traffic generated by the development will have on Converys Lane and the intersection of the Bruxner Highway and Converys Lane.

## 8.1 DA 2016/506 - 37 Converys Lane, Wollongbar

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Given the NSW Roads and Maritime Services (RMS) is the roads authority responsible for the Bruxner Highway, Council staff consulted with the RMS to determine its position in regards to the matter. The RMS advised that they would not support modification of the intersection and would rather see the issue managed using demand management strategies such as transporting students to the site via buses, should Council consider this an acceptable system to allow approval of the development.

The applicant was then provided the opportunity to submit a revised Traffic Management Plan (Attachment 2) to attempt to address the concerns raised by Council's Civil Services in relation to the capacity of the intersection and Converys Lane to accommodate the vehicle movement generated by the development.

This plan includes measures to attempt to maintain the traffic generation associated with the proposed development to the same number of vehicles (maximum of 90 movements/hour) associated with the current number of students approved to use the facility (100 students), despite the proposed increase of 135 students.

The measures in the plan include encouraging students to car pool, establishing a register of students offering or requiring carpooling and where the operator has identified more than 90 vehicles could be accessing the site, bus services will be provided from the Ballina airport for students who are flying to the event.

The plan also proposes to submit compliance reports to Council on a quarterly basis for the first two years of operation and then annually for the remaining life of the development.

Council's assessment staff are still concerned that there is a high risk of the system becoming non-compliant over time due to the following reasons:

- The difficulty and costs associated with the logistics of arranging carpooling for 235 people who live in different locations
- Students deciding to travel to the site using their own transport to avoid the inconvenience of carpooling, despite the best intentions of the operator
- The proposed system will require significant expenditure by the operator of the business creating a disincentive for them to continue the process on an ongoing basis.

The costs include administration associated with managing the carpooling system, contractors to implement the traffic control plan and consultants to prepare reports for Council.

It is anticipated that the operator is likely to request, at some stage in the future, that the Traffic Management Plan be amended on the grounds that it is not financially viable to operate the business with the financial impost associated with the system.

The proposed Traffic Management Plan also places additional resource requirements on Council as there are insurance and Work Health Safety requirements associated with the contractors completing the traffic control works in the road reserve and staff will also be required to review the reports provided by the applicant to ensure they are complying with the conditions of consent.

Where there are non-compliances, Council will be required to work with the applicant in an effort to ensure future compliance.

Should Council accept the proposed Traffic Management Plan it cannot reasonably require an upgrade of the Converys Lane road pavement, nor the intersection of Converys Lane and the Bruxner Highway given that the plan will theoretically limit the number of vehicles associated with the proposed development to that of the existing approved development.

Converys Lane is currently constructed to a width of seven metres for the first 150m from the intersection and only three metres wide for the remaining 220m to the access driveway of the subject property.

This is considered insufficient to accommodate additional traffic.

In addition, Council will be unable to charge road contributions for the proposed development given that there will theoretically be no increase in traffic beyond the number of vehicles associated with the existing approved development.

Council therefore needs to be satisfied that the proposed Traffic Management Plan will be effective in limiting the number of vehicles attending the site to a maximum of 90 vehicles/hour (as generated by the existing educational establishment with a maximum capacity of 100 students), despite the increase in the maximum capacity by a further 135 students.

Council's assessment staff have prepared draft conditions of consent (refer to Attachment 3), as required by the April 2017 resolution.

Should Council see fit to approve the application it should do so subject to compliance with all draft conditions.

## **Options**

### **Option One – Approval**

That Council resolves to issue development consent to the application, subject to the attached conditions (Attachment 3), on the basis that the development is suitable for the site, the impacts on traffic safety can reasonably be mitigated through the ongoing implementation of the proposed traffic management plan (Attachment 2) and the implementation of such a plan will not result in any additional traffic movements to/from the development site for the approved operations (maximum capacity of 100 students) .

This is not the preferred option for the reasons detailed in the previous Council report.



### Option Two - Refusal

That Council refuses the development application. As outlined in the previous Council report, this is the preferred option for the following reasons:

1. The intersection of the Bruxner Highway and Converys Lane has insufficient capacity to service the proposed development and approval of the application would compromise the safety and efficiency of the intersection.
2. The proposed Traffic Management Plan is neither practical nor self-enforcing. There is likely to be a high risk of non-compliance with the proposed traffic management strategies, and therefore these strategies are unlikely to alleviate traffic safety and management concerns at the intersection of the Bruxner Highway and Converys Lane.
3. For the reasons outlined above, the application is not considered to be in the public interest.

It is recommended that the development application be refused on the grounds that the intersection of the Bruxner Highway and Converys Lane has insufficient capacity to service the proposed development safely and non-compliance with the proposed traffic management strategies is likely to occur.

The facility can continue to operate at a maximum capacity of 100 students under the terms of DA 2011/416.

### RECOMMENDATION

That Development Application 2016/506 'To Permit Increased Student Numbers (from 100 to 235 students) on a Permanent Basis for an Approved Educational Establishment' on Lot 2 DP 2 DP 577649 No. 37 Converys Lane, Wollongbar be **REFUSED** for the following reasons:

1. The intersection of the Bruxner Highway and Converys Lane has insufficient capacity to service the proposed development and approval of the application would compromise the safety and efficiency of the intersection.
2. The proposed Traffic Management Plan is neither practical nor self-enforcing. There is likely to be a high risk of non-compliance with the proposed traffic management strategies, and therefore these strategies are unlikely to alleviate traffic safety and management concerns at the intersection of the Bruxner Highway and Converys Lane.
3. For the reasons outlined above, the application is not considered to be in the public interest.

### Attachment(s)

1. DA 2016/506 - 37 Converys Lane - Locality Plan
2. DA 2016/506 - 37 Converys Lane - Traffic Management Plan
3. DA 2016/506 – 37 Converys Lane – Draft Conditions

## 8.2 Compliance Work Plan 2016/17 - Final Report

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### 8.2 Compliance Work Plan 2016/17 - Final Report

**Delivery Program** Development Services

**Objective** To provide Council with the finalisation report on the 2016/17 Compliance Work Plan.

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#### **Background**

At the June 2016 Ordinary meeting, Council adopted a Compliance Work Plan for the 2016/17 financial year. This report provides a status report on that plan.

#### **Key Issues**

- Level of Compliance
- Results achieved

#### **Information**

The Compliance Work Plan nominated four areas as the priorities for this financial year, as they were considered to be the areas of highest risk or potentially lowest levels of compliance.

These priority areas are:

1. *Audit of Major Developments within the Shire (Ongoing Program);*
2. *Audit of Identified Development Consents (Ongoing Program);*
3. *Review of all Development Consents issued within the Russellton Industrial Estate; and*
4. *Review of Liquor Licenses and Licensed Premises within Ballina Shire (New Program).*

In addition to these areas of identified priority, the Compliance Team within the Development Services Section respond to customer requests received from members of the general public as well as from Council employees and State and Federal Government Agencies.

In the June 2016 Compliance Work Plan report there were 55 Outstanding Notices requiring follow up.

Given the large numbers of legal notices that are outstanding, and the legislative time limits that apply should legal action be warranted, the available staffing resources have been dedicated to this area of work.

## 8.2 Compliance Work Plan 2016/17 - Final Report

The main area of non-compliance resulting in Council's legal notices is a result of complaints for unauthorised second (and sometimes third) residential dwellings within rural land within the Shire. These dwellings are usually converted farm or dairy sheds and have substandard On-Site Sewage Management Systems.

Council has also been investigating a number of unauthorised "function centre" (wedding venue) and "tourist and visitor accommodation" complaints within rural zones.

These types of investigations are complex and require the dedication of many hours to identify and check all available records within Council's systems, as well as to conduct a number of inspections coordinating technical officers across various sections within Council's Development and Environmental Health Group to ascertain compliance and where necessary ensure remedial action is taken.

Of the nominated priority areas within the Compliance Work Plan, Council is provided with the following updates.

### 1. *Audit of Major Developments within the Shire (Ongoing Program)*

Major Developments are defined as developments consisting of five or more units/parcels of land/dwellings as well as all developments within areas of high environmental significance.

This program originally commenced in the 2008/09 financial year with an audit of 2006 development applications, which included applications that have been determined or withdrawn.

This program has continued on to audit 2007, 2008, 2009, 2010 and 2011 development applications. Compliance resources have also been involved in auditing developments being carried out on environmentally and culturally sensitive sites on an ongoing basis.

The 2006, 2007 and 2008 financial year audits have been completed, with all development consents now fully complied with and will no longer be reported on. The status of the remaining major developments is as follows.

Item	2009	2010	2011	2012	2013	2014
Number of Major Developments	43	83	56	47	30	38
Number Inspected for compliance	43	83	0	0	0	0
Number Compliant	34	40	0	0	0	0
Number of Ongoing Inspections (Current Works)	5 <sup>1</sup>	22 <sup>2</sup>	0	0	0	0
Number of Ongoing Inspections (No Works on site – Consent Physically commenced but dormant)	0	0	0	0	0	0
Number of Consents not commenced	0	17	0	0	0	0
Number of Consents lapsed	4	4	0	0	0	0
Number yet to be inspected	0	0	56	47	30	38

- <sup>1</sup> Four of these developments relate to ongoing subdivisions which are awaiting final submission of linen plans and the remaining development is a tourist development which will lapse in the coming months if the use is not physically commenced.
- <sup>2</sup> Approximately half of these developments relate to ongoing subdivision works, with the remainder applying to various developments that are progressing towards completion.

**2. Audit of Identified Development Consents (Ongoing Program)**

Identified Development Consents are defined as all approvals issued by Council *EXCEPT* those identified as either (a) Major Developments or (b) Consents that require further approvals from Council or an accredited certifier, (e.g. Construction Certificates, Occupation Certificates, Subdivision Certificates, Food Inspection Certificates) and therefore have a 'built in' mechanism or stage within the consent where compliance with conditions are checked.

In these circumstances, a desktop audit is conducted to ensure that the appropriate certification has been received, and if no documentation has been received by Council, follow up inspections to ascertain whether the consent has been acted on or has lapsed are then undertaken.

This program originally commenced in the 2008/09 financial year with an audit of 2006 development applications, which included applications that have been determined or withdrawn. This program has continued on to audit 2007, 2008, 2009, 2010 and 2011 development applications.

The 2006 and 2007 financial year audits have been completed, with all development consents now fully complied with and will no longer be reported on. The status of the remaining consents is as follows.

<b>Item</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Number of Identified Developments	131	99	148	96	112	82	80
Number Inspected for Compliance	131	99	148	0	0	0	0
Number Compliant	121	97	132	0	0	0	0
Number of Ongoing Inspections (Current Works)	4 <sup>1</sup>	2 <sup>2</sup>	11 <sup>3</sup>	0	0	0	0
Number of Ongoing Inspections (No Works on site – Consent Physically commenced but dormant)	0	0	0	0	0	0	0
Number of Consents not commenced	0	0	4	0	0	0	0
Number of Consents lapsed	6	0	1	0	0	0	0
Number yet to be inspected	0	0	0	96	112	82	80

- <sup>1</sup> These developments relate to a number of businesses within the Shire which have not provided final certification of building works. These matters originally came to the attention of Council as the developments had commenced however no certification had been received.
- <sup>2</sup> These outstanding developments relate to matters in which the works have been commenced, however matters are still outstanding for which final certificates have not been issued. These matters originally came to the attention of Council as the developments had commenced however no certification had been received.
- <sup>3</sup> Most of these developments relate to follow up inspections for vegetation removal and change of use applications within commercial or industrial zones.

### *3. Review of all Development Consent approvals issued within the Russellton Industrial Estate.*

This program is currently underway with an initial desktop audit having been completed that identified all relevant properties to be inspected and letters issued to all landowners within the Russellton Industrial Estate advising them of the scope of the audit.

The audit has been separated into two parts, the first being to identify any encroachments into the road reserve. These encroachments include installations, goods and/or vehicles stored on the footpaths or security gates opening onto the road reserve.

The landowners who have had encroachments, have in the main, been willing to address these obstructions without the need for formal enforcement action being taken.

The second part of the audit has been in relation to the development consents within private property. Approximately 95% of the properties within the Russellton Industrial Estate have been inspected, with a number of non-compliances detected.

Generally, these non-compliances relate to unauthorised uses, development consent conditions, fire safety requirements and the provision of fire safety certification, as well as identified trade waste and pollution matters.

Compliance staff have also identified four unauthorised dwellings currently occupied within the Estate, resulting in formal Notices being served on the relevant occupants and/or landowners.

It is anticipated that this audit will be completed early into the 2017/18 financial year with follow up actions to continue for some time.

### *4. Review of Liquor Licenses and Licensed Premises within Ballina Shire*

This program has now been completed.

Council's Liquor Licensing Register is also completed and contains the details of:

- Location of Licence
- Type of Licence (for example, On Premises – Hotel, Club, Limited Licence (Sporting Club and the like)
- Development Consent and/or Lease Agreement details
- Licence and Lease Expiration Dates (if applicable)
- Approved Trading Hours
- Ballina Shire Liquor Accord Membership
- General and Specific Liquor Licence Conditions and
- GPS Locations of Licensed Areas.

This Register now allows Council to comply with the recent amendments to the *Liquor Act 2007* (NSW). Liquor Applications received by Council can now be processed and actioned in a timely manner to meet the time frames of NSW Liquor and Gaming.

### *Court Proceedings*

Some matters investigated will result in the commencement of legal proceedings, either in the Ballina Local Court or, where circumstances warrant, the NSW Land and Environment Court. Any legal action through the Courts is undertaken in line with the provisions of Council's *Enforcement Policy*.

No new Local Court proceedings have been commenced this financial year.

As reported in the Compliance Half Yearly Update report to the January 2017 Ordinary Council meeting, Council also finalised a matter relating to the unauthorised removal of native vegetation within a premises in Pimlico.

This matter was determined in the Ballina Local Court where the Defendant was found guilty of the offence and a criminal conviction was recorded against him.

The Defendant was ordered to pay a fine of \$4,000 and to pay Council's legal costs of \$6,000.

Additionally, he was also required to enter into a Deed of Agreement with Council for revegetation and ongoing maintenance for a minimum period of five years to ensure restoration and protection of high conservation vegetation at the site.

This will result in the overall long-term improvement in the habitat value of the site for a range of species (including threatened flora and fauna) and the publication of this result will increase community knowledge and community involvement in the local natural environment within the Shire.

Further, action was underway to enter onto private land to undertake Clean Up Action for a waste dumping matter that was reported to Council's May 2016 Ordinary Meeting. This matter has now been successfully concluded in Council's favour and action is underway to recoup Council's costs.

The amount owed to Council is approximately \$11,000.

A further report may be required, should the matter of Council's outstanding costs not be adequately addressed.

### *Legal Notices*

In addition to any Court matters, legal notices are issued for any identified breaches and non-compliances. These legal notices are the commencement of the process to remedy identified breaches and non-compliances within Ballina Shire.

This current financial year, Council has:

- Issued 54 new notices for identified breaches and non-compliances
- Finalised 41 notices that have been ongoing, where the matter has been resolved to Council's satisfaction and without requiring litigation and
- 77 outstanding notices that require ongoing follow up where if a satisfactory resolution is not achieved the matter may result in formal Court proceedings.

The main area of non-compliance resulting in legal notices is as a result of complaints for unauthorised second (and sometimes third) residential dwellings within rural land within the Shire. These dwellings are usually converted farm or dairy sheds and have substandard On-Site Sewage Management Systems.

Council has also been investigating a number of unauthorised "function centre" (wedding venue) and "tourist and visitor accommodation" complaints within rural zones.

### *Liquor Licensing Matters*

During the current financial year, Council has dealt with 31 liquor licence applications.

## **Sustainability Considerations**

- **Environment**  
Compliance with issued development consents enhances the protection of the built and natural environments.
- **Social**  
Not Applicable
- **Economic**  
Compliance with development conditions results in a more level playing field for business operators.

## **Legal / Resource / Financial Implications**

This program aims to efficiently utilise the resources allocated for enforcement activities.

**Consultation**

This report has been provided for public information.

**Options**

This report has been prepared as a final update on the 2016/17 Compliance Work Plan and the recommendation is to note the contents of the report.

**RECOMMENDATION**

That Council notes the contents of this report on the outcomes from the Compliance Work Plan for the 2016/17 financial year.

**Attachment(s)**

Nil



### 8.3 Compliance Work Plan 2017/18

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#### 8.3 Compliance Work Plan 2017/18

**Delivery Program** Development Services

**Objective** To provide Council with the proposed Compliance Work Plan for 2017/18.

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#### **Background**

Following on from the previous report in this agenda, this report identifies the major areas where it is recommended that Council apply its development compliance resources for 2017/18.

#### **Key Issues**

- Proposed areas for investigation and review

#### **Information**

To provide Council with a forecast of how Council resources will be directed over the coming 2017/18 financial year, a Compliance Work Plan has been developed. Whilst additional land use complaints will inevitably be received over the coming financial year and all complaints will be prioritised and actioned as appropriate, priority will be given to the items contained within the Compliance Work Plan.

The Compliance Work Plan has nominated the following areas as the priorities for the forthcoming financial year as they are considered the areas of highest risk or potentially lowest levels of compliance.

#### **Programs:**

1. *Audit of Major Developments within the Shire* (Ongoing Program);

It is intended to continue this program to complete the audit of all 2010 Major Development consents and commence the audit of all 2011 and 2012 Major Development consents.

2. *Audit of Identified Development Consents* (Ongoing Program);

It is intended to continue this program and complete the audit of the 2008, 2009 and 2010 Identified Development Consents and commence the audit of the 2011 and 2012 Identified Development Consents.

3. *Completion of the Review of all Development Consents issued within the Russellton Industrial Estate* (Ongoing Program);

It is intended to complete this program audit of the Russellton Industrial Estate for compliance with issued development consents and to undertake enforcement action as required for identified non-compliances.

It is acknowledged that there are no new programs proposed in the upcoming Compliance Work Plan 2017/18.

This is due to the following new responsibilities transferred to the Compliance Team within the Development Services Section:

1. Caravan Park inspections, auditing and licensing;
2. Swimming Pool inspections and the issuing of compliance certification; and
3. Essential Services (Fire Safety) auditing in relation to fire safety certification.

A separate report has been provided as the next item in this business paper in relation to these three programs.

#### **Sustainability Considerations**

- **Environment**  
Compliance with issued development consents enhances the protection of the built and natural environments.
- **Social**  
Not Applicable
- **Economic**  
Not Applicable

#### **Legal / Resource / Financial Implications**

This program is based on utilising existing resources.

#### **Consultation**

This report has been provided for public information.

#### **Options**

The options are to either support the proposed work plan or amend it to include other areas where Council believes there may be a higher priority. The recommendation is to endorse the plan.

#### **RECOMMENDATION**

That Council endorses the proposed annual Compliance Work Plan for 2017/18, as detailed within this report.

#### **Attachment(s)**

Nil

## 8.4 Compliance Functions - Status

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### 8.4 Compliance Functions - Status

**Delivery Program**      Development Services

**Objective**              To provide Council with a review of the regulation and inspection programs in relation to the operation of Caravan Parks, the inspection of Private Swimming Pool Barrier Fencing and Essential Services (Fire Safety) Certification.

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#### **Background**

The 2016/17 half yearly Compliance Work Plan update to the January 2017 Ordinary Council meeting, foreshadowed that a detailed report was to be provided in relation to the compliance functions that have recently been transferred within the Development and Environmental Health Group from Building Services to the Compliance Team within the Development Services Section.

These compliance functions are:

1. A review of the Caravan Park Approval to Operate Program so that the Council can satisfy itself that the caravan parks in the Shire operate in accordance with legislative provisions and provide a safe environment for park residents
2. A review of Essential Services (Fire Safety) certification and inspections, which are defined as the fire and life safety systems installed or constructed in buildings to ensure adequate levels of safety for occupants in the event of a fire or emergency and
3. A review of the Private Swimming Pool Barrier inspection and compliance program to ensure that private swimming pools meet, wherever practicable, the legislative requirements to minimise the risk of drowning in a private swimming pool.

These three areas relate to critical legislative functions.

#### ***Caravan Park Approval to Operate Program***

All Manufactured Home Estates, Caravan Parks, and Camping Grounds in NSW are required to satisfy the provisions of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (NSW).

To ensure that such standards are being maintained, all Caravan Parks, Camping Grounds and Manufactured Home Estates are required to maintain a current "Approval to Operate" issued by Council under Section 68 of the *Local Government Act 1993* (NSW).

## 8.4 Compliance Functions - Status

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Each new Park, with the exception of Crown Holiday Parks, must also obtain development consent under the *Environmental Planning and Assessment Act 1979* (NSW) to establish the activity. Crown Holiday Parks operate under approved Plans of Management.

The development consents and Plans of Management establish the land titles which can be used for such activities, the mix of long term sites, short term sites, and camping sites as approved, and any other requirements for such development at the specific location within the Park itself.

Further site specific development conditions can be applied where a Caravan Park is located away from a connection to a reticulated public sewerage scheme, or where there is no connection to a reticulated town water supply, or where specific hazards such as flooding or bushfire need to be managed.

The legislation has a history dating back to before the *Local Government Act 1993* (NSW) commenced, with many older Caravan Parks and Camping Grounds operating well before planning laws and the current local government regulations came into force.

With the commencement of the *Local Government Act 1993* (NSW), transitional regulations were adopted in 1995. The 1995 Regulations were further revised and consolidated to form the 2005 Regulation.

In 2015 NSW Planning circulated a discussion paper to councils, crown authorities and the holiday park industry with the intention of completing a revision of the Regulation.

The process has been delayed, but expectations are that in the second half of 2017 a new Regulation or Regulations will be released.

The Regulation, as it currently stands, is prescriptive and sets standards for Caravan Parks and Camping Grounds, which must be maintained for each Park to continue to hold the required Approval to Operate.

Council is required to ensure that such standards are in place and maintained.

The transitional provisions of the Regulation have included select "exemptions" under certain specific clauses. These exemptions continue to cause debate between park operators and councils. It is hoped that the new Regulation may resolve these points of confusion.

Currently, caravan parks are only reviewed at the conclusion of an Approval to Operate, which is generally every five years, although inspections or investigations may be undertaken between these times following the receipt of a complaint from a member of the public, or other issues coming to the Council's attention.

### ***Essential Services (Fire Safety) Program***

The essential services provisions came into force on 1 July 1988. These provisions require that a building owner (or building owners' representative) must submit an Annual Fire Safety Statement for the whole property to a Local Council and the NSW Fire and Rescue.

## 8.4 Compliance Functions - Status

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This certification is required to state that all installed Essential Fire Safety Measures have been inspected, have been maintained, and will operate to the design standards to which they were installed.

Generally, all buildings other than private single dwellings (Class 1a) and non-habitable sheds and garages (Class 10a) are required to have fire safety measures installed. Some common fire safety measures included in commercial, industrial, multi-unit residential and public buildings are:

- Automatic fire detection and alarm systems and automatic fire suppression systems
- Emergency lighting
- Exit signs
- Fire doors, fire hose reel systems, fire hydrant systems and portable fire extinguishers
- Smoke alarms and smoke and heat vents
- Solid core doors
- Wall-wetting sprinkler and drencher systems.

The Essential Services programme is broken down into three main areas:

- (i) the Fire Safety Schedule
- (ii) the Fire Safety Certificate and
- (iii) the Annual Fire Safety Statement

### *Fire Safety Schedule*

When approval is given for a change of building use, a Construction Certificate is issued for a new building, or proposed building work on an existing building, or a fire safety order is given in relation to a building, then a schedule specifying the essential fire safety measures that are to be implemented in the building are attached to the approval, certificate or order.

A fire safety schedule must deal with the whole of the building, not merely the part of the building to which the Development Consent, Complying Development Certificate, Construction Certificate or Fire Safety Order relates, and must include the essential fire safety measures currently implemented in the building, and those proposed to be implemented.

A fire safety schedule must also specify the minimum standard of performance for each essential fire safety measure. This is usually done by a reference to an Australian Standard that applies to the installation of the measure.

### *Fire Safety Certificate*

Where building work has been carried out, or a change of use has occurred that has one of the above approvals issued, the Principal Certifying Authority (Council or the Accredited Private Certifier) must not issue an occupation certificate to allow the building, or part of the building, to be used unless they have received a fire safety certificate from the owner of the building.

A fire safety certificate is a certificate issued by either Council or a Principal Certifying Authority on behalf of the owner of a building to certify that the essential fire safety measures have been installed to the appropriate standard as specified in the fire safety schedule for the building.

## 8.4 Compliance Functions - Status

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This certificate is issued at the completion of the installation of the fire safety measures and is a requirement prior to the issuing of the final occupation certificate.

### *Annual Fire Safety Statement*

Certification of the ongoing performance and maintenance of the approved and installed fire safety measures is to be completed on an annual basis with the statement provided to Council and NSW Fire and Rescue.

### ***Private Swimming Pool Barrier Program***

Drowning is the leading cause of accidental deaths in very young children (defined as a child less than five years of age) as these children lack the cognitive water skills to deal with the danger of a backyard swimming pool.

The majority of these drowning events take place within a swimming pool of a family member.

In 2012, a comprehensive review of the *Swimming Pools Act 1992 (NSW)* ("the Act") was conducted in response to the findings of coronial inquests into the drowning deaths of young children in private swimming pools. As a result of this review, the Act was amended to require, amongst other things, that:

### *Pool Owners*

1. Register their swimming pool on a State on-line register
2. Conduct a self-assessment of the swimming pool and certify that the swimming pool was compliant with the legislation and
3. Ensure that the swimming pool remained, at all times, compliant with the requirements of the Act.

### *Councils*

1. Develop an inspection program in consultation with the community
2. Inspect swimming pools associated with tourist and visitor accommodation and multi dwelling developments at three year intervals
3. Conduct, at the owner's request, an inspection of a private swimming pool at the time of the sale or residential leasing of a property and
4. Issue Certificates of Compliance after an inspection has found a private swimming pool is compliant with the Act.

A report was submitted to the December 2013 Ordinary Council meeting which identified that the inspection program had been publically notified with 78 responses received from almost 3,000 pool owners within the Ballina Shire.

The preferred management option at that time was that only the swimming pools which fell within the definition of a mandatory swimming pool inspection were to be conducted.

A subsequent report was submitted to the August 2014 Ordinary Council meeting which provided an update on the resolutions to the December 2013 report. That report recommended that Council adopt the minimum requirements of the Act.

## 8.4 Compliance Functions - Status

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The Australian Water Safety Strategy 2016-2020 was published by the Australian Water Safety Council in 2016.

The report identified that between 2004/05 and 2014/15, there were 326 child (0 - 4 years) drownings within Australia with 53% of those drownings occurring within backyard swimming pools.

In addition, the Royal Life Saving National Drowning report 2016 revealed that 45 people drowned in swimming pools in 2016, which represents an increase of four people based on the 10 year average.

When focusing on New South Wales, private swimming pool drowning deaths in children under five, it indicated that between 1 July 2002 and 30 June 2015, 83 such drowning deaths were recorded.

The report indicated that the vast majority of these drownings take place in a swimming pool within the home of an immediate family member, namely a parent, primary caregiver or grandparent. The key findings in the investigation into these drowning deaths related to appropriate supervision, pool fencing and emergency care.

### *Supervision*

- Supervision of the child was completely absent in 59% of cases, with older siblings or other children left to supervise younger children in 6% of cases; and
- Among cases where it was known how long a child was left unsupervised, 33% of children were left unattended for 5-10 minutes and 30% were left unattended for 3-5 minutes.

### *Barriers*

- Among cases with information on fencing available, fencing was present in 27% of cases, was absent in 27% of cases and was faulty in 35% of cases;
- Among cases with available information, children most commonly gained access to the pool through a faulty fence or gate (38%), because of the lack of a fence (31%) or through a gate which was propped open (18%)

### *Resuscitation*

- Among cases where it was known who initiated CPR, parents were the most common first responders (63%)

The report that now follows provides an update on these programs and actions needed to improve Council's level of service in respect to inspections and compliance.

### **Key Issues**

- Priorities and resources
- Community safety

### Information

The management of the Caravan Parks, Camping Grounds and Manufactured Home Estates Program, the Private Swimming Pool Barrier Inspection and Compliance Program and the Essential Services (Fire Safety) Certification Program have been managed by Council's Building Section since inception.

Each program has been administered when technical, professional and administrative staff were not engaged in actively dealing with development applications, construction certificates, complying development certificates and building certificates as part of their day to day role.

Sufficient resources have not been available to be directed to any of these programs since their inception to provide a level of service that is considered satisfactory.

To try and improve our service an internal decision was made to transfer each of these programs to the Compliance Team within the Development Services Section at the end of the 2016 financial year. Following a report to Council, a temporary staff resource was funded for one year, to assess the level of service needed, along with the understanding the additional income that was going to be raised from a review of the existing fees.

As each program has existing deficiencies, each will be addressed individually within this report.

### *Caravan Parks*

Caravan Park and Camping Ground operations are a vital component of the tourism industry as well as providing low and moderate cost housing.

The current process relies heavily on the renewal inspection at the expiry of each park's Approval to Operate to identify any deficiencies in the operation of the Park.

Generally, many of the requirements under the Regulation such as operational fire safety equipment, laundry and amenity facilities, general waste collection and cleaning, and park maintenance are well established within each Park and are not varied unless changes have been made to the Park layout itself.

In some circumstances, however, when compliance inspections are only conducted every five years, notable deviations from the required standards have been identified.

One Caravan Park operator is currently involved in litigation with Council in relation to the failure to comply with approvals issued and concerns over the levels of accommodation provided within that Park.

Further, following compliance staff involvement in the management of inspections and approvals to operate, an additional three caravan parks have been identified to be operating with a number of serious deviations from the Regulation standards. In one particular instance, this was despite that Park Operator being provided with forward notice of the Council inspection.



## 8.4 Compliance Functions - Status

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These deviations from the prescriptive standards will require quite extensive rectification works to restore each park to a fully compliant condition, while still maintaining the day-to-day safety and public health of visitors.

Another Park Operator was found to have installed cabins and structures within the Park, which had significantly deviated from the terms of the "Approval to Operate" as issued by Council.

No amendment to the development consent or the Approval to Operate was sought from Council prior to these works being undertaken.

All of these matters are currently being actioned. Formal Notices are being prepared and any ongoing non-compliance will be reported to Council in due course.

The above issues, amongst others outlined within this report, are indicators that Council's current program to only inspect Caravan Parks in response to the five year renewal applications for "Approval to Operate" is insufficient to maintain the minimum standards and to provide a safe environment for Park residents or to visitors and tourists to the Shire.

### *Caravan Parks – Proposed Action Plan*

To address these issues, it is proposed to introduce an annual inspection program for all Parks. The annual inspections would concentrate in the first instance on the critical fire safety measures, such as fire hose reels, fire hydrants, fire extinguishers and smoke alarms in residences, holiday cabins and long term accommodation.

Secondly, public health and safety requirements associated with amenities, laundry, camp kitchens, water supplies, swimming pools etc. would also be reviewed and any new installations on each park identified.

Thirdly, those identified issues that do not fall within the above categories would then be addressed to bring the Park up to the Regulation standard.

### *Essential Service (Fire Safety) – Review*

Council's Essential Services Register currently records 513 premises as having essential services within the Ballina Shire. This is an overall increase from 496 at the end of March 2017.

This number of properties is a significant under-representation of those properties, which would potentially be required to provide an Annual Fire Safety Statement to Council and NSW Fire and Rescue.

Council has sought advice from NSW Fire and Rescue to ascertain whether any additional information is available from their records in relation to the number of premises who provide them with Annual Fire Safety Statements.

Council has been advised that these records are not available to Council as the records are stored in a bulk system that is not easily interrogated to provide the required information.

## 8.4 Compliance Functions - Status

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To provide a more accurate estimate in this regard is difficult and a number of factors will impact on the actual number of premises required to submit an Annual Fire Safety Statement.

Any estimate relying on purely zoning information alone will not be accurate across all zones as the higher level of compliance within the Industrial Zones and Business Zones will be mitigated by the much lower level of compliance required within the Medium Density Residential Zone.

In this regard, initial investigations have revealed that there are approximately 8,700 parcels within Ballina Shire which have a zoning classification of IN1 – Industrial Zone, B1 to B6 – Business Zone or R3 – Medium Density Residential Zone.

The actual number of premises within the Industrial, Business and Medium Residential Zones, which would be required to provide an Annual Fire Safety Statement to Council and NSW Fire and Rescue, is problematic to establish without further detailed investigations.

An initial interrogation of Council's records indicates that from 1 July 1988, there were 1,070 Final Occupation Certificates registered within Council's corporate system, all of which would require that the landowner provide an Annual Fire Safety Statement to Council and NSW Fire and Rescue.

There would also be a number of properties for which an Interim Occupation Certificate has been issued but a Final Occupation Certificate has not been obtained.

Initially, this program required the provision of the Annual Fire Safety Statement, signed by the landowner, attesting that the essential services (fire safety) measures within the property met the required standards.

Since the program has been taken over by the Compliance Team, landowners are now also required to provide a copy of the Essential Services Report (commonly called the "Service Report") along with the certification by the landowner.

This requirement alone has identified that a number of landowners are providing a statement which does not accurately reflect the content of the service report.

The Compliance Team has identified a number of residential flat buildings that have deficiencies with their fire suppression equipment. It is apparent that the existing fire safety systems are not being adequately maintained or that alterations have been made to the buildings and/or to the essential services (fire safety) measures to have a potentially serious impact on the safety of human life and property.

These matters are currently being actioned by the Compliance Team. Formal Notices are being prepared and any ongoing non-compliance will be reported to Council in due course.

## 8.4 Compliance Functions - Status

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### *Essential Services (Fire Safety) – Proposed Action Plan*

A program is being developed to incorporate Council's Essential Services Register, Council's Development Application Register, Council's Final Occupation Certificate data and Council's land zoning information into one mapping layer.

This will ensure that all properties within the Ballina Shire that are required to provide Annual Fire Safety Statements to Council and NSW Fire and Rescue will be captured in the Register and enable the development of the Essential Services program for Ballina Shire.

Once this data is available, Council can then implement a new follow up program to populate the Essential Services Register to ensure compliance with the requirements of the essential services provision of the Regulations.

It is proposed that in implementing this new program, resources will be prioritised on the basis of the protection of human life.

It is proposed that the Compliance Team will undertake the following prioritised actions:

1. Direct resources to identify and require the provision of Annual Fire Safety Statements for identified properties which provide residential accommodation in the first instance. This is because any catastrophic fire event within a property of this type will have the highest potential for loss of human life
2. Direct resources to those land uses within either Business and Industrial Zones which provide high numbers of patrons, for example shopping centres, places of public assembly, the cinema and large industrial complexes where large numbers of employees and patrons are present. This is because any catastrophic fire event within a property of this type will have a high potential for loss of human life
3. Direct resources to Business and Industrial land uses known to involve the storage of volatile fluids and combustible materials. This is to ensure wherever possible, the protection of property and
4. Direct resources to those premises requiring an Annual Fire Safety Statement not included in the above three categories. This is to ensure that all properties are identified and properly administered in relation to essential services legislation.

Should this proposed program be adopted, policies and procedures for staff will also be developed to reflect these requirements.

### *Private Swimming Pool Barrier – Review*

There is no breakdown available for New South Wales to provide accurate figures on the numbers of swimming pool barrier fences that do not comply with the legislation. The NSW Local Government Minister has issued press releases which indicate that approximately 90% of barriers do not meet the requirements of the relevant Australian Standards.

## 8.4 Compliance Functions - Status

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A number of local councils have also issued press releases indicating that non-compliance levels are as high as 99%. Within the Ballina Shire over the past twelve months, there is a current failure rate of almost 85% of properties following the initial inspection.

These figures are at odds with the submissions made by registered swimming pool owners who, as part of the registration process, self-assess their swimming pool barrier fence. 100% of pool owners have indicated that their barrier complies with the legislative requirements and the relevant Australia Standard at the time that the swimming pool was commenced / installed.

A review of the operation of the Swimming Pool Barrier Inspection Program has identified discrepancies between Council's Swimming Pools Register and the NSW Swimming Pools Register.

A breakdown of these registers reveals that:

- Council's current Swimming Pools Register contains 781 entries (this is an increase from 733 entries at the end of March 2017)
- The State Swimming Pools Register contains 2,740 separate entries

Council has identified approximately 4,200 swimming pools within Ballina Shire through our own development records. It is acknowledged that there is a substantial discrepancy between the Council Register records and that of the NSW State Register. This discrepancy is primarily due to the fact that entries are only made to Council's Register:

- (i) When a Council Officer undertakes an inspection of an existing swimming pool at the request of a landowner or managing agent; or
- (ii) When a new swimming pool is approved under a development consent or Complying Development Certificate.

The time needed to complete the data entry for all swimming pools within the Ballina Shire is dependent upon available resources.

The entries within the NSW State Register have been created by each landowner in accordance with legislative requirements.

The NSW Land and Property Information has aerial imagery which utilises an infrared spectrum to identify the locations of swimming pools within NSW.

A program is currently being developed to incorporate this LPI aerial mapping data, Council's Swimming Pools Register, Council's Development Application Register and the NSW Swimming Pools Register into one mapping layer.

This will ensure that all swimming pools within the Ballina Shire are properly identified and will enable the development of a suitable swimming pool program for all pools within Ballina Shire.

Following an initial review of the available data, there may be in the vicinity of approximately 2,000 to even 2,500 private swimming pools that are currently not registered within the State Register. However, a further investigation into this number is required to confirm the accuracy of the number of unregistered swimming pools within Ballina Shire.

## 8.4 Compliance Functions - Status

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These matters are currently being actioned by the Compliance Team as time permits. Formal Notices are being prepared and any ongoing non-compliance will be reported to Council in due course.

### *Private Swimming Pool Barrier – Proposed Action Plan*

Previous reports have identified that a public consultation process was to take place prior to the establishment of a swimming pool inspection program.

This public consultation process took place in 2014. The majority of those respondents preferred that Council exercise a minimalist approach to enforcement of swimming pool barrier fence compliance.

This resulted in the Council's resolution to only inspect swimming pools that require mandatory inspections and those properties which are listed for sale or lease.

With the benefit of additional data from the local councils across the State, as well as specific data for Ballina Shire, it is apparent that the level of swimming pool barrier fence compliance is much lower than was originally anticipated.

It is open to Council to re-engage with the local community in relation to the current swimming pool barrier fence compliance and inspection program with a view to utilising more current data to seek community input into whether the current inspection programme should continue or be amended.

The current inspection program will not require that all private swimming pools within the Ballina Shire are inspected within a nominated time frame, but rather would only require inspections when a property is listed for sale or rental.

Given the majority of residential dwellings are owner occupied this could leave many private swimming pools without a proper compliance inspection for many years.

If a mandatory swimming pool inspection program were to be considered for all swimming pools within the Ballina Shire, such a program would need to be conducted over a five year period.

This is due to the number of swimming pools within Ballina Shire and the current high non-compliance rate detected in swimming pool barrier compliance inspections conducted since 2014, but would afford a good level of oversight for compliance purposes.

If an extra Compliance Officer role is not funded, such a program could not be undertaken.

Council currently has legislated impositions on the raising of fees and charges for swimming pool barrier compliance inspections.

Council is currently limited to a maximum charge of \$150 for the initial inspection and \$100 for the second inspection, or a total of \$250.

## 8.4 Compliance Functions - Status

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The legislation currently prohibits additional inspection charges apart from the first two inspection charges.

It is Council's understanding that the limitation placed on councils to charge for only two inspections (whereas a Private Certifier can charge for multiple inspections) is currently under review by the NSW State Government.

It is anticipated that these changes will permit local councils to levy inspection charges for each inspection undertaken to ascertain compliance with the swimming pool barrier requirements.

### Sustainability Considerations

- **Environment**  
Compliance with the Legislation and Regulations assists in maintaining a healthy and safe built environment
- **Social**  
Residents and visitors can reasonably expect to be accommodated in safe parks that provide the required level of services. Residents and visitors can reasonably expect to be in an environment which provides safe buildings and to access safe swimming pools.
- **Economic**  
There is an economic impact to business owners and operators of existing caravan parks as well as business and industrial premises to meet and maintain their premises. Well managed and maintained Parks are important contributors to the local economy and tourism sector. Well managed and maintained business, industrial and multi-unit residential premises are also important contributors to the local economy and provide safe places for local residents to live and work.

### Legal / Resource / Financial Implications

Within the provisions of the *Local Government Act 1993* (NSW), the *Environmental Planning and Assessment Act 1979* and the *Swimming Pools Act 1992* (NSW) and their subordinate Regulations, there are a number of functions for which Council is the regulator.

These functions are legislatively mandated and generally do not provide a revenue source that will allow Council to meet the overall funding costs of the position.

The regulation of both caravan parks and essential services (fire safety) certification are regulatory functions of Council, which cannot be provided externally.

With respect to swimming pools, the initial inspections and issuing of Compliance Certificates and Non-Compliance Certificates can be undertaken by the private sector as well as Council however follow up investigations, including the service of formal Directives to rectify a Non-Compliance Certificate is the legal responsibility of Council.

## 8.4 Compliance Functions - Status

Private certification of swimming pools within Ballina Shire does not appear to have a major impact on the existing staff workload, with only six of the 781 entries within the currently Swimming Pools Register being listed as Privately Certified, with all of these certifications being by way of Final Occupation Certificate.

Council has an obligation to ensure that Notices and other forms of approval are investigated and where appropriate, services are maintained.

In the High Court case of *Pyrenees Shire Council v Day; Eskimo Amber Pty Ltd v Pyrenees Shire Council* (1998) 192 CLR 330, Council had commenced actions in relation to a defective fire place and subsequently failed to follow up on those proceedings.

In the Judgement, Chief Justice Brennan found that:

*"...the council was under a public law duty to enforce the legislation relating to fire prevention and was liable for failure to do so".*

In this case, the High Court found that the council was negligent and was ordered to pay costs plus interest to the adjoining landowners and to the occupants of the building for the damage caused by the fire.

Council has recently funded an officer who was recruited to review the Council's responsibilities to regulate Caravan Parks, Essential Services (Fire Safety) Certification and Private Swimming Pool Barrier legislation and to assess the approvals to operate for all Parks within Ballina Shire. This position is currently closed, with the officer engaged in the role having finished with Council on 24 May 2017

This role was a temporary position, which was only funded until 30 June 2017. The position is currently not forward funded in Council's Long Term Financial Plan (LTFP).

The current workload is being absorbed within the day to day functions of the Compliance Team, as time permits however this is not sustainable in the long term, without an impact on other services.

If Council wishes to improve additional service levels at least one additional Compliance position is needed on a permanent basis. The estimated cost of this position, inclusive of oncosts, is in the vicinity of \$85,000.

In respect to likely income figures from actions related to the three programs outlined in this report, the existing LTFP is based on the following forecasts.

Item	2016/17 Income Budget (\$)	2016/17 Income to date (\$)	2017/18 Exhibited Budget (\$)	2017/18 Optimistic Budget
Caravan Parks Inspections and Approvals	1,000	1,400	2,000	10,000
Essential Services Notification	19,000	20,000	22,000	25,000
Private Swimming Pool Inspections	25,000	29,100	42,000	42,000
Compliance Levy Paid on Development Applications	184,000	213,200	175,000	205,000
Legal Expenses / Fines / Notices	75,000	80,300	70,000	110,000
<b>Totals</b>	<b>304,000</b>	<b>344,000</b>	<b>311,000</b>	<b>392,000</b>

## 8.4 Compliance Functions - Status

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The forecast income for 2017/18 is currently conservative and the final column in this table provides a somewhat optimistic estimate of what income will be able to be achieved if a permanent staff member is allocated to implementing these three programs, along with support from existing Compliance staff members.

In reviewing these revised figures as stated earlier there are a number of private swimming pools and essential services (fire safety) certifications that are currently not being addressed by the landowner.

If Council were to proactively investigate and take the necessary enforcement action for, on average, 250 private swimming pools and 50 essential services (fire safety) certification premises during the 2017/18 year, each action could generate approximately \$25,000 in enforcement revenue to Council.

This is based on the minimum value infringement being issued in each case, namely \$220 per swimming pool and \$1,000 for each essential services (fire safety) certification. Even though Council does not wish to rely on enforcement revenue this is likely to be a conservative estimate of the income generated.

By way of example since April 2017, Council has issued approximately \$50,000 in Penalty Infringement Notices to 14 landowners for the failure to provide Annual Fire Safety Statements by the due date to Council. All but one of the landowners subject of the penalty infringement action have now elected to utilise Council's reminder service to assist them to maintain compliance in the future.

The program actions listed would also begin to generate recurring income with an increased uptake of the Council's reminder service for essential services (fire safety) certification of approximately \$5,000 each year.

### **Consultation**

Any change to Council's current practices will be notified to all landowners and Park operators currently on Council's Caravan Parks, Camping Grounds and Manufactured Home Estates Register as well as Council's Swimming Pool Barrier Register and Council's Essential Services Register with a focus on education and working with the landowners and Park operators.

Enforcement action will also be a part of this process where appropriate.

### **Options**

1. To endorse the provision of additional funding to provide a dedicated Compliance Officer to permit the Compliance Team to undertake the proposed programmes for the investigation, inspection and monitoring of caravan parks, essential services (fire safety) certification and private swimming pool barrier inspections within the Shire and to implement the proposed inspections and monitoring programmes as outlined in this Report to ensure that caravan parks, essential services (fire safety) certification and private swimming pool inspections are up to date.



## 8.4 Compliance Functions - Status

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2. To resolve not to provide the required funding to implement the proposed programs and to continue to conduct inspections and investigations based on the current registers as time permits. This option will, however have a detrimental impact on both the proposed 2017/18 Compliance Work Plan and will not allow a timely response to complaints lodged with Council for other unauthorised land uses and non-compliances with development consent conditions.

Even though there are some concerns in regard to the long term sustainability of the proposed funding, as there is some reliance on penalty notices, it is considered that Council cannot continue to under resource this compliance responsibility.

On that basis it is recommended that Council amend the draft Delivery Program and Operational Plan, as exhibited, to include the permanent recruitment of an additional compliance position to focus on the Caravan Park, Essential Services and Private Swimming Pool Barrier programs.

The position is to be matched by an increase in estimated revenues as outlined earlier in this report.

### RECOMMENDATIONS

1. That Council approves the employment of an additional Compliance Officer to increase Council's commitment to undertake the Caravan Park, Essential Services and Private Swimming Pool Barrier programs, as detailed within this report.
2. The funding for this position is to be financed from an increase in the following revenue items for 2017/18 onwards:

Item	2017/18 Exhibited Budget (\$)	2017/18 Revised Budget (\$)
Caravan Parks Inspections and Approvals	2,000	10,000
Essential Services Notification	22,000	25,000
Private Swimming Pool Inspections	42,000	42,000
Compliance Levy Paid on Development Applications	175,000	205,000
Legal Expenses / Fines / Notices	70,000	110,000
<b>Totals</b>	<b>311,000</b>	<b>392,000</b>

### Attachment(s)

Nil

## 8.5 Policy (Review) - On-Site Sewage Management

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### 8.5 Policy (Review) - On-Site Sewage Management

**Delivery Program** Environmental and Public Health

**Objective** To review the existing On-site Sewage Management (OSSM) policy and provide information on the implementation of recommended operational changes to the OSSM program.

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#### **Background**

All Council's policies are progressively reviewed at set intervals to ensure they reflect contemporary practices and legislative requirements. Council first adopted the OSSM Strategy (Policy) in 2001 and the last review of the policy was performed in 2008.

This policy was the only policy not reviewed during the last term of Council due to various legislative changes and the overall complexity of the policy and due to the extensive consultation that was being undertaken in forming a new policy.

The purpose of this report is to not only review the existing policy, however it is also important to update Council in regard to the status of operational changes to the OSSM program as detailed in a report to the Finance Committee meetings on 16 April 2015 (refer to attachments one and two).

The policy is the hierarchy document for Council's OSSM Program and is an important link between NSW State legislation and Council's Community Strategic Plan and Delivery Program.

There have been several reports and reviews conducted into the OSSM Program over the past five years highlighting operational deficiencies, while also proposing solutions and recommending changes to operations.

An action plan was prepared in November 2016 to start the process of prioritising and implementing the recommended changes to the OSSM Program. Council also approved a significant increase in the OSSM annual charge to allow an additional resource (two now in total) to be allocated to this program.

The revised policy (attachment three) provides a management framework for the OSSM Program moving forward, to ensure that the daily operational activities are relevant, effective and efficient.

#### **Key Issues**

- Whether the Policy meets the requirements of Council
- Best practice approach
- Will the Policy be supported by internal and external stakeholders?
- Resources
- Sustainability

### Information

The 2008 version of the policy, available on Council's website, provided a wealth of OSSM information including legislative requirements, operational, technical and educational information and, while all this information is important, the non-essential policy components would be better served in separate operational documents.

Therefore the revised policy has been reduced in content and now focuses on statutory and local administrative requirements and the overall OSSM Program objectives.

As a result of separating content from within the Policy, three key OSSM Program documents have been created:

1. OSSM Strategy (Policy) – Legislative requirements and Council OSSM operation and management objectives (attachment three)
2. OSSM Technical Guidelines – Design and installation detail (attachment four)
3. OSSM Educational Booklet – Information for homeowners

The OSSM Strategy and OSSM Technical Guidelines are attached and the OSSM Educational Booklet is currently under development.

To ensure the Strategy meets legislative requirements and satisfies the minimum standards for managing an OSSM Program, the recommended management strategies as detailed in the following two OSSM benchmark documents have been incorporated:

- NSW Environment & Health Protection Guidelines – On-Site Sewage Management for Single Households
- AS/NZS 1547 – Australian Standard - On-site domestic wastewater management.

Australian Standard AS/NZS 1547 has a strong emphasis on the need for regulatory authorities to focus on ensuring that:

- regulators have competent key personnel accredited through appropriate training programs
- administration and management procedures are in place
- only suitably qualified people perform design, installation and servicing of OSSM works
- certification is obtained for all stages of the OSSM installation
- education is provided for OSSM practitioners, property owners, real estate agents, solicitors, property conveyances, etc, and
- clear roles and responsibilities are stated for the regulator and private practitioners.

By focusing on these recommended goals and objectives, Council will satisfy its legislative requirements and provide a sustainable, efficient and effective OSSM Program.

## 8.5 Policy (Review) - On-Site Sewage Management

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As detailed in the Finance Committee report dated 16 April 2015, the OSSM Program has been through a review process.

That report presented recommendations to address the OSSM Program deficiencies and these are included in Attachment 5, titled Table 1 "Status of OSSM Program Review – Implementation of Recommendations".

As per that Table, many of the recommendations have been considerably progressed or completed.

### Sustainability Considerations

- **Environment**

The Policy has been developed in consideration with several other Council strategies and initiatives to ensure the protection of public and environmental health (ie drinking water catchment areas, priority oyster aquaculture areas, stormwater management, river and estuarine catchments).

The Richmond River and estuary catchments within the Council area have received a poor water quality grade ranging between D- to D+. OSSM plays a role in improving catchment management.

- **Social**

Over the past 10-15 years there have been substantial changes to OSSM Australian Standards, which has resulted in additional requirements in the OSSM assessment, design and installation process. Along with these additional requirements the OSSM installation costs have also significantly increased.

This increase in costs is emphasised when a defective or failing OSSM system requires an upgrade following Council enforcement action. In this situation the homeowner is unlikely to have planned or budgeted for the upgrade works, which may cost upwards of \$20,000.

A major component of the policy is to move further towards homeowner voluntary compliance by concentrating on education, prevention, and compulsory inspection and maintenance requirements.

The education component will focus on encouraging homeowners to take more responsibility for monitoring and maintaining their OSSM system, which would be expected to prolong or prevent an OSSM total upgrade and assist with budgeting homeowner finances.

- **Economic**

If the OSSM Program is to be effective and sustainable then a system of management, control, and monitoring needs to be in place.

The policy is proposing significant changes to the way the OSSM Program operates to ensure that in future it will be effective and sustainable.

The finances of the OSSM Program will need to be kept under review and resources allocated to achieve and maintain the desired result.

### **Legal / Resource / Financial Implications**

The proposed policy has incorporated the recommended strategies and actions needed, as detailed in the OSSM benchmark documents, to regulate an effective and sustainable OSSM Program and to manage the risk to public and environmental health.

This review process has also considered the risk and liabilities of not implementing the changes needed to the OSSM Program.

Legal advice was sought from CH Law – Clarissa Huegill & Associates in regard to the review and that advice has been received and included in drafting the policy.

### **Consultation**

Council formed a local stakeholder working group (comprising plumbers and drainers, wastewater consultants and planning consultant) to review the policy and OSSM Technical Guidelines.

Workshops were held on 18 and 25 May 2017 and the recommended changes and inclusions from these workshops have been included in the documents.

The Policy and OSSM Technical Guidelines have also been peer reviewed by Whitehead & Associates Environmental Consultants.

Whitehead & Associates is an experienced consultancy offering an extensive range of specialized services in on-site and decentralised wastewater management to government and private sector clients throughout Australia, New Zealand and the Pacific Islands.

In addition, Whitehead & Associates principal Joe Whitehead is Director of the Centre for Environmental Training, which is a registered training organisation providing OSSM courses in Australia.

### **Peer Review Comments - Whitehead & Associates**

*“Whitehead & Associates have undertaken an independent third party peer review of the Ballina Shire Council On-site Sewage Management Strategy and Technical Guidelines.*

*We are impressed with the level of detail and effort which has gone into the preparation of these documents and strongly support the efforts of Council to improve the level of professional input into the design, installation, servicing, maintenance and regulation of on-site wastewater management systems in the Shire. In particular we note, not only approaches which should result in significant short term gains, but also a willingness to commit to further initiatives in medium term planning, in particular the implementation of a risk based inspection program.*

## 8.5 Policy (Review) - On-Site Sewage Management

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*Further, we strongly support the direction of Council that responsibility for the design of on-site wastewater management systems should lie with the designer and responsibility for the installation and servicing and maintenance with the respective installer and service technician; and that Council will require persons operating in these capacities to be appropriately qualified and experienced, have appropriate insurance to cover their work and will be required to sign-off on their various activities. We have recommended that Council not only maintain registers of suitably approved organisations and personnel for these activities, but also that Council requires that evidence of appropriate insurance cover be provided annually, at the time of policy renewal.*

*Council and its staff should be congratulated on this initiative, which provides sound practical support for professionals working in on-site wastewater in Ballina Shire and commits to ongoing support in the future.”*

Within Council the Policy and OSSM Technical Guidelines have been sent to relevant internal stakeholders for comment and briefings have been conducted at section meetings.

### **Options**

In conclusion the revised policy:

- meets its legislative requirements to regulate an OSSM Program
- has implemented or is in the process of implementing all proposed changes to the OSSM Program operations as detailed in the previous report to the Council's Finance Committee dated 16 April 2015
- has consulted with internal and external stakeholders to gauge support for the draft Policy and has included stakeholders in the process
- has obtained peer review support and
- proposes to undertake on-going reviews of the OSSM Program to ensure it is sustainable.

The OSSM Policy and Technical Guidelines have been sent to Council's Corporate Communications for branding and formatting into a publication standard. The formatted documents have not been completed in time for inclusion in this agenda.

It is anticipated that the Guidelines will be formatted into publication standard prior to commencement of the public exhibition period.

The options are:

1. Council may the draft policy as attached and place it on public exhibition and only have it reported back to Council should significant submissions be received. If no significant submissions are received then the policy can be adopted and no further action is required.

## **8.5 Policy (Review) - On-Site Sewage Management**

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2. Council may amend the draft policy and place it on public exhibition and only have it reported back to Council should significant submissions be received. If no significant submissions are received then the Policy can be adopted and no further action is required.
3. Council may resolve to not adopt the draft policy. This option is not recommended as Council may be viewed as not meeting acceptable standards for an OSSM program under the provisions of the Local Government Act 1993.

The preferred option is to approve the exhibition and adoption of the document subject to any submissions being received.

### **RECOMMENDATIONS**

1. That Council place the amended On Site Sewage Management Strategy Policy, as attached to this report, on public exhibition.
2. If no responses are received to the public exhibition, the policy will be considered to be adopted by Council. Any responses received will be the subject of a further report to Council.

### **Attachment(s)**

1. Finance Committee report - 16 April, 2015
2. Finance Committee report attachment - 16 April, 2015
3. Policy (Review) - On-Site Sewage Management Strategy
4. On-Site Sewage Management - Technical Guidelines (Under separate cover)
5. Table 1 - Status of OSSM Program Review

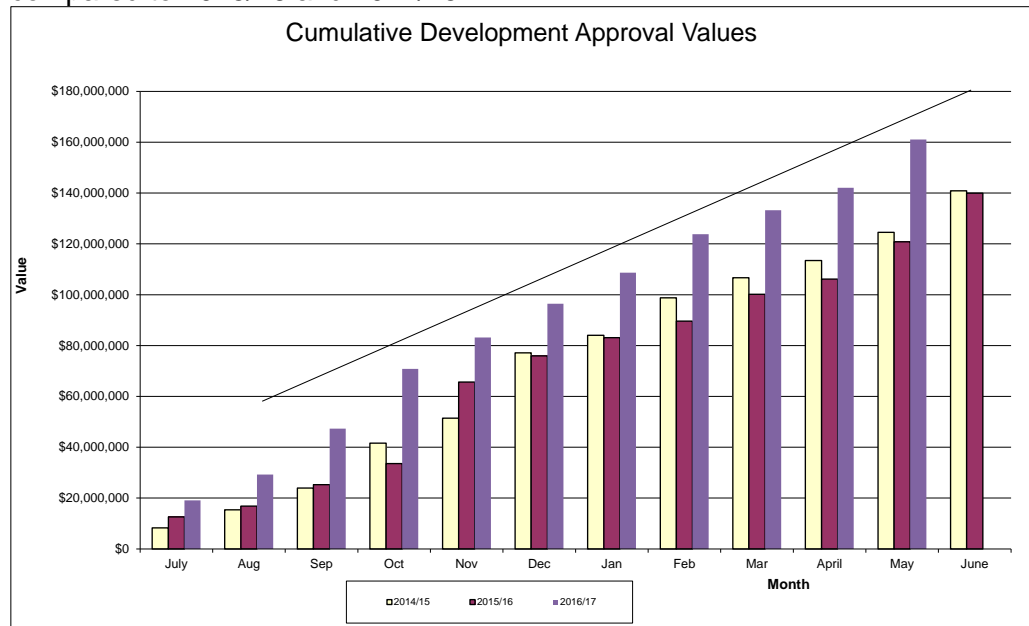
**8.6 Development Consent and Infrastructure Approvals - May 2017**

**8.6 Development Consent and Infrastructure Approvals - May 2017**

During the period of 1 May 2017 to 31 May 2017 the Development and Environmental Health Group issued Development Consents comprising of:

<b>Number of Applications</b>	<b>Value of Work (\$)</b>
46 Other including Changes of Use	2,601,753
21 Dwellings/Dual Occupancies/Residential Flat Buildings/New Commercial and Industrial Buildings	8,305,988
7 General Developments including Subdivisions	7,931,552
<b>Total Value</b>	<b>18,839,293</b>

The following chart details the cumulative consent figures for 2016/17 as compared to 2015/16 and 2014/15.



During the period of 1 May 2017 to 31 May 2017 the Development and Environmental Health Group issued Public Infrastructure / Civil Construction Works comprising of:

<b>Number of Applications</b>	<b>Value of Work (\$)</b>
1 Public Infrastructure / Civil Construction (Skennars Head Sports field expansion)	150,000
<b>Total Value</b>	<b>150,000</b>



**RECOMMENDATION**

That Council notes the contents of the report on development consent and public infrastructure approvals for 1 May 2017 to 31 May 2017.

**Attachment(s)**

Nil

## 8.7 Development Applications - Works in Progress - June 2017

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### 8.7 Development Applications - Works in Progress - June 2017

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The following schedule sets out current development applications that have not yet been dealt with for the reasons cited:

Please note that duplex and dual occupancy applications are not included in this report.

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2016/148	1/4/2016	Planners North	Amended Proposal - Mixed Use Development Comprising the Erection of a Two Storey Business Premises and Three x Two Storey Serviced Apartments -Tourist and Visitor Accommodation and Associated Works – 61 Ballina Street, Lennox Head	To be reported to Council for determination
2016/274	20/05/2016	Northern Rivers Land Solutions	Two lot boundary adjustment subdivision to create 1 x 1.45ha and 1 x 47ha allotments and the establishment of a rural worker's dwelling upon the larger Proposed Lot 11 – 61 & 145 Brooklet Road, Newrybar	Being assessed
2016/378	12/7/2016	Newton Denny Chapelle	Proposed Ballina Racecourse Redevelopment Comprising Upgrade to Race Tracks and Training Tracks, Bulk Earthworks, Stormwater Management Works, Installation of Irrigation System, Vegetation Removal, Environmental Offsets and Boundary Adjustment - Ascot Road and 36	Determination Pending subject to DoPE's concurrence

## 8.7 Development Applications - Works in Progress - June 2017

DA No.	Date Rec'd	Applicant	Proposal	Status
			Racecourse Road, Ballina	
2016/655	15/11/16	Ardill Payne & Partners	Amended Proposal - Establishment of Two Holiday Cabins – 56 Tooheys Mill Road, Pearces Creek	Determination Pending
2016/691	29/11/16	Ardill Payne & Partners	Construction of a new PAD site building of Ballina Fair Shopping Centre and subsequent modifications to part of the car parking area – 84 Kerr Street, Ballina	Being Assessed
2016/704	5/12/2016	Ardill Payne & Partners	Staged Seniors Housing Development Comprising the Re- Development of Alstonville Maranoa pursuant to S.83B of the EP&A Act with consent also sought for Stage 1 comprising 12 self- contained dwellings, tree removal, new driveway and associated works - 9-19 The Avenue, Alstonville	Awaiting Additional Information
2016/745	21/12/2016	Ardill Payne & Partners	Subdivision by way of boundary adjustment of five existing lots to create 5 new lots – 520 & 462 Newrybar Swamp Road, Broken Head	Awaiting Additional Information
2017/7	4/1/2017	RPS Group	Construction of a service station with convenience store, car parking, signage and associated works – 413-423 River Street, Ballina	Awaiting additional information  To be reported to Council

## 8.7 Development Applications - Works in Progress - June 2017

DA No.	Date Rec'd	Applicant	Proposal	Status
2017/57	8/2/2017	Ardill Payne & Partners	Erection of 7 x pole/pylon advertising signs (Lennox Head Service Station – 44-48 Byron Street, Lennox Head)	Determination Pending
2017/121	15/3/2017	Newton Denny Chapelle	To establish a rural worker's dwelling - 91 Newrybar Swamp Road, Kinvara	Awaiting Additional Information
2017/129	17/3/2017	CivilTech Consulting Engineers	Construction of a two lane road linking North Creek Road to the Ballina Byron Gateway Airport including three roundabouts at the intersections with North Creek Road, Boeing Avenue and the connection into the airport. The proposal also includes extensions to Boeing Avenue and the realignment of Corks Lane, site filling, vegetation removal and associated works. – Lot 5 DP 123781 Corks Lane, Ballina	Awaiting Additional Information
2017/146	27/3/2017	Joe Davidson Town Planning	Lease of Road Reserve for Commercial Use (Vehicle sales) and signage - 450-460 River Street, West Ballina	Being Assessed
2017/148	28/3/2017	Northern Rivers Land Solutions	Erection of a temporary Sales Office and construction of associated parking - 33 Mitchell Close, Cumbalum	Determination Pending
2017/155	31/3/2017	Planit Consulting Pty Ltd	Lease of Road Reserve for Commercial Use (Vehicle sales) - 444	Being Assessed

## 8.7 Development Applications - Works in Progress - June 2017

DA No.	Date Rec'd	Applicant	Proposal	Status
			River Street, West Ballina	
2017/160	5/4/2017	S R Schott	Erection and Strata Title Subdivision of a Multi Dwelling Housing Development Comprising Three x Two Storey Dwellings - 103 Cherry Street, Ballina	Being Assessed
2017/163	06/04/2017	Newton Denny Chapelle	Erection and Strata Title Subdivision of a Two Storey Multi Dwelling Housing Development Comprising Three Dwellings and Associated Works – 19 Stewart Street, Lennox Head	Determination Pending
2017/188	13/04/2017	Ardill Payne & Partners	Boundary adjustment subdivision of two existing lots to create two modified lots – 19 Bentinck Street & 65 Norton Street, Ballina	Awaiting Additional Information
2017/191	14/04/2017	Anglican Parish of Alstonville	Boundary adjustment and consolidation of lots (four lots to two lots), alterations to existing garage, and construction of new building – 1 & 3 The Avenue, Alstonville	Awaiting Additional Information
2017/203	26/04/2017	Dayne Mearns	Erection of a Building for the Purposes of Tourist and Visitor Accommodation – 21 McLeish Road, Kinvara	Awaiting Additional Information
2017/204	26/4/2017	Newton Denny Chapelle	38 Lot Residential Subdivision, Civil Infrastructure Servicing and	Being Assessed

## 8.7 Development Applications - Works in Progress - June 2017

DA No.	Date Rec'd	Applicant	Proposal	Status
			Associated Earthworks – Hutley Drive, Lennox Head	
2017/221	5/5/2017	Newton Denny Chapelle	Proposed bulk earthworks associated with the development of the neighbourhood commercial centre within the EPIQ Estate at Lennox Head. The earthworks involve significant excavation by mechanical means and blasting - Lot 54 DP 1222919 Hutley Drive, Lennox Head (EPIQ)	On Exhibition
2017/223	5/5/2017	Ardill Payne & Partners	Two lot residential subdivision to create 1 x 1157sqm and 1 x 1145sqm allotments and associated works – 31 Tara Downs, Lennox Head	Being Assessed
2017/227	9/5/2017	Nicholas Harty	Vegetation management works comprising the removal of two trees – 108 Ballina Road, Alstonville	Awaiting Additional Information
2017/232	12/5/2017	GM Project Development & Management	Three Lot Strata Title Subdivision – 6 George Street, Tintenbar	Awaiting Additional Information
2017/242	17/5/2017	Northern Rivers Land Solutions	Two lot boundary adjustment subdivision to create 1 x 3.2ha and 1 x 33.7 ha allotments - 158 Dalwood Road & Dalwood Road, Dalwood	Referred to Government Departments
2017/243	17/5/2017	Richard Mason	Erection of an industrial storage building for the purposes of storage	Being Assessed

## 8.7 Development Applications - Works in Progress - June 2017

DA No.	Date Rec'd	Applicant	Proposal	Status
			and use of equipment materials and tools associated with a construction and building business, associated office and amenities building, car parking, civil works and tree removal – 48 Northcott Crescent, Alstonville	
2017/249	18/5/2017	Anthony Gilding	Two Temporary Banner Signs - 419 Hinterland Way, Knockrow	Being Assessed
2017/251	19/5/2017	Ballina Shire Council	Ross Lane and Byron Bay Road Intersection Upgrade comprising the construction of a two lane roundabout, relocation of telecommunication infrastructure, installation of new culvert drains, installation of lighting and electricity supply, signage, vegetation removal and associated works. The proposed roundabout construction lies within SEPP 14 Coastal Wetlands - Byron Bay Road, Lennox Head	On Exhibition
2017/254	19/5/2017	Ardill Payne & Partners	Boundary adjustment subdivision between two lots to create two modified lots and subsequent erection and Strata Title subdivision of a detached dual occupancy on each modified lot and associated works -	On Exhibition

**8.7 Development Applications - Works in Progress - June 2017**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			34 & 36 Liffey Avenue, Cumbalum	
2017/258	23/5/2017	Ardill Payne & Partners	Alterations and additions to Biala Special School and associated works – 78 Fox Street, Ballina	On exhibition
2017/259	23/5/2017	Ardill Payne & Partners	Two lot Strata Title Subdivision of an Existing Dual Occupancy to create one 619sqm and one 573sqm allotments - 32 Castle Drive, Lennox Head	On Exhibition
2017/264	26/5/2017	Metricon Homes Qld Pty Ltd	Erection of a Multi Dwelling Housing Development Comprising Three Two Storey Dwellings and Associated Works - 75 Burns Point Ferry Road, West Ballina	On Exhibition
2017/276	1/6/2017	D Harris	Vegetation management works comprising the removal of one tree – 6 Fieldcrest Drive, Lennox Head	Being Assessed



## 8.7 Development Applications - Works in Progress - June 2017

### Regional Development (Determined by Joint Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
2016/2	4/01/16	21st Century Builders Pty Ltd	To undertake the first stage of the urban subdivision of the new Cumbalum Urban Release Area – Precinct B comprising a total of 191 allotments and including road construction and intersection works at Ross Lane, extensive earthworks, stormwater management, infrastructure works, vegetation removal and other associated subdivision works - 246 Ross Lane, 47 Dufficys Lane & Ross Lane, Tintenbar	Awaiting Additional Information
2016/184	15/4/16	Planners North	To undertake urban subdivision of the new Cumbalum Urban Release Area – Precinct A comprising a total of 633 residential allotments, road construction, earthworks, stormwater management, infrastructure works, vegetation removal and other associated subdivision works - Sandy Flat Road, 88 Sandy Flat Road, 52 Albert Sheather Lane, Tamarind Drive and 658 Tamarind Drive, Cumbalum	Awaiting Additional Information  Subject to Class 1 Appeal in the NSW Land & Environment Court

**8.7 Development Applications - Works in Progress - June 2017**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2016/524	16/9/16	Planners North	Amended Proposal: Seniors Living Development pursuant to SEPP (Housing for Seniors and People with a Disability) 2004 comprising amended layout, 170 (previously 211) serviced, self-care housing (previously 210) with associated clubhouse, recreation facilities, roads and associated infrastructure and environmental management and protection works – 67 Skennars Head Road, Skennars Head	Awaiting additional information
2016/660	17/11/16	BP Australia Pty Ltd	Erection of a Highway Service Centre and Associated Uses, Advertising Signage Including Two x 25 m High Structures, Land Filling, Vehicular Access of Pacific and Bruxner Highways, Car Parking and Associated Works - Pacific Highway, West Ballina	Awaiting Additional Information

## 8.7 Development Applications - Works in Progress - June 2017

DA No.	Date Rec'd	Applicant	Proposal	Status
2016/746	23/12/16	Ringtank Pty Ltd	Erection of dwelling houses, rural worker's dwelling, tourist and visitor accommodation, 10 site caravan park, polo training field and equestrian exercise area, equine building including stables, veterinary facility, quarantine stalls and horse float and equipment shelters, private helipad and hanger, outdoor recreation facilities including go-kart track, shooting range, motocross track, associated buildings, roadworks, earthworks including dams and landscaping - Carrs Lane, Empire Vale Road, Reedy Creek Road- Keith Hall/Empire Vale	Awaiting Additional Information  Briefing to be held with Councillors
2017/149	28/3/2017	Ardill Payne & Partners	Alterations & Additions to existing terminal building – Ballina Byron Gateway Airport – Lot 264 DP 1195313 & Lot 7 DP 793980 Southern Cross Drive, Ballina	Determination Pending – Scheduled for JRPP Meeting in July (date to be confirmed).

## 8.7 Development Applications - Works in Progress - June 2017

DA No.	Date Rec'd	Applicant	Proposal	Status
2017/244	17/5/2017	Intrapac Skennars Head Pty Ltd	To undertake the first stage of a residential subdivision comprising 214 residential lots, six public reserve lots, nine super lots for future subdivision, five utility lots and one residue lot. The proposed subdivision, to be carried out in stages, will involve the construction of a new access to The Coast Road incorporating the Sharpes Beach Car Park Access junction with a signalised intersection and facilitating connection into Headlands Drive. The subdivision also proposes extensive earthworks across the site, utilities augmentation, stormwater management and drainage, vegetation removal and associated works – Lot 265 DP 1212348 The Coast Road, Skennars Head	On Exhibition

### Major Development (Determined by Minister)

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
Nil				

### RECOMMENDATION

That Council notes the contents of the report on the status of outstanding development applications for June 2017.

### Attachment(s)

Nil

## **8.8 Development Applications – Variation to Development Standards**

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### **8.8 Development Applications – Variation to Development Standards**

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The following schedule sets out development applications approved under delegation since the last Council meeting which have involved variations to development standards (via the BLEP 1987 or BLEP 2012):

<b>DA No.</b>	<b>Date Approved</b>	<b>Applicant</b>	<b>Proposal and Address</b>	<b>EPI and Land Zoning</b>	<b>Development Standard and Approved Variation</b>	<b>Justification for variation</b>
Nil						

### **RECOMMENDATION**

That Council notes the contents of this report on the development applications approved under delegation for variations to development standards less than 10% for May 2017.

### **Attachment(s)**

Nil

## **9.1 Rural Area - Detached Dual Occupancy Development**

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### **9. Strategic and Community Facilities Group Reports**

#### **9.1 Rural Area - Detached Dual Occupancy Development**

**Delivery Program** Strategic Planning

**Objective** To invite Council's further consideration of the merits of permitting detached dual occupancy development within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.

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#### **Foreword**

The Council at its Ordinary Meeting on 23 March 2017 resolved as follows in respect to Item 9.2 Detached Dual Occupancy Development Within Rural Areas [Minute No 230317/1]:

*That Council further investigate a change to planning policy in relation to dwellings on rural land (specifically detached dual occupancy and secondary dwellings).*

A Councillor briefing was held on 16 May 2017 to further discuss available options and issues relating to permitting detached dual occupancy and secondary dwellings within certain rural areas located within Ballina Shire. The briefing presentation updated in respect to consultation options forms Attachment One to this report.

Following the Councillor briefing the report previously presented to Council at its Ordinary Meeting held on 23 March 2017 has been revised. The report below reflects issues discussed at the briefing.

#### **Background**

The Council, at its Ordinary Meeting held on 24 March 2016, when considering the extension of the urban secondary dwelling developer contribution policy, resolved in part to receive a report concerning secondary dwellings on land in rural zones [Minute No. 240316/16].

Council further considered the issue of detached dual occupancy development and secondary dwellings at its Ordinary Meeting on 23 March 2017 and at a Councillor briefing on 16 May 2017 (Information presented at the briefing is contained in Attachment One).

This report gives further consideration to a policy approach that would permit dual occupancy development (attached and detached) on land located within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012. Permissibility of secondary dwellings within these rural zones is not further discussed within this report.

## 9.1 Rural Area - Detached Dual Occupancy Development

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It is considered that sufficient flexibility exists, should dual occupancy development be permitted, such that there is no specific need to also permit secondary dwellings in the RU1 and RU2 zones.

### Key Issues

- Planning framework for rural land
- Compliance framework related to unauthorised rural dwellings
- Long term impacts

### Information

#### *Legislative Framework Ballina LEP 2012*

Ballina LEP 2012 (LEP) contains two rural zones. The RU1 Primary Production zone (RU1) and the RU2 Rural Landscape zone (RU2).

Development characterised as detached dual occupancy is prohibited within the RU1 and RU2 zones, whereas an attached dual occupancy is permissible with development consent. The permissibility of only attached dual occupancy development on rural land also applies to deferred areas under the LEP and has been applied in Ballina Shire since the introduction of the Ballina LEP in February 1987.

Ballina LEP 2012 defines a dual occupancy, dual occupancy (attached) and dual occupancy (detached) as:

***dual occupancy*** means a dual occupancy (attached) or a dual occupancy (detached).

***dual occupancy (attached)*** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

***dual occupancy (detached)*** means 2 detached dwellings on one lot of land, but does not include a secondary dwelling.

The LEP permits, with development consent, attached dual occupancy dwellings within the RU1 and RU2 zones. Such dwellings may range in form from a typical granny flat arrangement to two substantial dwellings.

Whilst it is the case that secondary dwellings are also not specifically permitted, there is sufficient flexibility within the LEP to be able to consider such small dwellings, if attached to the principal dwelling, as an attached dual occupancy. It is for this reason that it is considered that there is no specific benefit derived from also permitting secondary dwellings (as distinct from dual occupancies) within the RU1 and RU2 zones.

*Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity* (DCP) specifies that a dual occupancy on rural land must comply with the following criteria:

- The second ***dwelling*** must be within 10 metres of the first ***dwelling*** and is to be attached to the first/ original ***dwelling***. Attachment may be achieved by way of a covered walkway, deck or the like;
- The second ***dwelling*** must be on the same legal title as the first ***dwelling***;

## 9.1 Rural Area - Detached Dual Occupancy Development

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- *The second **dwelling** must have the same road access as the first **dwelling**; and*
- *The second **dwelling** must be located so that it minimises conflict with adjoining land uses.*

It is possible to Strata Title subdivide attached dual occupancy dwellings. Each strata lot, excluding common property, must however conform to the minimum lot size shown on the lot size map (generally 40 hectares). Torrens Title subdivision of land in rural areas is subject to conformity with the minimum lot size for subdivision, which is typically 40 hectares.

Also permitted with development consent on land within the RU1 and RU2 zones are studio-type uses, rural workers' dwellings and tourist and visitor accommodation. The latter includes farm stay accommodation.

A rural worker's dwelling is subject to specific criteria in the LEP and is defined as:

***Rural worker's dwelling** means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.*

There is no definition of what constitutes a studio within the LEP. In a rural context a studio is viewed as a building ancillary to a dwelling house which cannot be separately occupied and used as a dwelling.

As an indication of the extent of land that might be influenced by a policy change, there are some 4,588 rural lots located in Ballina Shire. Of these 3,672 properties are zoned all or part RU1 or RU2.

### *Reasons Supporting a Policy Change*

Councillors at the briefing on 16 May 2017 nominated the following reasons in support of a change in policy position to permit detached dual occupancy development with development consent throughout the RU1 and RU2 rural zones:

- Removes anomaly (Attached dual occupancy, tourist and visitor accommodation and studios already permitted)
- Provides additional housing choice
- Provides a potential affordable housing option
- Assists farm succession planning
- Potentially frees up enforcement resources by providing an approval pathway and
- Provides a source of farm income (rental housing).

### *Adjoining Council Position – Lismore City Council*

Lismore City Council resolved to prepare a planning proposal to permit detached dual occupancies in rural areas at its Ordinary Meeting held on 12 March 2013. The objective behind this planning proposal was to increase rural housing options, to provide support for farmers, and to allow older people to stay on the land and younger people to remain in the area.



## 9.1 Rural Area - Detached Dual Occupancy Development

The amendments to Lismore LEP 2012 were subsequently published on 25 October 2013. The amendments permitted dual occupancies (attached or detached) within the RU1 zone. The amendments also prohibited *rural workers' dwellings* within this zone. Previously, only attached dual occupancies were permitted with development consent.

The prohibition of *rural workers' dwellings* was designed to limit the impact of housing within the RU1 zone. Few rural workers' dwellings had been approved by Lismore City Council due to the nature of agricultural uses which did not necessitate farm workers living on the farm (in addition to the occupants of the principal residence). The Council also considered that *rural workers' dwellings* would become a redundant land use once detached dual occupancies were permitted.

The principal controls relating to detached dual occupancy development are contained within clause 4.2C of Lismore LEP 2012 which provides as follows:

### **4.2C Erection of dual occupancies (detached) in Zone RU1**

- (1) *The objectives of this clause are as follows:*
- (a) *to provide alternative accommodation for rural families and workers,*
  - (b) *to ensure development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land.*
- (2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production unless the consent authority is satisfied that:*
- (a) *the development will not impair the use of the land for agriculture or rural industries, and*
  - (b) *each dwelling will use the same vehicular access to and from a public road, and*
  - (c) *each dwelling will be situated within 100 metres of each other, and*
  - (d) *the land is physically suitable for the development, and*
  - (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
  - (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

In terms of the impact of these provisions, an examination of Lismore City Council's on line development consent register revealed that the following number of approvals had been granted:

Year	Number of Detached Dual Occupancies Approved in the RU1 Zone
2014	4
2015	9
2016	14

It is noted that in the first year of detached dual occupancies being permitted, 7 conversions of existing studios were found to have been approved.

## 9.1 Rural Area - Detached Dual Occupancy Development

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The impact of the changed Lismore City Council policy was discussed with a Lismore Council Strategic Planner. Advice was provided that he considered that there have been no real negative consequences. In his view, the community appears to be accepting of this housing form and the development planners appear to be satisfied with the administration of the new legislative provisions.

Initial concerns relating to land fragmentation and increased usage of rural roads appear not to have been realised. A minor amendment is currently proposed to the objectives of clause 4.2C to further reinforce the primary production value of the RU1 zone.

Advice was also provided by the Lismore Council Strategic Planner that the 100 metre maximum separation distance between dwellings was an arbitrary figure selected to prevent excessive land fragmentation and impacts.

This distance has been varied a number of times by Council using the variation provisions of the LEP (clause 4.6).

Lismore LEP 2012, following its amendment in October 2013, now permits both attached and detached dual occupancies on land within the RU1 zone. It does not permit this form of development within the RU2 zone.

However, the extent of the RU2 zone is relatively limited. Secondary dwellings are not permitted within the RU1 and RU2 zones under the provisions of Lismore LEP 2012.

### *Adjoining Council Position – Byron Shire Council*

Byron Shire Council followed Lismore City Council's lead when on 10 July 2015 amendments to Byron LEP 2014 were published. The amendments were in similar terms to those contained within Lismore LEP 2012 except that they also permitted, with development consent, secondary dwellings and extended the permissibility provisions to both the RU1 and RU2 zones.

Information extracted from Byron Shire Council's online DA register for the period 10 July 2015 to 31 December 2016 has found that 12 detached dual occupancy applications had been approved during that period.

No specific search of secondary dwellings approved in Byron Shire's rural zones was undertaken. This was due to the very significant number of secondary dwellings being approved within this shire's urban areas and the difficulties associated with locating those in rural zones.

### *Advantages and Disadvantages Associated with Permitting Detached Dual Occupancy and Secondary Dwellings in Rural Zones*

The planning proposals submitted by both Lismore and Byron Councils for Gateway determination relied on a similar table of advantages and disadvantages which is reproduced below (italics), together with Ballina Shire Council staff comments.

## 9.1 Rural Area - Detached Dual Occupancy Development

Advantages	Disadvantages	Ballina Shire Strategic Planning Staff Comments
<p><i>Additional dwellings can allow farmers and others approaching or at retirement age to remain on their farm / rural land but not within the same dwelling as a new farmer takes over. This creates opportunities for physical (workers), social and financial support, and can assist with succession planning.</i></p>	<p><i>Increase in dispersed rural settlement. This will occur gradually as long as subdivision of the second dwelling is not supported. Pressure for subdivision will occur if substantial dual occupancy dwellings are erected.</i></p>	<p>Council has initiated a planning proposal (111 Friday Hut Road) the objective of which is to free up land for primary production purposes by allowing the subdivision of the dwelling on a lot below the minimum lot size and preventing a dwelling house from being erected on the undersized residue lot.</p> <p>Pressure for subdivision of land in the longer term is a significant concern and may result in further fragmentation of rural land and land use conflict.</p>
<p><i>Potential to legitimise unapproved dwellings and structures, and receive financial contributions from such buildings that may otherwise be occupied illegally.</i></p> <p><i>Section 94 contributions apply to detached dual occupancy (not secondary dwellings).</i></p>	<p><i>Potential increases in land use conflicts, which can impact adversely on existing farming operations. The potential for conflict can be mitigated to some extent by requiring the dwellings to have the same vehicular access from a public road and be within a prescribed radius of each other.</i></p>	<p>It is understood that the waiver of development contributions for secondary dwellings in Byron Shire does not extend to the rural areas.</p> <p>In the case of Ballina Shire, secondary dwellings are not currently permitted within rural zones and hence the fee waiver issue does not currently arise.</p> <p>If detached dual occupancy development is permitted (with or without the inclusion of secondary dwellings) there is the potential to recoup s94 contributions which may not have been previously paid.</p> <p>The potential to legitimise suitable unauthorised development may free up enforcement resources and ultimately save costs and reduce angst amongst some residents. This issue is discussed in greater detail under the heading Legitimation and Compliance Options below.</p> <p>Land use conflict is considered to be a primary concern, particularly where primary production is seen as the desirable principal purpose for rural land in the shire.</p>
<p><i>Increasing the number of residents in rural areas can provide increased support for rural halls and schools.</i></p>	<p><i>Potential for fragmentation and alienation of land from farming. This can be minimised if locational criteria are used. The inability to subdivide the dwellings will also assist.</i></p>	<p>Noted.</p>

## 9.1 Rural Area - Detached Dual Occupancy Development

Advantages	Disadvantages	Ballina Shire Strategic Planning Staff Comments
<p><i>Providing for an additional housing option on existing rural land may reduce the need to subdivide larger allotments for new rural residential estates.</i></p>	<p><i>As with any form of dispersed settlement, there is potential for increased vehicular traffic, especially if employment is not available within the immediate area. Not only will this increase the cumulative impact on rural roads but it raises the question about long term environmental sustainability, for example increased vehicle emissions. Section 94 contributions provide some financial response; however they cannot address the longer term maintenance aspects.</i></p>	<p>Ballina Shire no longer permits rural residential subdivision within the rural areas of the Shire.</p> <p>It is agreed that longer term traffic issues may arise if this form of development becomes popular.</p> <p>The experience to date in the Byron and Lismore LGAs indicates a low take up rate for detached dual occupancy development in rural zones in terms of dwellings that progress to approval and construction. Council does not have any current information on the extent to which compliance is achieved in relation to unauthorised dwellings.</p>

As indicated primary planning concerns in relation to Ballina Shire are:

- The potential for increased rural land use conflict between residential occupants of land and farming activities, particularly in a context of an existing fragmented rural landscape.
- The potential for pressure to subdivide rural land in the longer term in that this may undermine primary production through further fragmentation of land holdings and increased land use conflict over time.

In addition to the above and the disadvantages nominated by Lismore and Byron Councils, the following additional disadvantages have also been identified:

- Additional on-site sewerage systems will be required and will need to be regulated, and
- Conversion of some farm buildings may be costly and problematic due to non-compliances with the Building Code of Australia (BCA), land constraint and buffer concerns.

### *Unauthorised Dwelling Legitimation and Compliance Options*

Should Council see merit in permitting detached dual occupancy development, within the RU1 and RU2 zones under the provisions of Ballina LEP 2012, then the question arises as to how to respond to unauthorised dwellings. This is of particular relevance in the period between Council's decision to prepare a planning proposal, the LEP amendment taking effect, and a development application being submitted to legitimise the buildings use, as well as the subsequent period relating to compliance with consent conditions.

There is no one process available which would guarantee that all current examples of unauthorised rural dwellings can be legitimised or can be cost effectively brought into compliance with BCA requirements.

## 9.1 Rural Area - Detached Dual Occupancy Development

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Council's compliance staff advised in February 2017 that they had investigated 88 complaints in relation to unauthorised residential dwellings within rural zones since July 2012. These complaints resulted in some form of legal action (either Court action or resulting in the service of formal Notices and Orders).

This figure did not include complaints lodged where no formal action was required or where the unauthorised residential dwelling was decommissioned prior to the service of a formal Notice. It also did not include 30 uninvestigated complaints which had been identified as lower priorities and were awaiting investigation.

Permitting detached dual occupancy dwellings within the RU1 and RU2 zones may provide additional options for some land owners to legitimise buildings through the DA process. It will not provide a solution to those owners in other rural or environmental zones. It may also ultimately not provide a solution for owners who may subsequently find that they cannot cost effectively upgrade buildings to meet minimum building and or on-site sewerage management requirements.

### *Byron Shire Council's Compliance Approach*

Information was sought from Byron Council's Compliance staff as to the approach used by that Council relating to the occupation of unauthorised residential premises.

The information obtained has been summarised as follows:

- From approximately two years prior to Council's July 2015 LEP amendment, which permitted detached dual occupancy and secondary dwellings in rural zones, Council staff maintained a list of unauthorised dwellings. The list was reported to Council and unauthorised dwellings were inspected to ensure that public health and safety issues were rectified.
- In the period following July 2015 compliance staff undertook inspections of unauthorised dwellings including those listed in the period before July 2015. Health and safety issues such as fire safety and on-site sewerage management were addressed as a matter of priority.
- Land owners since July 2015 have been requested to lodge development applications for the use of unauthorised dwellings within 28 days. If this is not complied with then a process involving Notices and Orders follows.
- If the unauthorised dwelling cannot be made compliant enforcement action is taken to have the building decommissioned as a dwelling, and alternative solutions are suggested for the use of the building such as a studio or shed etc.
- Byron Shire Council's adopted 2017 Compliance Priorities Program lists as a high priority the undertaking of education or workshops and a compliance enforcement program related to shared accommodation and improved compliance standards for unapproved dwellings.
- Responding to unapproved dwellings is also listed as a high priority matter.

## 9.1 Rural Area - Detached Dual Occupancy Development

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*Restricting Permissibility of Dual Occupancy Development (Detached) to buildings that existed as of a certain date.*

Consideration has been given to whether it would be possible and/or reasonable to limit the opportunity to convert existing buildings to a detached dual occupancy if the building existed as of a certain date. This approach would limit the impact of the proposal only to those buildings which existed in a detached state on a certain date and or those that have already been completed and converted without consent.

The above approach would be unusual and may pose legal drafting difficulties. It could be seen as rewarding those in the community who may not have had due regard to planning laws and penalise those that have been properly waiting for the amendments to be introduced. As a consequence of these issues it is considered to result in an inequitable outcome which should not be supported irrespective of whether the legal drafting issues may be able to be resolved.

### **Sustainability Considerations**

- **Environment**

There will likely be a series of potential environmental, social and economic benefits and impacts associated with additional dwellings in any form in rural areas. Such impacts and associated planning provisions would need to be considered as part of any policy adjustment.

- **Social**

As above.

- **Economic**

As above.

### **Legal / Resource / Financial Implications**

Initiating a planning proposal to permit dual occupancy development (attached and detached) on land within the RU1 and RU2 rural zones under the provisions of Ballina LEP 2012 can be managed within existing resources. This matter is not currently part of the Strategic and Community Facilities Group work program.

Financial implications arise depending on the nature of community engagement specified. If the engagement is limited generally to that indicated within the Consultation section of this report then this will also be able to be achieved within allocated resources. However, if it is desired that each rural zoned property owner be advised then a cost in the vicinity of \$6,000 plus staff time is estimated. A randomised telephone survey of 400 rural owners has been quoted as costing \$12,600 plus GST.

### **Consultation**

Following Gateway determination it is proposed to consult with the following Government Authorities:

## 9.1 Rural Area - Detached Dual Occupancy Development

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- NSW Rural Fire Service, and
- NSW Department of Primary Industries – Agriculture.

A minimum public consultation period of 28 days is proposed involving the following consultation strategies:

- Advertisement within the Ballina Shire Advocate,
- Letters to Secretaries of rural area hall committees,
- Notice on Council's web site and Facebook posts,
- Ward Committee information item,
- Paradise FM interview (GM's Briefing and/or discussion with Strategic staff),
- Poster and Flyers at Rural Area post offices including Tintenbar, Wardell, Empire Vale and Alstonville.
- Community Connect information story for September 2017 (depending on timing of exhibition commencement).

### Options

Options available to the Council to progress this matter include the following:

1. Support the preparation of a planning proposal and associated amendments to Ballina DCP 2012 (DCP) which will permit and manage the erection of dual occupancy development (attached and detached) within the RU1 and RU2 rural zones under the provisions of Ballina LEP 2012.

The DCP will require amendment to remove the maximum 10 metre separation and attachment distance requirements specified in Chapter 7 – Rural Living and Activity as well as the associated advisory notes.

It is also suggested that the drafting of the LEP amendment include a provision in the Ballina LEP 2012 consistent with the following:

*Development consent must not be granted to development for the purpose of a dual occupancy on land in zone RU1 Primary Production or zone RU2 Rural Landscape unless the consent authority is satisfied that:*

- (a) the development will not impair the use of the land or adjoining land for agriculture or rural industries, and*
- (b) each dwelling will use the same vehicular access to and from a public road, and*
- (c) the land is physically suitable for the development, and*
- (d) the land is capable of accommodating on-site disposal and management of sewage for the development, and*

In adopting this approach, it is also open to the Council to apply the change to some or all of the deferred matter areas in the shire. Expanding the scope of zones to which the change is applied (beyond the RU1 and RU2 zone) is not recommended on the basis that:

## 9.1 Rural Area - Detached Dual Occupancy Development

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- the areas not subject to existing environmental protection zoning will be progressively be brought into the 2012 LEP under Council's current approach (that is, areas that are integrated into the 2012 LEP that receive an RU1 or RU2 zone will be subject to the revised policy position in future), and
- the policy approach to enable the change is in its current form designed around application to rural land rather than environmental protection areas.

This option is recommended on the basis that it provides for the outcomes discussed by Councillors at the briefing on 16 May 2017, noting that the March 2017 reporting to Council addressed the potential advantages and disadvantages of the change (with these summarised again in this report).

2. Take no further action in respect to the permitting detached dual occupancy development within Ballina Shire's rural areas.

The benefits associated with permitting additional detached dwellings in certain rural areas of the shire appear to be finely balanced. Whilst it is the case that various building forms are already permitted (studios, tourist and visitor accommodation, sheds etc), and numerous examples exist of unauthorised dwelling conversions, setting a policy direction that will permit additional detached dwellings may result in pressure to review minimum lot sizes and permit additional subdivision in the future. Such an outcome would disadvantage agricultural uses and the future agricultural use of rural land.

As Councillors are aware, this was the originally recommended course of action in the March reporting to Council. This approach is not recommended in this report on the basis that the report seeks to address the sentiment expressed by Councillors in relation to the March report and recommendations (being an interest in identifying an approach to enable a detached second dwelling on rural land).

3. Broaden the planning proposal to incorporate secondary dwellings and to remove rural workers dwellings as a permissible use.

This option is not recommended on the basis of the following.

It is considered that there is little benefit to be gained by permitting secondary dwellings as small dwellings will be permitted as a consequence of permitting dual occupancy development (attached and detached).

In respect to rural workers' dwellings few have been approved due to the requirements of clause 4.1C of the LEP. Clause 4.1C requires Council to be satisfied, amongst other matters, that the dwelling is required due to *the nature of the agricultural or rural industry land use lawfully occurring on the land or as a result of the remote or isolated location of the land.*

4. Defer the decision to prepare a planning proposal to enable additional research or information to be obtained.

It is open to the Council to request additional information should there be matters that require additional investigation or clarification.



## **9.1 Rural Area - Detached Dual Occupancy Development**

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If Council were of the view that there is significant merit in restricting conversion opportunities only to existing buildings then it is suggested that it would be appropriate for this report to be deferred pending consultation with the Department of Planning and Environment. Such an approach would enable the Department to consider whether they would be prepared to issue a Gateway determination allowing the proposal to proceed to public exhibition and to explore legal drafting concerns with Parliamentary Counsel.

As a consequence of the equity concerns previously raised limiting the planning proposal to existing buildings is not supported.

In conclusion the recommendation is as per option one, as outlined. However the Council staff preference remains option two, as was recommended in the March 2017 meeting report.

Option two has been the long standing position of this Council and from a whole of community perspective it is considered that Council has managed rural land use conflicts relatively well, with generally speaking, limited conflicts in use.

There remain genuine concerns that over the longer term (it may take many years for the full impacts to be felt) that a decision by this current Council to allow increased residential use of the rural areas will create increased land use conflicts (i.e. between residential and rural uses as well as potential traffic issues), while doing little in the way of providing substantial benefits in respect to housing diversity or affordability. Council's focus for housing should be in the urban areas where there is adequate infrastructure in place to support residential living.

### **RECOMMENDATIONS**

1. That based on the feedback from the Councillor briefing held 16 May 2017, Council endorses the preparation of a planning proposal which proposes to permit dual occupancy development (attached and detached) with development consent within the RU1 Primary Production and RU2 Rural Landscape zones under the provisions of Ballina LEP 2012.
2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for Gateway determination.
3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition for a minimum period of 28 days in accordance with the consultation strategy detailed in this report and the requirements of the gateway determination.
4. That Council prepares associated draft amendments to Ballina Shire Development Control Plan 2012 – Chapter 7 Rural Living and Activity to align the DCP with the planning proposal.
5. That the draft DCP amendments be placed on public exhibition with the planning proposal for a minimum period of 28 days.

## **9.1 Rural Area - Detached Dual Occupancy Development**

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6. That Council give further consideration to the planning proposal and associated draft DCP amendments following the conclusion of the public exhibition period.
7. That Council give further consideration to an appropriate compliance approach following the conclusion of the public exhibition process.

### **Attachment(s)**

1. Attachment One - Councillor Briefing Presentation 16 May 2017

## 9.2 Ballina Marina Master Plan

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### 9.2 Ballina Marina Master Plan

**Delivery Program** Strategic Planning

**Objective** To seek direction on the finalisation of the Ballina Marina Master Plan project.

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#### **Background**

Council has been engaged in the preparation of a master plan for the redevelopment of the West Ballina Trawler Harbour site (known as the Ballina Marina Master Plan project). The area being examined under the project is shown in Figure 1.



**Figure 1: Ballina Marina Master Plan Study Area**

The study area is comprised of Crown Land and land owned by the NSW State Government. Parts of the land are managed by Council, with the study area also incorporating a Roads and Maritime Services depot and existing harbour area which is leased to the Ballina Fishermen's Cooperative. Given that Council is not a land owner, the project has principally focused on encouraging the redevelopment of the site as a significant economic stimulus and employment generating initiative, rather than Council undertaking or partnering in the development of a marina.

The overarching purpose of the Ballina Marina Master Plan project is to prepare a master plan and associated supporting documents to encourage and facilitate redevelopment of the Trawler Harbour site, inclusive of enhanced marine infrastructure. Fundamentally, the project seeks to document a conceptual plan for the provision of a substantial marina and associated land uses in Ballina.

## 9.2 Ballina Marina Master Plan

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The Council considered draft master planning documentation at its Ordinary Meeting held on 23 February 2017. This followed a Councillor briefing on the project of 7 February 2017. At the Ordinary Meeting, the Council resolved to place the draft master plan and associated information on public exhibition as follows [Minute No: 230217/14]:

1. *That Council endorses the draft Ballina Marina Master Plan (as contained in Attachment 1) for public exhibition for a period of at least 28 days.*
2. *That Council receives a further report concerning the draft master plan following the conclusion of the public exhibition period.*

Subsequently, the draft Ballina Marina Master Plan (including a draft boating demand and feasibility analysis report, design rationale reporting and perspective sketches) was placed on public exhibition for six weeks during March and April 2017. A Councillor briefing was held on 6 June 2017 in relation to the status of the project and the public exhibition and community engagement undertaken.

This report outlines the outcomes of the exhibition process and seeks direction with respect to the finalisation of the master planning project.

### Key Issues

- Approach to the establishment of a marina in Ballina
- Community engagement
- Finalisation of the master planning for the West Ballina Trawler Harbour site

### Information

Ballina Shire Council has had a long standing interest in the redevelopment of the Ballina Trawler Harbour into a larger and more diverse marina. In particular, the project is an action in the Council's current delivery program and operational plan (PE1.2.1d) and aligns with the outcomes envisaged under the following key documents:

- Ballina Shire Community Strategic Plan (2013-2023).
- Delivery Program and Operational Plan (2016/17).
- Lower Richmond Recreational Boating Study (GHD 2005).
- Ballina Foreshore Master Plan (GHD 2008).
- Ballina Shire Local Growth Management Strategy (BSC 2012).
- Ballina Major Regional Centre Strategy (BSC 2016).

The project is also considered to be generally consistent with the following State Government plans:

- Northern Rivers Regional Action Plan (NSW State Government 2012).
- Far North Coast Regional Strategy (NSW State Government – Department of Planning 2006 – now superseded) and the more recent North Coast regional Plan 2036 (Department of Planning and Environment 2017).
- Marine-Based Industry Policy – Far North Coast & Mid North Coast NSW (NSW State Government – Department of Planning and Environment 2015).

## 9.2 Ballina Marina Master Plan

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As Ballina Shire Council is not a land owner within the study area, the intention of the master plan project is to prepare a package of material to assist local and State Government as well as private interests to consider the site for potential investment and redevelopment.

Whilst the project involves the somewhat traditional approach of preparing a master plan and examining site opportunities and constraints, the intention of the project is to provide information beyond the master plan itself to enable and facilitate delivery of a preferred redevelopment outcome.

The project has involved the examination of a variety of site redevelopment options, an assessment of the feasibility of redevelopment of the site and engagement with State Government agencies through a Government Agency Working Group.

The project has now progressed to a point where a master planning package to guide and support the redevelopment of the site has been prepared (Attachment 1). The master planning for the site has been revised and refined based on the feedback received during the public exhibition phase of the project.

Most notably, this has resulted in a master package comprised of various plans and materials as opposed to a single site redevelopment plan. The intention behind this is to provide for an overarching direction but retain flexibility as there are a number of significant steps yet to be taken to bring the redevelopment of the site (and provision for a marina on the land) to fruition.

The Direction Forward Section of the Ballina Marina Master Plan contained in Attachment 1 outlines the approach taken to preparing the final master plan documentation and incorporates the following key material:

- Two master plan design options with associated design rationale.
- Detailed design plans for the Fishery Creek boat ramp area (in relation to the two master plan options).
- Explanation of master plan strategies (key planning and design elements).
- Perspective sketches of marina esplanade and Fishery Creek open space areas.
- Two staging plans based on different funding models (private funding and initial public funding).

With respect to both master planning options, the following provides a summary of the key planning elements:

- Provision of an enlarged wet area for boat berths.
- Provision of berths for a mixture of private, commercial and government agency vessels of varying sizes.
- Provision for residential development in the form of apartments in buildings varying between two to three stories and four to five stories (different scenarios are shown under the two master plan options).
- Establishment of enhanced public spaces including foreshore open space and a boulevard area around the marina (boat harbour area).
- Provision for commercial outlets, possibly including a seafood outlet.

## 9.2 Ballina Marina Master Plan

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- Provision for dry storage for boats.
- Provision for a community building.
- Retention of the existing boat ramp (and part of the existing car parking area).
- Establishment of an enhanced site entry as well as car parking.

In considering the plan, it is important to note that the marina development and associated uses utilises the land currently occupied by the Roads and Maritime Services depot. Therefore, the depot would need to be relocated if this master plan is implemented. The impacts and logistics of such a relocation require further consideration as the redevelopment of the site is progressed.

With respect to the feasibility analysis undertaken to date, it is evident that there is demand for enhanced marina infrastructure in the shire. Further, the analysis conducted indicates that the publicly master plan approach (Draft Ballina Marina Master Plan) can be feasibly achieved in a staged fashion (over up to 20 years) from an economic perspective.

The boating demand and feasibility analysis has been updated having regard for feedback received in response to the public exhibition of the draft master plan. However, much of the analysis remains based on the core assumptions made in relation to the exhibited draft master plan. Also, feasibility assessment has not been extended to the northward expansion option now included within the master plan reporting. A copy of the revised boating demand and feasibility analysis is contained in Attachment 2.

Importantly, the purpose of the feasibility analysis is to illustrate the mix and scale of development that is presently expected to provide for an economically feasible redevelopment outcome. That is, the analysis provides a sense that the project can be feasible and highlights development elements considered necessary to attract private sector interest in the project.

Given the above, it is suggested that the master plan project has now progressed to a point where it can be reasonably concluded. In this regard it is recommended that Council adopts the Ballina Marina Master Plan as a package of information that can provide a basis for further steps in the progress towards redevelopment of the West Ballina Trawler Harbour site for a marina.

### **Sustainability Considerations**

- **Environment**

The site is generally in a degraded state from an environmental perspective. However, environmental attributes of the site have been considered in the master plan design. The conceptual design includes retention of mangrove areas on the western edge of the site as well as embellishment of the foreshore areas for open space purposes.

- **Social**

The redevelopment of the site for a marina and associated residential and commercial land uses has the potential to provide for extensive positive housing and service outcomes as well as public domain improvements of social benefit. However, there may be adverse impacts associated with the redevelopment of the site on nearby residents and existing site users including the RMS in relation to its present depot site.

- **Economic**

The provision of enhanced marine infrastructure and a marina in Ballina has the potential to result in significant immediate and enduring economic benefits associated with boating and maritime activity, as well as tourism more broadly. It is expected that there would also be positive economic benefits associated with the residential and commercial uses proposed under the plan.

### **Legal / Resource / Financial Implications**

There are no significant legal, resource or financial implications associated with the project at this stage based on the recommended approach outlined in this report.

With respect to finance, it is recommended that Council does not commit further funding to the next steps of the project (beyond promotion) at this time, particularly given the expected costs and that Council is not a landholder in the study area. However, if Council is inclined to directly seek to advance the project through application of local resources, it is suggested that Council would benefit from obtaining outside expertise (specialised in delivering marina projects). Progression of the next steps identified in the master plan is estimated to have a cost in the order of several hundred thousand dollars.

Notwithstanding the above, adoption of the master plan does improve the status of the project in relation to seeking grant funding. Grant funds could be sought for key steps in the redevelopment project or more broadly to enable construction of marina elements. Council involvement in seeking funding for construction works should be carefully considered in the context of financial risk associated with Council undertaking a project of this type, particularly given the current land tenure circumstances.

It is important to note that the project is supported by grant funding from Transport for NSW.

### **Consultation**

In addition to a variety of community engagement initiatives undertaken in relation to the plans and documents referred to in the information section above, the master plan project has also involved project specific engagement with the community and stakeholders.

## 9.2 Ballina Marina Master Plan

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Dr Liz Baker was initially engaged by Council to discuss ideas and feedback from stakeholders and the community to inform the preparation of the draft master plan (i.e. engagement was undertaken prior to the drafting of the master plan for the site). The engagement occurred between May and July 2016.

This engagement included individual meetings with marine industry stakeholders and an online survey. Council invited feedback through media, letters to stakeholders and surrounding residents and publication and distribution of a project postcard. A report on the outcomes of the initial community engagement undertaken is contained in Attachment 3.

In addition to the above, consultants Hill PDA, appointed by Council, engaged with stakeholders in the initial phases of the project when undertaking their feasibility analysis work. This included marine industry stakeholders and real estate agents.

With respect to the public exhibition phase of the project, Council received 52 submissions (copies of the submissions are contained in Attachment 4). Key stakeholders were also invited to meet with staff to discuss the draft master plan. Representatives from the Ballina Fishermen's Cooperative and the Boating Industry Association of Australia provided feedback through this forum.

Dr Liz Baker was engaged to undertake a review of the submissions received in response to the public exhibition. A copy of Dr Baker's report on the exhibition submissions is contained in Attachment 5. The feedback received has informed the finalisation of the master plan material with various changes made in response to the information received (see The Direction Forward Section of the Ballina Marina Master Plan in Attachment 1). Dr Baker's report does not address late submissions received, but these submissions have been considered in refining the master plan design and reporting.

Importantly, a number of the issues raised in the submissions require further consideration as the project advances. Such matters include details around the design and operation of the marina (berths and supporting infrastructure), the use of the RMS depot, the capacity of the road network and building form and design.

### **Options**

Given that the project is underpinned by an extensive set of strategic documents, detailed site assessment and economic evaluation as well as recent community, stakeholder and Government agency engagement, it is recommended that Council now proceed to endorse the Ballina Marina Master Plan (as set out in Attachment 1) as a package of information.

This approach would have the effect of bringing the master planning phase of the project to a conclusion. That is, adoption of the master plan as a package provides for an overarching, but flexible, direction for redevelopment of the site and allows interested parties to consider advancing the next steps in the marina project. Key steps considered to be necessary to advance the project are noted in the Summary and Next Steps Section of the Ballina Marina Master Plan (Attachment 1).



## **9.2 Ballina Marina Master Plan**

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In association with the adoption of the Ballina Marina Master Plan, it is envisaged that the final boating demand and feasibility analysis as well as a summary document outlining the master planning process and outcomes would be published in support of the project.

Endorsement of the Ballina Marina Master Plan effectively makes a statement to Government and the community that Council is supportive of a mixed use redevelopment of the Trawler Harbour site for the purposes of establishing an enlarged marina on the site. This is a foundation for the undertaking of future steps towards redevelopment of the site.

Alternatively, Council could defer the adoption of the master plan to seek further information. This approach is not recommended on the basis that two briefings have been held with Councillors recently and there has been extensive community engagement undertaken with the outcomes informing the content of the final plan and associated documentation.

Council may also elect to cease further work on this project. This approach is not recommended given the extent of general support for the project evident from the community engagement undertaken to date, as well as the potential benefits that could be derived from redevelopment of the Trawler Harbour site.

### **RECOMMENDATIONS**

1. That Council endorses the Ballina Marina Master Plan (as contained in Attachment 1) as the basis for planning for the redevelopment of the Ballina Trawler Harbour site at West Ballina.
2. That Council advise Government agencies, stakeholders and community members who have participated in the master planning process of the Council's decision to endorse the Ballina Marina Master Plan.
3. That Council advise relevant Ministers and local members of parliament of the outcomes of the marina master planning project.

### **Attachment(s)**

1. Ballina Marina Master Plan (Final) (Under separate cover)
2. Ballina Marina Master Plan - Boating Demand and Feasibility Analysis (Under separate cover)
3. Ballina Marina Master Plan - Community Engagement Stage 1 Report - July 2016 (Under separate cover)
4. Ballina Marina Master Plan - Public Exhibition Submissions (Under separate cover)
5. Ballina Marina Master Plan - Community Engagement Stage 2 Report - May 2017 (Under separate cover)

### 9.3 Management Plans (Draft) - Killen Falls and Tosha Falls

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#### 9.3 Management Plans (Draft) - Killen Falls and Tosha Falls

**Delivery Program** Strategic Planning

**Objective** To outline the draft Management Plans for Killen Falls site and Tosha Falls site and seek direction on the public exhibition of the Plans.

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#### **Background**

In June and July 2016, Council resolved to prepare management plans for the Council owned land in the vicinity of Tosha Falls [Minute No. 280716/21] and Killen Falls [Minute No. 230616/23] to assist with long term planning for each of these areas. The location of the land the subject of each management plan is shown in the respective plans contained in Attachments 1 and 2.

#### *Tosha Falls Site (Part of Lot 1 DP 853747)*

This site is classified as "Operational Land" in accordance with the terms of the *Local Government Act 1993* and is situated on Maguires Creek adjoining Lot 5 DP 253899 and Lot 1 DP 853747 at Alstonville. As the area is located on operational land, it is presently under the management of Council's Water and Wastewater section.

A key consideration in relation to Tosha Falls is site access. This issue has been the subject of representations to the Council over many years. The issue of public access to Tosha Falls, amongst other matters is considered in the draft management plan.

#### *Killen Falls Site (Lot 1 DP 251994).*

This site is classified as "Community Land" in accordance with the terms of the *Local Government Act 1993*. It is situated on Emigrant Creek downstream of Emigrant Creek Dam adjoining Lot 1 DP251994 and Lot 3 DP1153559 at Tintenbar. As the land is classified community land, it is presently under the management of Council's Open Spaces and Resource Recovery section. This area is a popular site for the community and to visitors of the shire.

Key issues relating to Killen Falls include car parking and site access as well as provision of amenities on site. Council has recently received representation on these and other matters relating to Killen Falls. The draft management plan considers actions in relation to these items.

It is also important to recognise that public safety is also a key consideration in relation to planning for both Tosha and Killen Falls.

### **9.3 Management Plans (Draft) - Killen Falls and Tosha Falls**

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This report presents the draft management plans for the consideration of Council and seeks direction with respect to placing the plans on public exhibition. In considering the plans, it is important to note they each contain a hierarchy of actions. This report does not recommend adoption of any particular combination of actions but rather recommends exhibition of the action ideas for public feedback. It is likely that the final plans will comprise of a refined set of actions, with those not favoured by Council to be removed from final plans.

#### **Key Issues**

- Establishment of a framework for the long term management of the Killen Falls and Tosha Falls sites.
- Potential opportunities to address provision of facilities, access and use of the Killen Falls and Tosha Falls sites.
- Public exhibition and community feedback opportunity.

#### **Information**

The main objective of the management plans is to identify Council's management approach to each of the sites. This includes address of potential opportunities for future development of facilities, site access and use of the sites, and documentation of the basis for ongoing risk management.

MikeSvikis Planning was engaged to prepare plans for both sites, which considered potential opportunities for facilities, access and infrastructure relevant to the areas. An audit of each locality was undertaken, which included background and historical material review.

Each draft plan has canvassed options to manage the sites along with associated issues for Council's consideration. These are articulated as baseline actions and additional actions rather than landscape plans. Baseline actions range from minimal actions and infrastructure, through to more substantial actions and infrastructure depending on the nature of the issues identified through the site analysis and consultation phases of the project. The plans are focused on the Council owned land parcels but have included actions relating to adjoining and nearby land to achieve identified outcomes. Preliminary costings have been provided to help evaluate options.

A copy of the draft plan for Tosha Falls is contained in Attachment 1. The draft plan for Killen Falls is contained in Attachment 2.

#### *Killen Falls – Most Significant Issues*

##### Safety and Risk

The site has a range of potential hazards in relation to the current condition of the path and general access to the falls. A viewing platform was previously installed by Council to direct visitors to a safer viewing experience at the top of the waterfall and to remove the hazard associated with individuals walking on the slippery rocks to the edge of the falls.

### Toilets

There have been consistent requests from some local residents and visitors for Council install toilet facilities at the site. The nearest public toilet is located at the Tintenbar Sports Ground, which is 5km away from the site. Last year, Council resolved to install a temporary toilet at the Killen Falls Car park on a three month trial basis (Dec-Mar 2017). It is important to point out that the site does not have access to a reticulated sewer. There is also a concern that Council would need to acquire more land from Rous or another adjoining landholder in order to facilitate a toilet on the site depending on the toilet design.

### Parking

Parking at the site currently caters for nine vehicles and includes a car or bus turn-around area at the northern end. Overflow parking occurs in unmarked parts of the road reserve south of the car-park, along Killen Falls Drive. Parts of the verge have been damaged by this action. Over-night parking is not identified as a major problem at this stage.

### *Tosha Falls – Most Significant Issues*

#### Safety and Risk

It is important that if Council resolves to allow visitor use of the subject site, it does not unduly impact on the operational use of the balance of the site as a Sewer Treatment Plant.

Council currently mows from Johnstons Road to the site regularly creating a mown accessway to the falls. This accessway has a slight cross fall that may be difficult for elderly or disabled access.

With respect to the waterfall, jumping from the rocks at Tosha Falls has been identified as an activity that takes place at the site. The jumping rock is only 3m above the water, is quite sheer and the pool below is relatively deep.

#### Site Access

##### Johnstons Road

At the termination of Johnstons Road, there is a wire fence that is signposted "Sewage Treatment Works – Private Property – No Entry Permitted". Despite the signage saying "No Entry Permitted", there is a gap in the fence that allows pedestrian access and this appears to be used by visitors to Tosha Falls. Recently, this fence has been cut several times to allow private vehicles to access the site.

##### Trespass

Although the site can be accessed from Johnstons Road, it is relatively close to the northern suburban edge of Alstonville. Trespass to access the falls appears to occur from the drainage or road reserves that abut Lot 2 DP 1182136 owned by the Prendergast family. In particular, it has been reported that trespass occurs from the north-western corner of the Tanamera drainage reserve, Banjo Place, Kim Court, Rosedale Place and Hillburn Place. Many of the trespassers are identified as children or teenagers.

### 9.3 Management Plans (Draft) - Killen Falls and Tosha Falls

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Other access options have been highlighted in the draft management plan including:

- Option 1 – From Lumley Park via a creek side easement.
- Option 2 – A direct pedestrian easement across Lot 2 SP 1182136 from a public road near to the site.
- Option 3 – Acquisition of part of Lot 2 DP 1182136 to create a public land from a public road direct to Council land at Tosha Falls.
- Option 4 – Prevent access to Tosha Falls.

Each of the above issues as well as other matters arising from the community engagement and site investigations are addressed in further detail in the draft management plans.

It is recommended that the draft management plan be placed on public exhibition inclusive of all management options identified by MikeSvikis Planning in the draft plans (including the Tosha Falls access options) to seek public feedback prior to determining the Council's preferred approach.

#### **Sustainability Considerations**

- **Environment**  
The draft management plans have been prepared having regard for the environmental, social and economic attributes and values of each site.
- **Social**  
As above.
- **Economic**  
As above.

#### **Legal / Resource / Financial Implications**

There are no significant legal or financial implications associated with the public exhibition of the draft plans. However, should the plans progress to implementation, funding is required to complete the identified actions.

Council is able to undertake the public exhibition of the draft plans and associated reporting within the existing work program and available resources.

#### **Consultation**

As part of the preliminary plan preparation process, a key stakeholder meeting with Council Officers was undertaken and subsequent meetings were held in relation to the first draft of the plans.

Council also requested initial feedback from various government authorities in relation to key issues or considerations to inform the draft plan preparation stage. Early feedback was received from Rous County Council (in relation to the Killen Falls site only), and the Office of Environment and Heritage. There will be a further opportunity for government authorities to comment once the draft plans go on public exhibition.

### **9.3 Management Plans (Draft) - Killen Falls and Tosha Falls**

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Both plans were informed by a comprehensive community and stakeholder process. Council wrote directly to immediate neighbours of Tosha and Killen Falls and verbal and written feedback has been received from neighbouring landholders (Part B of each management plan).

As well as contacting neighbouring landholders, a community and user group survey was conducted online. The purpose was to gain an idea of the range of people that use the sites, where they live, the way in which they access the areas and use them, and the community values associated with the falls. A media release was issued on 10 January and an online survey was conducted over the January/February period.

A visitor count by MikeSvikis Planning was undertaken on the weekend 21-22 January (school holidays) between 10am and 2pm and discussions took place with site users of the days. Surveys were distributed during this time.

A Councillor briefing on both sites was held on 5 May 2016.

#### **Options**

In determining the preferred approach to the plans, it is important for Council to consider whether the sites are managed primarily as publically accessible land. Many of the opportunities and difficulties associated with the land and falls are associated with public access and use.

The use of the sites, and particularly Killen Falls, has increased at a greater rate than Council's management structure and budget has allowed for. An approach to actively manage these sites as publically accessible land has substantial financial implications to Council. If Council resolves to proceed with the management plans, appropriate budget and resource allocations will need to be provided for over time.

In summary, the key options regarding the draft plans are as follows:

- Proceed to public exhibition (with or without amendments).
- Defer consideration of the plans.
- Cease further consideration of the plans.

As outlined above the draft plans have been prepared in response to Council resolutions in June and July 2016 to assist with long term planning for each of the areas. The draft management plans have also been informed by a comprehensive community and stakeholder process. It is recommended that the draft management plans be publicly exhibited for a period of four weeks (subject to any required minor formatting, typographic and presentation adjustments).

Alternatively, Council could defer the matter to seek further information or could discontinue further consideration of the plans. Both of these approaches are not recommended given the process undertaken to date to develop the draft management plans, including a Councillor briefing in May 2016. It is suggested that any concerns arising could be considered in greater detail in association with the public exhibition process and the associated reporting to follow.

**RECOMMENDATIONS**

1. That Council endorses the draft management plans for Tosha Falls and Killen Falls (as attached to this report) for public exhibition for a minimum period of four weeks.
2. That Council forward a copy of the draft management plans for Tosha Falls and Killen Falls to relevant Government authorities to seek feedback during the public exhibition period.

**Attachment(s)**

1. Tosha Falls Management Plan (Draft) (Under separate cover)
2. Killen Falls Plan of Management (Draft) (Under separate cover)

9.4 **Planning Proposal - Boeing Avenue, Southern Cross Estate**

**Delivery Program** Strategic Planning

**Objective** To inform the Council of the outcomes of the public exhibition of Planning Proposal BSCPP 16/003 - Boeing Avenue, Ballina and to seek direction from the Council on the finalisation of this proposed LEP amendment.

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**Background**

Council received an LEP amendment request on 2 June 2016 for the rezoning of two approved but not yet created lots on Boeing Avenue in the Southern Cross Industrial Estate, being proposed Lots 2 and 3 approved via DA 2009/258 (as amended), and part of the Boeing Avenue road reserve.

The land is described in real property terms as Part Lot 952 DP 1165266 located at 25-39 Boeing Ave, Ballina and Part Lots 2-5 DP 123781 located at Corks Lane, Ballina. The location of the land is shown in Appendix 1 of the planning proposal (as contained in Attachment One to this report).

The LEP amendment request has been prepared by Ardill Payne and Partners on behalf of Council's Commercial Services Section in response to a decision of Council's Commercial Services Committee.

The Commercial Services Committee considered a report on the status of its current land holdings in Southern Cross Industrial Estate and adjoining lands at its 16 February 2016 meeting and recommended as follows:

1. *That Council resolves to pursue rezoning of Lots 2 and 3 Boeing Avenue from Business B5 to Industrial IN1, with the inclusion of an enabling clause (or use of another suitable mechanism) to permit bulky goods development as an additional permitted use on the land.*
2. *That Council hold a briefing on options for increased flexibility for the existing bulky goods precinct.*

Council subsequently adopted the recommendation at its Ordinary Meeting held on 25 February 2016 [Minute No. 250216/35].

Following the Council decision, documentation to support the rezoning request was provided and incorporated into a draft planning proposal. Further information was also submitted to support amendment of the Minimum Lot Size Map from 10,000m<sup>2</sup> to 1,000m<sup>2</sup> for the subject land.

Council considered a report regarding the draft planning proposal at its Ordinary Meeting held on 25 January 2017. The Council resolved as follows [Minute No. 250117/16]:

1. *That Council endorses, for Gateway determination, the application of an IN1 General Industrial Zone and associated changes to planning provisions in relation to Part Lot 952 DP 1165266, 25-39 Boeing Avenue, Ballina, Part Lots 2-5 DP 123781, Corks Lane, Ballina and the adjacent Boeing Avenue road reserve in accordance with the planning proposal contained in Attachment One.*



## 9.4 Planning Proposal - Boeing Avenue, Southern Cross Estate

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2. *That Council submits the planning proposal to the Department of Planning and Environment for review and Gateway determination.*
3. *That Council advises the Department that it does not wish to seek or exercise delegation in relation to completion of this planning proposal.*
4. *That upon an affirmative Gateway determination being received, the procedural steps associated with the progression of the planning proposal, including public exhibition, be undertaken.*
5. *That a further report be presented to the Council in relation to this matter following the mandatory community consultation.*

The planning proposal was referred to the Department of Planning and Environment for review and Gateway determination in accordance with the Council's resolution. Affirmative Gateway determination, dated 20 February 2017, was received requiring consultation with the NSW Rural Fire Service (RFS) prior to public exhibition. The planning proposal was referred to the RFS in accordance with the Gateway determination, however Council did not receive a submission in relation to this matter.

The planning proposal was placed on public exhibition for a period of 16 days from 22 March 2017 until 7 April 2017, in accordance with the Council's resolution and the terms of the Gateway determination. Council received one public submission, from an adjacent landholder Harvey Norman. A copy of this submission is provided in Attachment Two.

The purpose of this report is to present the outcomes of the public exhibition process with regard to the subject planning proposal and to seek the Council's direction regarding its finalisation.

### **Key Issues**

- Suitability of land for industrial zoning and development including general industrial use and bulky goods premises.
- Availability and use of employment land.

### **Information**

#### Summary of Proposal

As indicated above, the amendment proposes the rezoning of proposed Lots 2 and 3 and the Boeing Avenue road reserve from B5 Business Development Zone to IN1 General Industrial Zone and to include an enabling clause to permit bulky goods development as an additional permitted use to the subject land.

The proposed amendment to the LEP seeks to provide more flexibility in the use of the land by enabling a broad range of general industrial uses as per the existing permitted uses within the zone, whilst the inclusion of "bulky goods premises" as an additional permitted use recognises a strategic policy decision of Council to encourage collocation of bulky goods uses in the vicinity of the Harvey Norman Complex.

It is also proposed to change the existing minimum lot size from 1ha to 1,000m<sup>2</sup> to be consistent with the minimum lot size for subdivision standard of other IN1 zoned land within the Southern Cross Industrial Estate. This will enable further subdivision of the land into more conventional lots for industrial uses. The existing 10m building height will be maintained.

### Peer Review

Council sought a peer review of the rezoning proposal by planning consultant Darryl Anderson Consulting (DAC). DAC recommended that Council seek an update to the Bulky Goods Retailing Investigation report prepared by Hill PDA in 2012 to assist in the consideration of the matter. This information was sought having regard for Council's ownership of the land and the implications of the rezoning with respect to broader bulky goods planning policy in the shire.

In October 2016, Council commissioned Hill PDA to undertake an update to the previous Ballina Shire Bulky Goods Retailing Investigation study undertaken in 2012. The updated report concludes that it is reasonable to proceed with the rezoning of the subject land to IN1 General Industrial with the addition of bulky goods retailing as a permissible use by way of an enabling clause.

Darryl Anderson Consulting also conducted a peer review of the updated Hill PDA report and was satisfied with the methodology, conclusions and recommendations contained within the report.

### Ballina Shire Bulky Goods Retailing Investigation 2012 and Ballina Shire Bulky Goods Retailing Demand Update 2016

Council commissioned Hill PDA to undertake an investigation into bulky goods and large format retailing (LFR) land uses in Ballina Shire ('the study'). The primary purpose of the study, which was completed in 2012, was to investigate the demand for bulky goods and LFR premises in Ballina Shire over the 2011 to 2026 period.

The study concluded that it would be advantageous for bulky goods and LFR floorspace to be concentrated in one location. In particular, it was recommended that a bulky goods and LFR cluster be established in the Southern Cross Precinct in and around the Harvey Norman Centre, including the Harvey Norman Centre itself and vacant land to the north and west.

As a result of the peer review of the rezoning request, and having regard for Council's ownership of the land and the implications of the rezoning with respect to broader bulky goods planning policy in the shire, Council sought an update to the 2012 Bulky Goods Retailing Investigation report.

## 9.4 Planning Proposal - Boeing Avenue, Southern Cross Estate

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The updated report concluded that it is reasonable for the subject land be rezoned to IN1 General Industrial zone, with the addition of bulky goods retailing as a permissible use by way of an enabling clause. This approach addresses short term demand for additional general industrial lots whilst retaining the potential for bulky goods retailing within the previously identified area for clustering of bulky goods ("Harvey Norman Complex"). Further information regarding these considerations is contained in the attachments to the 25 January 2017 Council Report on this matter.

### Strategic Planning Context

In addition to the consideration of demand for bulky goods retailing and associated local planning policy, the key aspects of the strategic planning framework applicable to the planning proposal are canvassed within the planning proposal (Attachment One). In summary, when considering the current zoning of the land, the outcomes of the bulky goods retailing demand update report and the characteristics of the site, the planning proposal is considered to be consistent with the outcomes envisaged under following documents:

- North Coast Regional Plan 2016.
- Ballina Retail Strategy 2003.
- Southern Cross Precinct Master Plan 2008.
- Ballina Shire Growth Management Strategy 2012.
- Ballina Major Regional Centre Strategy 2015-2035.

### Submissions to public exhibition

One submission was received to the public exhibition of the planning proposal, from adjacent landholder Harvey Norman (Yoogalu Pty Ltd). The Harvey Norman site is identified in real property terms as Lot 951 of DP 1165266). A copy of the submission is provided in Attachment Two.

Harvey Norman does not object to the zoning arrangement proposed for the subject site by Planning Proposal 16/003. However, the company requests that Council include the Harvey Norman site in the subject planning proposal to achieve the same proposed planning outcome. The Harvey Norman submission notes that this would assist in their efforts to secure tenants for their development, such as gyms or other uses which are prohibited by the current B5 Bulky Good zone.

Given the relaxation of Council's previous position on the clustering of Bulky Goods development, there appears no obvious reason why proposed zoning arrangements should not be considered for the entirety of the area currently subject to the B5 Bulky Good zone.

Should the Harvey Norman request be supported in principle, Council has several options with respect to progressing the matter:

- Council could seek to amend the subject planning proposal to include the Harvey Norman site. This option would involve Council requesting that the Department of Planning and Environment amend the subject Gateway determination to include Lot 951. This would likely require re-exhibition of the subject planning proposal once amended. It is estimated that this would delay the completion of the planning proposal by approximately three months.
- Council could invite Harvey Norman to lodge a separate planning proposal request. This option would enable the existing planning proposal to proceed without further delay.

### **Sustainability Considerations**

- **Environment**

The subject land is already zoned for urban purposes with potential environmental impacts having been considered in relation to DA 2009/258 (as amended) and previous zoning of the land. The proposed rezoning is not expected to raise potential for environmental impacts beyond those that might otherwise occur in association with the development of the land for bulky goods retailing purposes under the current urban zone.

- **Social**

It is anticipated that the availability of employment lands will deliver positive social benefits to the community by providing opportunities for employment growth which in turn will have multiplier effects on the economy.

- **Economic**

The planning proposal seeks to provide for additional flexibility in the use of employment lands to facilitate ongoing economic development opportunities in Ballina Shire. The proposed rezoning will likely have positive economic impacts in relation to employment opportunities in the shire.

### **Legal / Resource / Financial Implications**

Costs associated with processing the LEP amendment request are being met by the proponent in accordance with Council's schedule of fees and charges. There are no significant resourcing or financial implications associated with the proposal proceeding to finalisation.

Finalising the planning proposal can be accommodated within the existing work program of the Strategic and Community Facilities Group.

### **Consultation**

The NSW Rural Fire Service (RFS) was consulted regarding the proposal, in accordance with the terms of the Gateway determination. The RFS did not raise any objection to the subject planning proposal proceeding. A copy of the RFS submission is provided in Appendix Five of the attached planning proposal.

The draft planning proposal was publicly exhibited for a period of 16 days (22 March – 7 April 2017), in accordance with the Council's resolution. Council received one submission in response to the public exhibition. A copy of the submission is provided in Attachment Two. The consideration of matters raised in this submission is contained in the body of this report.

### Options

1. That Council request that the Department of Planning and Environment amend the Gateway determination to include Lot 951 DP 1165266 in planning proposal BSCPP 16/003.

This option would involve writing to the Department of Planning and Environment requesting that the subject Gateway determination be amended to include Lot 951 DP 1165266 so as to be subject to the changes proposed in the planning proposal.

This option is not recommended on the basis that Lot 951 was not included in the initial planning proposal request and its late inclusion at this stage would further delay the finalisation of the subject planning proposal by a period of at least several months. Given the uncontroversial nature of the proposal and that the applicant has provided the necessary information to enable its finalisation, delaying the planning proposal at this stage is not recommended.

2. That Council proceed to finalise the planning proposal and invite the landowner of Lot 951 DP 1165266 to submit a separate planning proposal in relation to that land parcel.

This is the recommended option. This option is recommended on the basis that the planning proposal is generally consistent with the strategic land use planning framework for the area, is supported by independent analysis of the demand and supply of industrial land and represents an acceptable land use outcome for the land.

This option would involve Council requesting that the NSW Department of Planning and Environment proceed to amend the Ballina Local Environmental Plan 2012 to give effect to the planning proposal (as contained in Attachment One subject to it being updated to reflect Council's resolution and finalise it for submission to the Department). It is noted that Council has not been delegated plan-making functions with respect to this matter.

This option would also involve writing to the landowner of Lot 951 DP 1165266, inviting them to make a formal planning proposal request in relation to their land.

3. That Council discontinue the subject planning proposal.

This option is available to the Council. This option is not recommended in this case on the basis that there is sufficient merit to support the planning proposal in its current form.

4. That Council consider this matter further by way of a Councillor briefing.

## **9.4 Planning Proposal - Boeing Avenue, Southern Cross Estate**

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This option is available to the Council. This option is not recommended in this case on the basis that this matter has been previously considered by the Council and no new information has come to light during the public exhibition process to warrant a Councilor briefing at this time.

### **RECOMMENDATIONS**

1. That Council endorses the amendment of the Ballina Local Environmental Plan 2012 to apply the IN1 General Industrial zone and 1000m<sup>2</sup> minimum lot size standard and include 'bulky goods' as an additional permitted use on land in Boeing Avenue Ballina as set out in Planning Proposal BSCPP 16/003 (Attachment One).
2. That Council submits planning proposal BSCPP 16/003 to the Department of Planning and Environment for finalisation.
3. That Council write to the landowner of Lot 951 DP 1165266 inviting submission of a separate planning proposal in relation to the land.

### **Attachment(s)**

1. Planning Proposal BSCPP 16/003 (final version) (Under separate cover)
2. Harvey Norman Submission

## 9.5 Planning Proposal - 111 Friday Hut Road, Tintenbar

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### 9.5 Planning Proposal - 111 Friday Hut Road, Tintenbar

**Delivery Program** Strategic Planning

**Objective** To inform the Council of the outcomes of the public exhibition of Planning Proposal BSCPP 16/004 - 111 Friday Hut Road, Tintenbar, and to seek direction from the Council on the finalisation of this proposed LEP amendment.

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#### **Background**

The Council, at its Ordinary Meeting held on 27 October 2016, considered an LEP amendment request to permit the subdivision of Lot 339 DP 755684 (Lot 339) into two lots. One lot was proposed to be used for rural residential purposes and contains an existing dwelling house. The other lot was proposed to be used for primary production purposes being the growing of organic seedlings and the production of seed. No building entitlement was sought for the primary production lot.

The Council resolved [Minute No. 271016/1] as follows:

- 1. That Council endorses the preparation of a planning proposal which proposes to permit the subdivision of Lot 339 into two lots as outlined in this report, but which would preclude the erection of a dwelling on the proposed horticultural allotment.*
- 2. That the planning proposal, once prepared, be forwarded to the Department of Planning and Environment for a Gateway determination.*
- 3. That subject to a Gateway determination allowing the proposal to proceed to community consultation being issued, the planning proposal be placed on public exhibition.*
- 4. That Council give further consideration to the proposal following the conclusion of the public exhibition period.*

A Gateway determination was obtained on 24 February 2017, which required the LEP amendment to be completed in a period of 9 months. It also required that Council consult with the Department of Primary Industries – Agriculture and the NSW Rural Fire Service. A minimum 28 day community consultation period was also specified. The gateway determination also required address of certain issues prior to community consultation (see below).

On 1 May 2017 the Department of Planning and Environment advised Council that it considered that the proposal's inconsistency with section 117 Direction 4.4 Planning for Bushfire Protection is justified and no further approval is required in relation to this Direction.

A copy of the Gateway determination is contained within the Planning Proposal which forms Attachment One to this report.

## 9.5 Planning Proposal - 111 Friday Hut Road, Tintenbar

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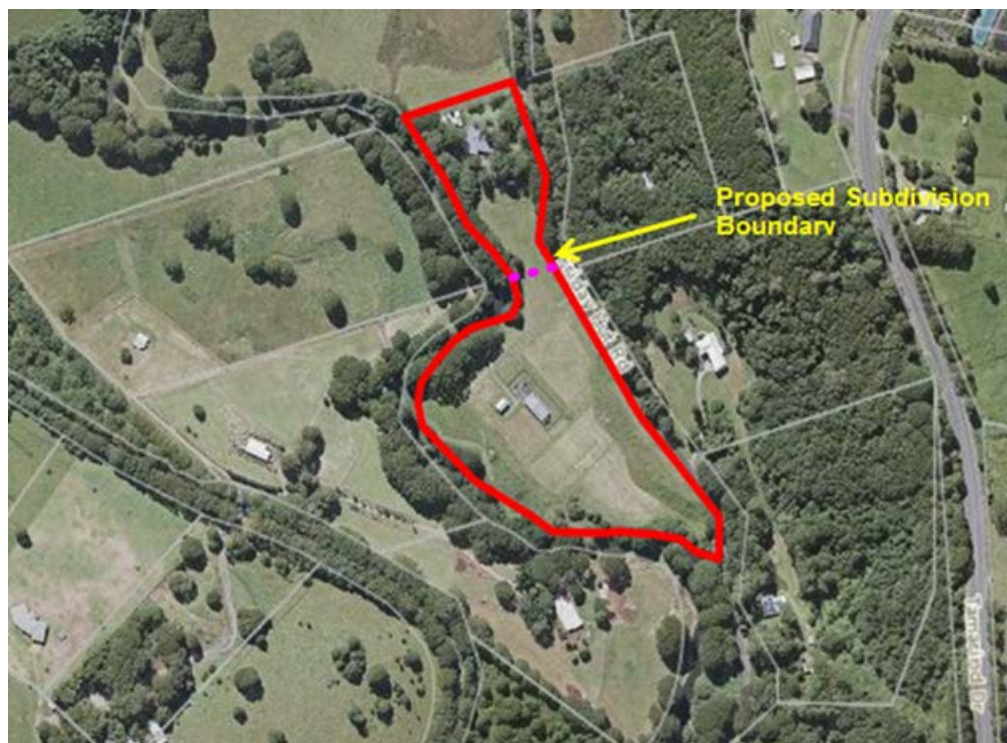
### Key Issues

- Consideration of the outcomes of the public exhibition process.
- Finalisation of the LEP amendment taking into consideration the matters raised by the Department of Planning and Environment in the Gateway determination.
- Consideration of acceptance of delegation from the Department of Planning and Environment to finalise the planning proposal.

### Information

Lot 339 is outlined in red on the plan below. Also indicated by purple dots is the approximate boundary of the proposed two lot subdivision.

### Location Diagram - Aerial Photo Extract



Lot 339 is located on the western side of Friday Hut Road approximately 600 metres north of the Tintenbar Road intersection. Lot 339 has an area of 3.95 hectares and has existed as a separate lot since 1928.

Part of lot 339 (approximately 1 hectare) is used for rural residential purposes and contains a dwelling house (approved in 1979), a garage and small shed.

The residue of lot 339 is currently used for primary production for the growing of organically produced seedlings and for seed production. This part of lot 339 has an area of approximately 3 hectares and contains a farm shed (6m x 12m) and propagation shed (9m x 21m).

Lot 339 is zoned RU1 Primary Production under the provisions of Ballina Local Environmental Plan 2012 (Ballina LEP 2012) and is subject to a 40 hectare minimum lot size for subdivision.



The proposed two lot subdivision would excise the existing dwelling house and its curtilage on approximately one hectare, to be retained by the property owner, with the balance being then proposed to be purchased by the existing tenant for primary production purposes.

No dwelling entitlement is sought for the proposed primary production lot.

The Gateway determination, issued by the Department of Planning and Environment, required updating of the planning proposal prior to public exhibition in respect to the following two issues:

- (a) Clarification of the objectives in relation to existing use rights for the dwelling and that the proposal is not a LGA wide amendment; and
- (b) Consideration of whether the primary production lot should be increased in size to include the greatest amount of regionally significant farmland possible.

In respect to point (a) *Part 2 Objectives and Intended Outcomes* of the planning proposal was amended prior to public exhibition to indicate that the planning proposal had the following objectives and intended outcomes:

- *The continued use of that part of the land containing an existing dwelling house for rural residential purposes and the maintenance of a dwelling entitlement for this land. It is considered that existing use rights will continue to apply to the dwelling house on the subdivided lot.*
- *The use of the residue lot for primary production purposes without a building entitlement;*
- *The limitation of the amendment to Lot 339 DP 755684 – 111 Friday Hut Road, Tintenbar, without further applicability to other rural lots within Ballina Shire; and*
- *The reinforcement of the prohibition related to the erection of a dwelling on the primary production lot.*

The issue of whether scope existed to increase the size of the primary production lot was required to be addressed by the proponent's planning consultant. Advice was provided that moving the boundary further to the north does not provide land suitable for intensive farming (seed production) or additional nursery infrastructure for the following reasons:

- The section of land is narrow and contains a small overland flow path, and
- Moving the boundary reduces the width of a buffer between the existing house and the use of the rural lot.

The site has been inspected and the above reasons were considered to be valid. In addition, the proposed boundary line is at the narrowest point of lot 339 between the creek and road. This assists with visually separating the residential and primary production uses. Consequently the planning proposal was amended to incorporate the above information prior to being exhibited.

### **Sustainability Considerations**

- **Environment**

It is considered that there are no significant environmental issues associated with what is proposed or that require further investigation. The subject land is already used for two distinct purposes, one being rural residential and the other primary production (horticulture).

- **Social**

The proposal has social implications in so far as it will facilitate the use of part of the land for its current agricultural purpose and in so doing will provide limited local employment opportunities within the locality.

- **Economic**

The proposal has economic implications through facilitating a productive and viable agricultural use on part of the land. This is considered to add strength and diversity to the local economy.

### **Legal / Resource / Financial Implications**

There are no significant resourcing or financial implications associated with the proposed LEP amendment. The further processing of the amendment can be accommodated within the work program of the Strategic and Community Facilities Group. The proponent has met the costs associated with the processing of this planning proposal in accordance with Council's adopted Fees and Charges.

The processing of the amendment does not involve specific legal implications beyond compliance with the *Environmental Planning and Assessment Act 1979*. It is noted here that as part of the Gateway determination, an authorisation for Council to exercise delegation to make the plan has been issued. Having regard for the nature of submissions received in response to the public exhibition of the planning proposal, it is considered that Council should now process the planning proposal to finalisation under delegated authority.

### **Consultation**

The planning proposal was publically notified from 3 May 2017 until 2 June 2017. Notification included an advertisement in the Ballina Shire Advocate and letters to 29 adjoining and nearby property owners.

A copy of the exhibited planning proposal is contained in Attachment One.

In response to the exhibition seven submissions in support of the planning proposal were received.

Prior to the public exhibition of the planning proposal the comments of the NSW Rural Fire Service and the Department of Primary Industry - Agriculture were sought and obtained.

Copies of all submissions received in response to the Government agency consultation and the public exhibition of the planning proposal are contained within Attachment Two.

## 9.5 Planning Proposal - 111 Friday Hut Road, Tintenbar

The table below provides a summary of the issues raised in submissions as well as planning staff comments.

Name	Issues Raised	Staff Comments
NSW Rural Fire Service	Raise no concerns or issues in relation to bush fire.	Noted
Department of Primary Industries - Agriculture	<p>Advise they are supportive of the growth of agricultural industries and recognise the success and level of investment in the organic seedling facility established on this site. When considered individually the planning proposal has merit.</p> <p>Indicate that the proposal raises a number of strategic concerns as follows:</p> <ul style="list-style-type: none"> <li>• Approving the application based on the merit of the existing land use does not give due consideration of the needs of any future potential use/owner of the land and increases the risk of land use conflict risk upon sale of the retained dwelling parcel.</li> <li>• Inconsistency of the proposal with State policies, minimum lot size considerations and general LEP provisions could set precedence for further subdivision within the Ballina LGA.</li> </ul>	<p>Noted – Council has considered this proposal on an individual merit basis and has not sought to introduce shire wide provisions within the planning proposal.</p> <p>It is relevant to consider that what is proposed facilitates the continued primary production use of the land in an area predominantly used for rural residential purposes. A land use conflict risk assessment has been prepared by the proponents planning consultant which indicates that the risk of land use conflict between the existing primary production use and adjoining land is considered to be low. This assessment is supported.</p> <p>Whilst it may arise in the future that a different primary production use may be proposed it should be noted that 'extensive agriculture' and 'intensive plant agriculture' do not require consent within the RU1 zone. Therefore there is little control able to be exercised to ensure land use conflicts do not arise in the future.</p> <p>The need for this planning proposal arose as a consequence of Council, when preparing Ballina LEP 2012, determining that clause 9 of State Environmental Planning Policy (Rural Lands 2008) should not apply. Had this clause applied then the proposed subdivision would be permitted with consent.</p> <p>The Department of Planning and Environment when issuing a Gateway determination also recognised that the planning proposals inconsistency with S117 Direction 1.5 Rural Land and 4.3 Flood Prone Land are of minor significance and require no further approvals.</p>

## 9.5 Planning Proposal - 111 Friday Hut Road, Tintenbar

Name	Issues Raised	Staff Comments
Department of Primary Industries – Agriculture (Con't)	<ul style="list-style-type: none"> <li>Inconsistency of the proposal with State policies, minimum lot size considerations and general LEP provisions could set precedence for further subdivision within the Ballina LGA (Con't)</li> </ul>	<p>In respect to minimum lot size provisions the proposal will create two lots below the minimum 40 hectare lot size specified in the LEP. The site is however located within an area where few lots comply with the lot size requirement. Due to the shape and topography of the site there will also be little visual indication that the proposed subdivision has resulted in lots that are different to the general lot pattern which currently exists within the locality.</p> <p>The nature of the LEP amendment proposed (additional permitted use in Schedule 1) ensures that Council will be able to consider any future similar proposals on a case by case basis having due regard to the merits of each case.</p> <p>This proposal is viewed as a particularly specific case with particular merits. As such it is not considered that an undesirable precedent has or will be created by this planning proposal.</p>



## 9.5 Planning Proposal - 111 Friday Hut Road, Tintenbar

Name	Issues Raised	Staff Comments
Bianka and Jared Kent (owners of adjoining property on western side)	Advise they have no opposition to the planned changes.	Noted
Sue Mangan	Support planning proposal. Rely on seedlings from this enterprise for their organic vegetable production. Supporting planning proposal will give local growers the security and confidence required to grow their businesses.	Noted
Che Devlin – Fig Tree Restaurant	Support planning proposal. Rely on Seedlings Organic for their seedlings.	Noted
Haley Burgess	Strongly supports planning proposal. Local organic grower who relies on seedlings produced by Seedlings Organic.	Noted
Elizabeth Gray	Strong supporters of this business. Advise that Luke is a great contributor of organic farming on the North Coast.	Noted
Ross Cawdor	Fully supports subdivision and continued operation of this business.	Noted
Josh Dooley	Support the ongoing respect for the land that has been given so far.	Noted

### Options

#### ***Option 1: Finalise the Planning Proposal***

This is the recommended option.

Finalisation of the planning proposal would include updating the planning proposal documentation (as contained in Attachment One) to reflect the outcomes of the public exhibition process and Council's decision in respect to the proposed amendment.

The LEP amendment will create the potential for the subject site to be subdivided into two lots thereby separating the rural residential and the primary production uses of the land under separate titles. This would then facilitate the sale of the primary production lot to the current tenant. Through this process it better ensures that an agricultural land use remains established on this site. It is primarily due to this reason that it is considered that the planning proposal has merit and should continue to be supported and finalised.

Importantly, this circumstance should be seen as a case that has particular circumstances and merit. It is not a general endorsement of this type of rural subdivision on a wider basis in the shire.

As indicated previously, it is also recommended that Council exercise the authority granted by the Department of Planning and Environment and proceed to finalise the planning proposal under delegated authority.

***Option 2: Discontinue the Planning Proposal***

The option to discontinue the proposal is open to the Council.

If the Council considers that support for this planning proposal may result in increased pressure to permit the subdivision of rural land into lots below the current 40 hectare minimum lot size, then the merits associated with finalising the planning proposal should be carefully considered. On balance, given the current primary production use taking place on part of the lot it is considered that the planning proposal does have sufficient merit and could readily be distinguished from other potential future proposals if required.

Therefore given the circumstances applicable to the subject planning proposal the discontinuation option is not supported. On assessment, there are also no outstanding matters identified as a basis for discontinuation of the proposal.

***Option 3: Defer the Planning Proposal***

The Council may wish to defer the finalisation of the planning proposal should it consider that there are unresolved issues or if further information is required.

Given the nature of the planning proposal and the results of the public exhibition process this option is not recommended.

**RECOMMENDATIONS**

1. That Council endorses the amendment of the Ballina Local Environmental Plan 2012 to permit the subdivision of Lot 339, DP 755684, No 111 Friday Hut Road, Tintenbar, into two lots as detailed in Planning Proposal BSCPP 16/004.
2. That Council authorises the General Manager to proceed to finalise and implement Planning Proposal BSCPP 16/004 under delegated authority.

**Attachment(s)**

1. Attachment One - Planning Proposal BSCPP 16/004 (Under separate cover)
2. Attachment Two - Submissions

## 9.6 LEP Amendments and Planning Proposals - Status

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### 9.6 LEP Amendments and Planning Proposals - Status

**Delivery Program** Strategic Planning

**Objective** To inform the Council of the status of Local Environmental Plan amendment requests and planning proposals that are currently under consideration.

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#### **Background**

Council has an ongoing program of assessing and processing requests to amend the Ballina Local Environmental Plans 1987 and 2012 (LEPs) and associated planning proposals. This report provides an update of those matters which are currently pending, for the information of Councillors and the community.

#### **Key Issues**

- Status of rezoning and LEP amendment requests.

#### **Information**

##### *LEP Amendment Requests and Planning Proposals Status*

Table 1 provides an overview of the LEP amendment requests and planning proposals currently being considered and processed by Council. With respect to terminology used in this report, the term planning proposal refers to the documentation prepared to describe a request to amend the Ballina Local Environmental Plan/s.

Requests are typically referred to as planning proposals once the Council has agreed to progress the LEP amendment request and has prepared the required planning proposal documentation for Gateway determination by the NSW Department of Planning and Environment (DPE).

**Table 1: Status of LEP amendment requests and planning proposals**

<b>Item</b>	<b>Name and Status</b>	<b>Summary and Notes</b>	<b>Completion Due</b>
13/005	Southern Cross Industrial Estate Expansion, Ballina. (Stage 4)	Proposal by Ballina Shire Council for the rezoning of land northward of the existing Southern Cross Industrial Estate from its current rural zoning to enable a mixture of business and industrial land uses.  Proponent's consultant was asked on 13 April 2016 to supply additional information as highlighted in a gap analysis report prepared by an independent planning consultant.  Currently awaiting submission of additional information.	30/10/2017



## 9.6 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
14/001	Teven Road, West Ballina. Complete	Proposal to enable the establishment of freight transport facilities adjacent to Teven Road on the western side of the Ballina Bypass. This is not a rezoning request. Rather, the proposal involves the insertion of new provisions in the Ballina LEP 2012 to permit development which is currently prohibited on the land.  The amendment was completed via Amendment No. 32 to the Ballina LEP 2012 on 19 May 2017. The Voluntary Planning Agreement became operative at that time.	Complete
14/005	Blue Seas Parade (No 44-52), Lennox Head. Complete	A proposal for the rezoning of land located at the eastern end of Blue Seas Parade in Lennox Head for residential purposes.  The amendment was completed via Amendment No. 30 to the Ballina LEP 2012 on 17 March 2017.	Complete
14/008	Burns Point Ferry Road, West Ballina (Ballina Waterways). (Stage 7)	Proposal for the rezoning of land located adjacent to Burns Point Ferry Road and River Street in West Ballina to enable a mixture of employment and residential land uses. The proposal includes implementation of a biobanking scheme over part of the land.  Council at its meeting of 25 May resolved to proceed with the finalisation of the planning proposal subject to DCP provisions being adopted and the associated voluntary planning agreement being registered to the land title. Council is seeking consultant fee proposals for the preparation of the DCP and is working towards executing the planning agreement.	01/01/2018
15/004	Greenwood Place, Lennox Head. Complete	Proposal to rezone land fronting Greenwood Place and The Coast Road in Lennox Head for residential purposes.  The amendment was completed via Amendment No. 29 to the Ballina LEP 2012 on 24 February 2017.	Complete
16/002	Stoneyhurst Drive, Lennox Head. (Stage 4)	Proposal to rezone land located adjacent to Stoneyhurst Drive in Lennox Head for residential purposes and to enable subdivision of the land.  At the request of the proponent, the Department of Planning & Environment (DPE) has granted a 12 month extension of time to complete the planning proposal.  Council is awaiting submission of technical assessment material by the proponent.	02/06/2018

## 9.6 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
16/003	Southern Cross Industrial Estate, Bulky Goods Precinct (Stage 6)	Proposal by Council to rezone land within the Southern Cross Industrial Estate bulky goods precinct to enable broader industrial land uses (whilst retaining potential for bulky goods/large format retailing development).  This matter is the subject of a separate report elsewhere in this business agenda.	27/11/2017
16/004	Friday Hut Road (No 111), Tintenbar. (Stage 6)	Proposal to amend the LEP to enable the creation of an allotment of land having an area below the LEP's minimum lot size for subdivision for the purpose of enabling a primary production land use.  This matter is the subject of a separate report elsewhere in this business agenda.	24/11/2017
17/001	Stage 1 Deferred Matters Integration Program. (Stage 3)	Proposal to integrate land identified as a "deferred matter" into the Ballina LEP 2012 through the application of appropriate zones and planning controls. Relates primarily to water catchment areas in the shire. Further discussion on this matter is provided at the end of this table.	14/12/2017
17/002	Stage 2 Deferred Matters Integration Program. Discontinued	Proposal to integrate land identified as a "deferred matter" into the Ballina LEP 2012 through the application of appropriate zones and planning controls. Relates primarily to scenic/ escarpment areas in the shire.  At its April 2017 meeting, Council resolved not to proceed with the previously adopted staging program in relation to BLEP 2012 deferred matters.	Complete
17/003	Stage 3 Deferred Matters Integration Program. Complete	Proposal to integrate land identified as a "deferred matter" into the Ballina LEP 2012 through the application of appropriate zones and planning controls. Relates primarily to habitat areas in the shire.  At its April 2017 meeting, Council resolved not to proceed with the previously adopted staging program in relation to BLEP 2012 deferred matters.	Complete
17/004	Stage 4 Deferred Matters Integration Program. Complete	Proposal to integrate land identified as a "deferred matter" into the Ballina LEP 2012 through the application of appropriate zones and planning controls. Relates primarily to existing urban buffer between Alstonville and Wollongbar.  At its April 2017 meeting, Council resolved not to proceed with the previously adopted staging program in relation to BLEP 2012 deferred matters.	Complete

## 9.6 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
17/005	Stage 5 Deferred Matters Integration Program. Complete	Proposal to integrate land identified as a "deferred matter" into the Ballina LEP 2012 through the application of appropriate zones and planning controls. Relates primarily to coastal land. At its April 2017 meeting, Council resolved not to proceed with the previously adopted staging program in relation to BLEP 2012 deferred matters.	Complete
17/006	Bath Street (No 17), Wardell. (Stage 2)	Proposal to amend the LEP to rezone a single land parcel in Wardell from RU2 Rural Landscape to R2 Low Density Residential. The proponent has arranged for technical reports to be prepared but has not yet paid the fees associated with the proposal. Therefore a Gateway determination has not yet been sought.	#
17/007	Visions Estate, Henderson Drive and Kellie Ann Crescent, Lennox Head (Stage 3)	Proposal by Council to rezone land within the Visions Estate from R3 Medium Density Residential to R2 Low Density Residential with the exception of Lots 1, 7 and 15. At its May 2017 meeting, Council resolved to submit the planning proposal to DPE for Gateway determination.	#
<p><b>LEP Amendment Request/Planning Proposal Processing Stages</b></p> <ol style="list-style-type: none"> <li>Initial Concept - Proponent submits initial amendment concept for review and reporting to the Council.</li> <li>Planning Proposal - Preparation of a planning proposal for the Council's consideration (if the initial concept is supported by the Council).</li> <li>Gateway Determination - DP&amp;E determination as to whether the planning proposal may proceed (if the Council resolves to submit the planning proposal for determination).</li> <li>Study Preparation - Relevant technical information to enable complete assessment compiled and considered. This step may also involve pre-exhibition public authority consultation.</li> <li>Community Consultation - Planning proposal and associated technical assessment material exhibited for public comment.</li> <li>Public Hearing - Public Hearing held, where required.</li> <li>Submissions Assessment and Council Decision - Reporting of community consultation outcomes and Council decision regarding finalisation of the planning proposal.</li> <li>Finalisation - DP&amp;I finalisation (or Council finalisation under delegation) of the LEP amendment based on the planning proposal. Note: the Minister for Planning and Environment may finalise, alter or terminate the amendment.</li> </ol> <p># Denotes proposal number and due date subject to Gateway determination. The completion due date is a date for completion determined by the Department of Planning and Environment.</p>			

### Stage 1 Deferred Matters Integration Program (BSCPP 17/001)

At its April 2017 meeting, Council resolved not to proceed with the previously adopted staging program for the integration of deferred matters into the Ballina LEP 2012. Council resolved instead to retain the existing environmental protection zones under the Ballina LEP 1987 as deferred areas and to integrate the remaining deferred areas into the Ballina LEP 2012. The Council resolution is as follows [Minute No. 270417/12]:

## 9.6 LEP Amendments and Planning Proposals - Status

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*That Council addresses the deferred matters under the Ballina Local Environmental Plan 2012 through the following:*

- (a) Retention of all deferred areas the subject of an environmental protection zone under the Ballina Local Environmental Plan 1987 as deferred areas (having the effect that the Ballina LEP 1987 will continue to apply).*
- (b) Preparation of a planning proposal to integrate all deferred areas that are not subject to existing environmental protection zones under the Ballina Local Environmental Plan 1987 into the Ballina Local Environmental Plan 2012.*
- (c) Application of the criteria established under the Northern Councils E Zone Review to the areas to be integrated into the Ballina Local Environmental Plan 2012 under point (b).*

The Department of Planning and Environment has issued a Gateway determination in respect of the planning proposal for Stage 1 of the previously adopted program. Having regard for the above and in line with Council's most recent resolution, it is recommended that Council formally request that the Department of Planning and Environment discontinue the processing of the Stage 1 planning proposal as required under section 58(4) of the *Environmental Planning and Assessment Act 1979*.

The integration of deferred matters in line with the Council resolution of April 2017 will commence after ecological information has been received from an external consultant engaged to compile information required to address the Department of Planning's E zone criteria.

### **Sustainability Considerations**

- **Environment**  
Environmental, social and economic considerations form part of the Council's assessment of all planning proposals and LEP amendments.
- **Social**  
As above
- **Economic**  
As above

### **Legal / Resource / Financial Implications**

The work program is being undertaken within existing resources or on a fee for service basis for specific proposals.

### **Consultation**

This report is provided for the information of the community. Community consultation is, or has been, undertaken in relation to individual planning proposals.

### **Options**

The status of the LEP amendments outlined above is provided for noting only. All matters are being processed within the legislative framework in accordance with previous decisions of the Council.

## **9.6 LEP Amendments and Planning Proposals - Status**

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With respect to BSCPP 17/001, it is recommended that Council requests discontinuation of the planning proposal for the reasons outlined above.

### **RECOMMENDATIONS**

1. That Council notes the contents of this report concerning the status and approach regarding the current LEP amendment requests and planning proposals that are being processed.
2. That Council write to the Department of Planning and Environment requesting the planning proposal BSCPP 17/001 for Stage 1 of the Deferred Matters Integration Program be discontinued.

### **Attachment(s)**

Nil

**9.7 Land Classification - Lot 180 DP 1229369, 26 Kell Mather Drive**

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**9.7 Land Classification - Lot 180 DP 1229369, 26 Kell Mather Drive**

**Delivery Program** Strategic Planning

**Objective** To determine the classification of land recently acquired by Council under the provisions of the Local Government Act 1993

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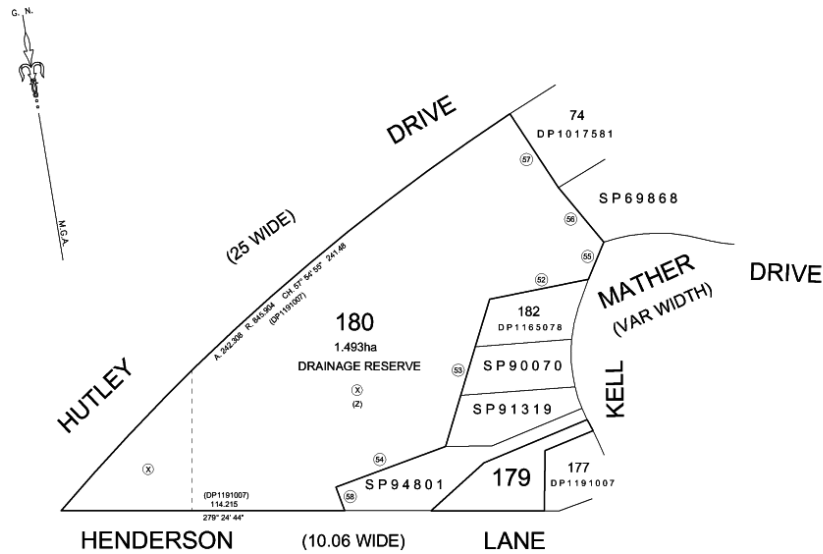
**Background**

Lot 180 in DP 1229369 is known as 26 Kell Mather Drive, Lennox Head and has its major frontage to Hutley Drive being located opposite Gradwell Drive and Hoop Pine Court. It was created on 11 April 2017 with the registration of Deposited Plan (DP) 1229369.

Lot 180 has an area of 1.493 hectares and is dedicated to the public (Council) as a drainage reserve. Lot 180 is zoned as R2 Low Density Residential under the provisions of Ballina LEP 2012.

The subject lot is shown on the extract from DP 1229369 below.

**Extract from DP 1229369 showing location of Lot 180**



The lot comprises part of the stormwater management system in place for the Meadows Estate which was originally created in 1999.

The purpose of this report is to determine the classification of Lot 180 under the terms of the *Local Government Act 1993* (LG Act). Part 2 of Chapter 6 of the LG Act regulates the management of public land.

Specifically, sections 26 and 27 of the LG Act require public land to be classified as either “community” or “operational” land in accordance with its intended use.

**Key Issues**

- Classification of the land under the terms of the LG Act.
- Nature and use of the land.

**Information**

The subject lot has been dedicated to Council as a drainage reserve and contains stormwater management infrastructure provided to service the residential development on nearby land.

As lot 180 has been created to contain stormwater management infrastructure and will not function as open space for public recreation it is recommended that it be classified as operational land in accordance with the provisions of the LG Act.

Section 31 of the LG Act provides that before a council acquires land, or within three months after it acquires land, it may resolve that the land be classified as community land or operational land. If the land has not been classified within the three month period then it is taken to have been classified as community land.

Lot 180 was acquired by Council on 11 April 2017 upon the registration of DP 1229369 and the associated issue of a certificate of title. The three month classification “window” expires on 11 July 2017.

Section 34 of the LG Act requires that public notice of a proposed resolution to classify land must be given and that a period of not less than 28 days to receive submissions must be provided. A public notice of the proposal to classify the subject land as operational land was provided in the Ballina Shire Advocate on 26 April 2017, in accordance with section 34 of the Act, with submissions invited until 29 May 2017. No submissions were received in response to the notification.

Given that the land has been dedicated to Council and the required public notification has been completed, it is now necessary for Council to confirm whether or not the land is to be classified as operational land under the terms of the LG Act.

**Sustainability Considerations**

- **Environment**  
The classification of the subject lot as operational land is not expected to result in any negative environmental, social or economic outcomes. An operational land classification is consistent with the proposed and current use of the land for stormwater management purposes.
- **Social**  
As above.
- **Economic**  
As above.

**Legal / Resource / Financial Implications**

The classification of Lot 180 as operational land is a legal mechanism under the LG Act that provides Council with flexibility in the management and maintenance of the land for stormwater infrastructure. The proposed classification will not directly result in adverse resource or financial implications but will enable the efficient management and maintenance of the land for its intended public utility purpose in the long term.

**Consultation**

Public notification of the proposal to classify the land as operational land has occurred in accordance with the requirements of section 34 of the *Local Government Act* 1993. Public submissions were invited, with the closing date being 29 May 2017. No submissions in response to the notification were received.

**Options**

1. The Council may resolve to classify the lot as operational land.

Under this option, the proposed classification of the lot as operational land would take effect immediately upon the resolution of the Council.

2. The Council may resolve to classify the lot as community land.

Where land is classified as community land, Council would be obliged to manage the land for community purposes and make provision for its categorisation and incorporation into a plan of management. Given the intended use of the land is for stormwater management, classifying the land as community land is not recommended.

The classification of the land as operational land as per option one is the recommended approach as the land has been specifically dedicated for a use compatible with an operational classification. Classification as operational land allows for the ongoing management and maintenance of the land for stormwater infrastructure.

**RECOMMENDATION**

That Council classify the land identified as Lot 180 DP 1229369, 26 Kell Mather Drive, Lennox Head as operational land under the provisions of the *Local Government Act* 1993 and that this classification takes effect immediately.

**Attachment(s)**

Nil



## 9.8 Land Classification - Closed Crown Roads, Ballina Airport Site

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### 9.8 Land Classification - Closed Crown Roads, Ballina Airport Site

**Delivery Program** Strategic Planning

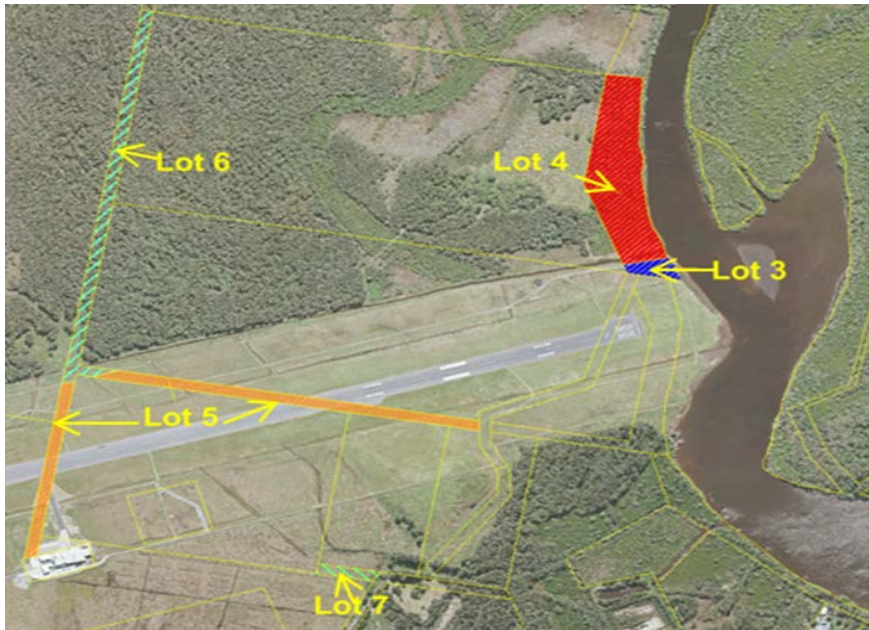
**Objective** To determine the classification of land recently acquired by Council, under the provisions of the Local Government Act 1993.

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#### Background

Lots 3 to 7 in DP 1221472 (Lots 3 to 7), as shown in the site plan below, are closed roads recently acquired by Council from the Crown.

#### Site Plan showing location of Lots 3 to 7



Lots 3 to 7 have a combined area of 6.95 hectares, and form a part of the Ballina Byron Gateway Airport (BBGA) site.

The purpose of this report is to determine the classification of lots 3 to 7 under the terms of the *Local Government Act 1993* (LG Act). Part 2 of Chapter 6 of the LG Act regulates the management of public land.

Specifically, sections 26 and 27 of the LG Act require public land to be classified as either “community” or “operational” land in accordance with its intended use.

#### Key Issues

- Classification of the land under the terms of the LG Act
- Nature and use of the land

### Information

The subject lots form a part of the Ballina Byron Gateway Airport site. The land has been acquired as it forms part of the operating area for the Ballina Byron Gateway Airport.

Section 31 of the LG Act provides that before a council acquires land, or within three months after it acquires land, it may resolve that the land be classified as community land or operational land. If the land has not been classified within the three month period then it is taken to have been classified as community land. The subject land was acquired by Council on 6 April 2017 upon the issue of certificates of title. The three month classification "window" expires on 6 July 2017.

Section 34 of the LG Act requires that public notice of a proposed resolution to classify land must be given and that a period of not less than 28 days to receive submissions must be provided. A public notice of the proposal to classify the subject land as operational land was displayed in the Ballina Shire Advocate on 17 May 2017 in accordance with section 34 of the Act, with submissions invited until 13 June 2017. No submissions were received in response to the notification.

Given that the land has been dedicated to Council and the required public notification has been completed, it is now necessary for Council to confirm whether or not the land is to be classified as operational land under the terms of the LG Act.

### Sustainability Considerations

- **Environment**  
The classification of the subject lot as operational land is not expected to result in any negative environmental, social or economic outcomes. An operational classification is consistent with the current use of the land for airport related purposes.
- **Social**  
As above.
- **Economic**  
As above.

### Legal / Resource / Financial Implications

The classification of Lot 3 to 7 as operational land is a legal mechanism under the LG Act that provides Council with flexibility in the management and maintenance of the land for airport related purposes.

The proposed classification will not directly result in adverse resource or financial implications but will enable the efficient management and maintenance of the land for its intended purpose in the long term.

### **Consultation**

Public notification of the proposal to classify the land as operational land has occurred in accordance with the requirements of section 34 of the *Local Government Act 1993*. Public submissions were invited, with the closing date being 13 June 2017. No submissions in response to the notification were received.

### **Options**

1. The Council may resolve to classify the lots as operational land.

Under this option, the proposed classification of the lot as operational land would take effect immediately upon the resolution of the Council.

2. The Council may resolve to classify the lots as community land.

Where land is classified as community land, Council would be obliged to manage the land for community purposes and make provision for its categorisation and incorporation into a plan of management. Given the current use of the land is for airport related purposes, classifying the land as community land is not recommended.

The classification of the land as operational land as per option one is the recommended approach as the land has been specifically acquired from the Crown for use in relation to the operation of the Ballina Byron Gateway Airport, compatible with an operational classification. Classification as operational land allows for the ongoing management and maintenance of the land for airport related purposes.

### **RECOMMENDATION**

That Council classify the land identified as Lots 3, 4, 5, 6 and 7 DP 1221472, being land forming a part of the Ballina Byron Gateway Airport site, as operational land under the provisions of the *Local Government Act 1993* and that this classification takes effect immediately.

### **Attachment(s)**

Nil

## 9.9 Policy (New) - Mobile Vending on Public Land

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### 9.9 Policy (New) - Mobile Vending on Public Land

**Delivery Program** Strategic Planning

**Objective** To report the outcomes of the public exhibition of the draft Mobile Vending on Public Land Policy and seek direction in relation to the policy's adoption and implementation.

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#### **Background**

The Council considered the draft Mobile Vending on Public Land Policy at its April 2017 Ordinary Meeting. At that meeting, the Council resolved to place the draft policy on public exhibition for community feedback and receive a further report following the exhibition period in the event that submissions were received [Minute No. 270417/14].

In accordance with the Council's resolution, the draft policy was placed on public exhibition with the closing date of 7 June 2017. Nine submissions were received (Attachment One).

#### **Key Issues**

- Policy framework for mobile food vending operations in Ballina Shire
- Issues raised in submissions

#### **Information**

The draft Mobile Vending on Public Land Policy seeks to identify the form of mobile vending permitted on public land and roads and establish a single system for the approval and management of such vending activities. Specifically, the draft policy provides for two forms of approvals (in the form of a permit) being location specific and within the road network.

As indicated in the April 2017 report to the Council, it is important to note that enabling mobile vending on public land might appear simple but it is subject to a complex range of legislation and land management obligations that are applicable to Council. It is also the case that mobile food vendors presently operate in the shire (typically in the form of coffee vans within the public road network) in the absence of a specific policy.

The draft policy document was exhibited for a period of 28 days to allow for public comment. The exhibition was notified via Council's website and by way of advertisement in the local newspaper. Copies of the document were made available at Council's Community Access Points. The policy was also exhibited through Council's new electronic newsletter Community Connect eNews, with a link to an online feedback form.

Three written submissions and six survey responses were received. All survey responses were received after the public exhibition closing date and were in favour of the exhibited policy with no specific suggestions for improvement.

## 9.9 Policy (New) - Mobile Vending on Public Land

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Two survey responses suggested that it would be beneficial if more public reserve trading sites were made available (such as in the Ballina Heights and North Wall areas).

It is important to note that the three submissions received are all from local business owners in the Ballina Shire. The key issues of concern raised are as follows:

### Trading Distance from Local Businesses

The draft policy proposes that *“No Mobile Food Vending Vehicle is to trade within 100m of an existing takeaway food or drink premises open for business that is serving the same or similar food types”* (Attachment 2 10.1 of the Policy).

One of the submissions specifically requested an increase in the exclusion distance. With respect to the on reserve trading locations, a limited number of areas have been nominated for within reserve trading having regard for the proximity of existing businesses as well as applicable land management requirements. Other locations such as Shelly Beach, Captain Cook Park and Fawcett Park were recognised as being too close to existing food and drink premises and therefore were deemed unsuitable for on reserve trading.

With respect to mobile trading within the road network (and formed car parking areas), this type of trading is subject to the above noted restriction under the draft policy and is limited to trading period of 45 minutes at a time.

No change is recommended to the policy in relation to the on reserve locations, the 100m exclusion distance or the specified trading periods. However, it is open to Council to adjust each of these aspects of the policy if considered desirable.

### Reserve Vending Locations

One submission expressed concern over the Mobile Vending Locations within Councils Reserves stating that this will affect local business trade as the mobile vending vans will intercept potential clientele.

As noted above with regards to the trading distance, the rationale of the proposed locations (Missingham Park, Pop Denison Park and Sharpes Beach) is that they are not in close proximity to commercial centres and existing food and drink premises. The nomination of the on reserve trading sites has sought to balance the potential benefits of mobile trading and trading interest with the potential impacts on exiting ‘bricks and mortar’ businesses.

### Fees

There is a suggestion by a local business owner that the fee proposed for the Mobile Vending on Public Land permit is set too low. It is currently proposed that the Annual Fee for Roads and Car Parking permit be \$220 and the Location Specific Permit be \$660 for the first location plus \$330 for each additional permit thereafter. The matter of fees was also raised in the Council’s consideration of the draft policy in April 2017.

## 9.9 Policy (New) - Mobile Vending on Public Land

Having regard for the feedback received, it is recommended that the Council apply a higher fee to both forms of mobile vending permits. It is suggested that a reasonable approach in the circumstances is to raise the initially intended fees by 50% so that the applicable fees would be as follows:

<b>Application Fee</b>	\$99
<b>Annual Fee (Roads and Car Parking Permit)</b>	\$330
<b>Annual Fee (Location Specific Permit)</b>	\$990 for the first location plus \$495 for each additional location
Note: Vendors will also be required to meet food registration and inspection charges in the amount of \$225 (as at April 2017) levied by Council.	

It is also suggested that further increase of the fees be considered after the first 12 months of the operation of the policy.

### Other Issues

In addition to the above several other issues were raised as outlined below:

<b>Issue</b>	<b>Staff Comments</b>
Preference to local businesses	The draft policy does not provide for the preferencing of local business owners in relation to the issue of permits. This is on the basis that the policy does not set any limit to the number of permits that can be issued.
Annual fee increases	It is anticipated that fees will increase annually by at least CPI. It is also recommended that Council considers further increases in the applicable fees following the first 12 months of the operation of the policy.
Monitoring of the 100m exclusion zone	It is intended that permits will be issued with conditions requiring compliance with the policy including the 100m exclusion zone. Council Rangers are able to enforce the requirements of the policy and permits.
Application of a total restriction at car parks near established businesses	The policy seeks to enable mobile food vending businesses in the shire, with key restrictions including limitations of trade in proximity to existing bricks and mortar businesses and limitations on the time periods for trade in recognition of existing business.

It is also evident from the submissions received that there is a concern that Council is now allowing mobile food vending in the shire. Whilst it is the case that the policy enables trading from a limited number of reserve areas where this is currently not allowed, mobile food vendors do currently operate in the shire (typically in the form of coffee vans within the road network).

Bearing this in mind, a key benefit of the introduction of the policy is that it sets a defined set of operating requirements for such businesses and creates a formal licensing system to assist Council in managing this activity. Another important aspect of the policy is that it identifies the types of mobile vending that Council will not permit in the shire.

## 9.9 Policy (New) - Mobile Vending on Public Land

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### Other Amendments

In addition to the adjustment of fees, the following changes are recommended:

- (i) Insertion of a provision to allow Mobile Vending Permit holders to trade within 20m of nominated on reserve sites. This provides flexibility for traders in the event that an on reserve site is occupied (e.g. by a parked car).
- (ii) Insertion of text to clarify that the 100m trading exclusion relating to existing takeaway food or drink premises does not apply to on reserve trading sites (that is, several vendors can trade on reserves in close proximity to each other based on the number of available sites specified by the policy).
- (iii) Inclusion of a provision to clarify that Council will not grant donations or reductions in fees and charges to charitable organisations (or others) wishing to hold a Mobile Food Vending Permit. This is primarily in response to concern that charitable organisation may seek to take up the vending permits based on public funding of the applicable fees. Such an approach is considered to be counter to the policy which is seeking to enable commercial trade. Importantly, the policy allows charities to trade subject to meeting the requirements of the policy including payment of the applicable fees.
- (iv) Correction of minor typographic and formatting errors, including adjustment to the location of the on reserve sites at Sharpes Beach to avoid a newly created no parking area.

A copy of the amended draft (in line with the recommended changes) is included as Attachment two to this report.

### **Sustainability Considerations**

- **Environment**  
The draft policy has been prepared having regard for potential impacts on the environmental attributes of public land. The policy includes requirements that seek to minimise adverse impacts on public land.
- **Social**  
The draft policy has been prepared having regard for potential impacts on local residents and users of public land. The policy includes requirements that seek to minimise adverse impacts on neighbours and ensure that public land remains available to the public for its intended purpose.
- **Economic**  
The draft policy has been prepared having regard for potential impacts on existing businesses, but also opportunities for small business and the economic use of public land. The policy includes provisions that seek to recognise existing 'bricks and mortar' businesses and provide a balanced approach to enabling mobile businesses and to operate in the shire.

### Legal / Resource / Financial Implications

There are no significant legal, resource or financial implications for Council associated with adopting the policy.

### Consultation

The draft policy was placed on public exhibition with the closing date of 7 June 2017. Outcomes of the exhibition process are discussed above.

In addition, given Council currently leases land at the Sharpes Beach car park, feedback was invited from the landowner in relation to the enabling of mobile food vending at this location. No response was received.

### Options

1. Council can adopt the policy as exhibited.

This is not recommended as improvements can be made to the draft policy as per this report.

2. Council can amend and adopt the policy as attached to this report.

This is the recommended option as the suggested changes seek to improve the function and flexibility of the policy consistent with the original objectives associated with enabling mobile food vending in the shire.

3. Council can determine to not adopt the policy.

This is a valid option as there have been concerns expressed by existing businesses that the establishment and encouragement of this policy will increase the impact on local businesses already established in our business precincts.

Finally in adopting the policy it is also recommended that Council increases the fees as set out above and specifies that the policy will commence operation from 1 August 2017. The August commencement date provides time for the administrative system that will support the policy to be established.

### RECOMMENDATIONS

1. That Council adopts the Mobile Vending on Public Land Policy with amendments as set out in Attachment Two.
2. That Council applies the following fee structure in relation to the implementation of the policy.
  - Application Fee - \$99
  - Annual Fee (Roads and Car Parking Permit) - \$330
  - Annual Fee (Location Specific Permit) - \$990 for first location and \$495 for each additional location.
3. That the Mobile Vending on Public Land Policy takes effect from 1 August 2017.



**Attachment(s)**

1. Mobile Vending on Public Land Policy - Submissions
2. Mobile Vending on Public Land Policy (Revised)

## 10.1 Use of Council Seal

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### 10. General Manager's Group Reports

#### 10.1 Use of Council Seal

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#### RECOMMENDATIONS

That Council affix the Common Seal to the following documents.

US17/15	<p>Ballina Shire Council Lease to R Lange and R McEwen for Lot 3 DP 746440 at the Ballina Byron Gateway Airport for a period of twenty years.</p> <p>Explanation: Lange and McEwen have occupied land at the Ballina Byron Gateway Airport for a number of years under a previous lease. This lease was offered as a result of Lange and McEwen requesting consent to upgrade their current hangar. The annual lease fee is set at \$12,600 p.a. + GST with CPI reviews annually.</p>
US17/16	<p>Ballina Shire Council Sublease to T Woznitza for Part Lots 321 DP 755745 &amp; 7003 DP 92641 being that part of the building and surrounds known as the "Old Tintenbar Council Chambers" sitting upon reserve number D57675 dedicated for town hall site and called "Area 3 and Area 4" for three years with a two year option.</p> <p>Explanation: Council has a head lease with the Crown over the site known as "The Old Tintenbar Council Chambers". T Woznitza has been in occupation at the Old Tintenbar Council Chambers for a number of years under a previous sublease. The annual sublease fee is set at \$5,510 p.a. + GST with CPI reviews annually.</p>
US17/17	<p>Survey plan, Section 88B Instrument and documents to enable the closing of a Council public road as part of a boundary adjustment subdivision at 981 Teven Road.</p> <p>Explanation: This section of road proposed to be closed within Lot 8 DP 1052883 is Council public road. There is a property access constructed along this road reserve, however it is not a road constructed or maintained by Council. Council, as the roads authority and owner of the road, is required to sign the documents relating to the road closure and the creation of an easement by Section 88B over the track in use.</p>

#### Attachment(s)

Nil

## 10.2 Investment Summary - May 2017

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### 10.2 Investment Summary - May 2017

**Delivery Program** Financial Services

**Objective** To provide details of Council's cash and investments portfolio breakup and performance.

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#### **Background**

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a Council must provide a monthly report (setting out all money Council has invested), to be presented at the Ordinary Meeting of Council, immediately following the end of the respective month. This report has been prepared for the month of May 2017.

#### **Key Issues**

- Compliance with Investment Policy and the return on investments.

#### **Information**

Council's investments are all in accordance with the Local Government Act, the Regulations and Council's Investments Policy. The balance of investments as at 31 May was \$69,786,000. This represents an increase of \$200,000 from April. Council's investments, as at 31 May, are at an average (weighted) rate of 2.67%, which is 0.93% above the 90 Day Bank Bill Index of 1.74%.

The balance of the cheque account at the Commonwealth Bank, Ballina, as at 31 May 2017, was \$8,000,509. This balance is higher than the balance of \$1,127,384 as at 30 April 2017. The increase was a result of receipts of \$2,000,000 of rates and \$1,200,000 from RMS received on 31 May. Cash reserves were being held for plant, creditors and loan repayments totaling \$2,900,000, and expenditure related to the Ballina and Alstonville Pools of \$3,000,000.

It is anticipated that the balance of investments will be higher in June 2017 and therefore the interest earned in the remaining month of this year will be higher than that achieved in recent months. This is as a result of later than anticipated payments for the pool project.

The majority of Council's investment portfolio is restricted by legislation (external) and Council (internal) uses for the following purposes:

Reserve Name	Restriction	% Portfolio*
Wastewater Fund (incl developer contributions)	External	22.6
Water Fund (incl developer contributions)	External	16.0
Section 94 Developer Contributions	External	7.9
Bonds and Deposits	External	3.0
Other External Restrictions	External	7.5
Carry Forward Works	Internal	9.8
Sportsfields	Internal	5.8
Landfill and Resource Management	Internal	5.3
Employee Leave Entitlements	Internal	4.2
Quarries	Internal	2.0
Property Reserves	Internal	4.0
Plant and Vehicle Replacement	Internal	1.5
Miscellaneous Internal Reserves	Internal	7.8
Unrestricted		2.6
<b>Total</b>		<b>100%</b>

## 10.2 Investment Summary - May 2017

\* Updated to reflect reserves held as at 30 June 2016

### A. Summary of Investments by Institution

Funds Invested With	Fossil Fuel Aligned	ADI Rating *	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
<b>Grandfathered Investments</b>							
National Australia Bank	Yes	BBB	1,788	1,788	0	2.6%	<b>3%</b>
<b>Rated Institutions</b>							
AMP Bank	Yes	A	2,000	2,000	20%	2.9%	
Auswide Bank	No	BBB-	0	1,000	N/A	1.4%	
Bank of Queensland	No	BBB+	3,000	3,000	10%	4.3%	
BankWest	Yes	AA-	9,500	9,500	20%	13.6%	
Bendigo & Adelaide Bank	No	BBB+	5,000	5,000	10%	7.2%	
Beyond Bank	No	BBB	1,000	1,000	10%	1.4%	
Big Sky Building Soc	N/A	BBB	1,000	1,000	10%	1.4%	
Commonwealth Bank of Australia	Yes	AA-	10,798	10,998	20%	15.8%	
Credit Union Australia	No	BBB	2,000	2,000	10%	2.9%	
Defence Bank Ltd	No	BBB	4,500	6,500	10%	9.3%	
Greater Bank Limited	No	BBB	2,000	2,000	10%	2.9%	
IMB Bank	No	BBB	0	1,000	10%	1.4%	
ING Bank Ltd	Yes	A-	4,000	4,000	10%	5.7%	
Members Equity Bank	No	BBB	3,000	2,000	10%	2.9%	
My State Bank Ltd	No	BBB	5,000	5,000	10%	7.2%	
National Australia Bank	Yes	AA-	6,000	6,000	20%	8.6%	
Newcastle Perm Bld Society	No	BBB	1,000	2,000	10%	2.9%	
Rural Bank Ltd	No	BBB+	2,000	0	10%	0.0%	
Suncorp-Metway Bank	No	A+	4,000	2,000	20%	2.9%	
Westpac Banking Corporation	Yes	AA-	2,000	2,000	20%	2.9%	<b>97%</b>
<b>Unrated ADI's</b>					\$1m	0.0%	<b>0%</b>
<b>Total</b>			<b>69,586</b>	<b>69,786</b>		<b>100%</b>	

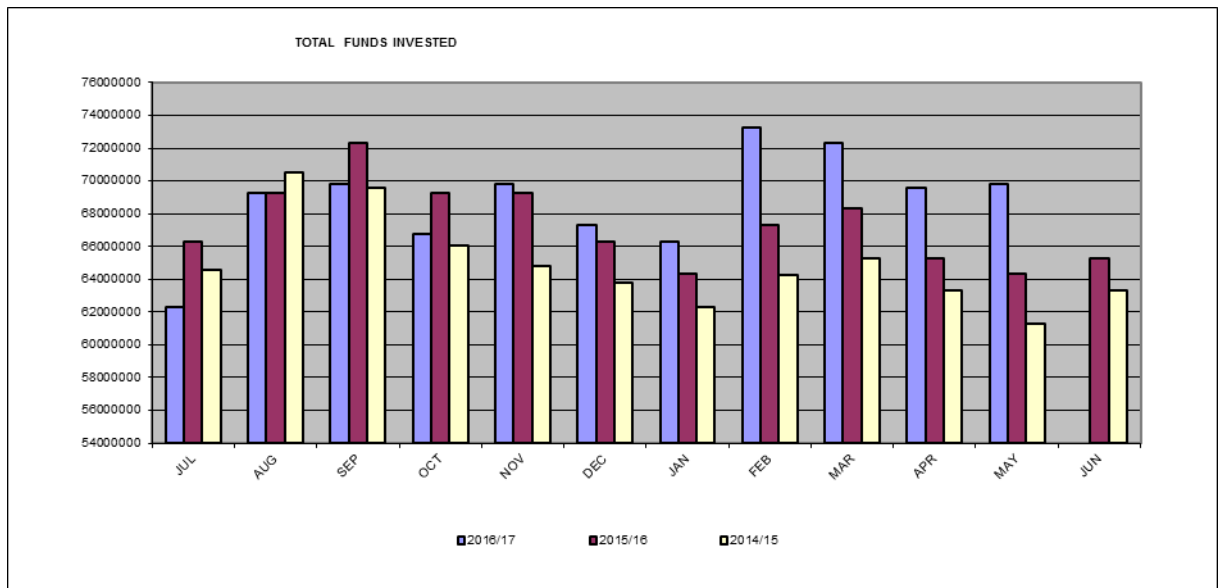
### B. Summary of Investments Fossil Fuel Aligned

	Previous Month	Current Month
<b>Fossil Fuel Aligned</b>	36,086 <b>52%</b>	36,286 <b>52%</b>
<b>Non-Fossil Fuel Aligned</b>	32,500 <b>47%</b>	32,500 <b>47%</b>
<b>Not Classified</b>	1,000 <b>1%</b>	1,000 <b>1%</b>
<b>Total</b>	<b>69,586 100%</b>	<b>69,786 100%</b>

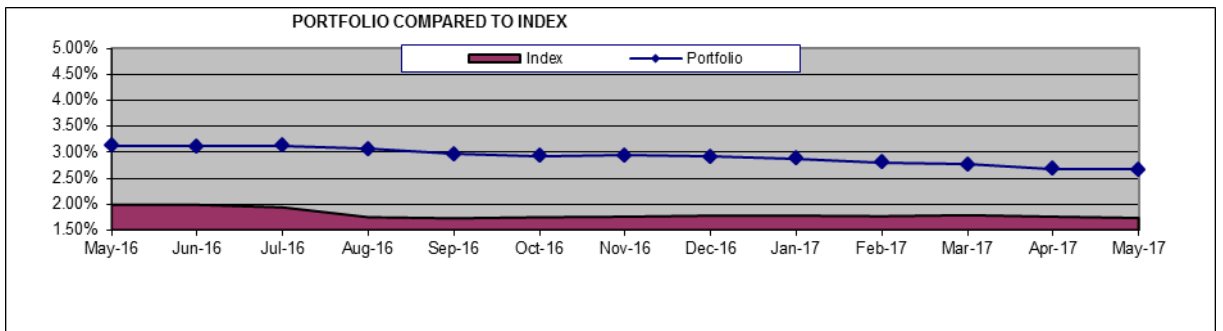
The determination of fossil fuel alignment is based on advice from 'Market Forces' as follows:

- Fossil Fuel Aligned: Noted by Market Forces as funding fossil fuels
- Non-Fossil Fuel Aligned: Noted by 'Market Forces' as having no record of funding fossil fuels and having provided a position statement.
- Not Classified: Not classified as information not available.

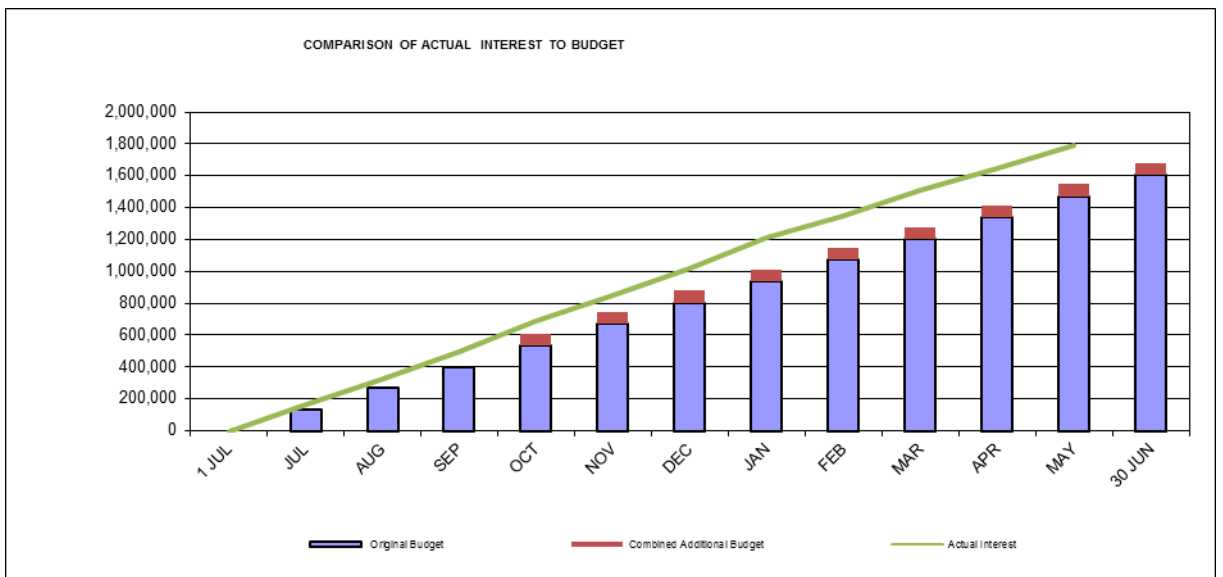
C. Monthly Comparison of Total Funds Invested



D. Comparison of Portfolio Investment Rate to 90 Day BBSW



E. Progressive Total of Interest Earned to Budget



## 10.2 Investment Summary - May 2017

### F. Investments held as at 31 May 2017

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
20/09/04	National Australia Bank (ASX Listed)	FRN	2.94%	Perpetual	1,788	1,373
25/01/13	Commonwealth Bank Of Australia	TD	2.67%	25/01/18	1,998	2,029
25/02/14	Westpac Bank	FRN	2.68%	25/02/19	2,000	2,014
17/06/16	Commonwealth Bank Of Australia	FRTD	2.85%	17/06/21	1,000	1,000
28/06/16	Commonwealth Bank Of Australia	FRTD	2.84%	30/06/21	1,000	1,000
26/07/16	Commonwealth Bank Of Australia	FRTD	2.80%	26/07/21	1,000	1,000
16/08/16	Bendigo & Adelaide Bank	TD	2.80%	16/08/17	2,000	2,000
23/08/16	Bendigo & Adelaide Bank	TD	2.75%	22/08/17	1,000	1,000
29/08/16	My State Bank	TD	2.71%	06/06/17	1,000	1,000
30/08/16	Greater Bank Limited	FRN	3.29%	30/08/19	1,000	1,004
04/10/16	National Australia Bank	TD	2.77%	04/10/17	1,000	1,000
12/10/16	National Australia Bank	TD	2.77%	12/09/17	2,000	2,000
03/11/16	Bendigo & Adelaide Bank	TD	2.70%	03/08/17	1,000	1,000
07/11/16	National Australia Bank	TD	2.77%	06/09/17	1,000	1,000
14/11/16	National Australia Bank	TD	2.77%	10/08/17	1,000	1,000
15/11/16	National Australia Bank	TD	2.82%	15/09/17	1,000	1,000
16/11/16	Bendigo & Adelaide Bank	TD	2.70%	09/08/17	1,000	1,000
22/11/16	My State Bank	TD	2.80%	04/07/17	1,000	1,000
23/11/16	Defence Bank	TD	2.80%	08/11/17	2,000	2,000
24/11/16	Bank of Queensland	TD	2.80%	01/06/17	1,000	1,000
28/11/16	My State Bank	TD	2.81%	05/09/17	1,000	1,000
29/11/16	My State Bank	TD	2.81%	24/08/17	1,000	1,000
30/11/16	Suncorp-Metway Bank	TD	2.81%	02/06/17	1,000	1,000
01/12/16	Suncorp-Metway Bank	TD	2.81%	19/06/17	1,000	1,000
01/12/16	Beyond Bank	TD	2.85%	13/06/17	1,000	1,000
02/12/16	Big Sky Building Soc	TD	2.85%	20/06/17	1,000	1,000
08/12/16	Defence Bank	TD	2.90%	15/06/17	1,000	1,000
09/12/16	Defence Bank	TD	2.90%	27/06/17	1,000	1,000
12/12/16	Defence Bank	TD	2.90%	05/07/17	500	500
23/12/16	My State Bank	TD	2.85%	12/07/17	1,000	1,000
11/01/17	Newcastle Permanent Bld Society	TD	2.80%	13/07/17	1,000	1,000
17/01/17	Bank of Queensland	TD	2.80%	19/07/17	1,000	1,000
24/01/17	ING Bank Ltd	TD	2.80%	01/08/17	1,000	1,000
30/01/17	ING Bank Ltd	TD	2.80%	08/08/17	1,000	1,000
02/02/17	ING Bank Ltd	TD	2.80%	17/08/17	1,000	1,000
06/02/17	ING Bank Ltd	TD	2.80%	15/08/17	1,000	1,000
15/02/17	Bank of Queensland	TD	2.60%	15/06/17	1,000	1,000
24/02/17	Greater Bank Limited	FRN	3.19%	24/02/20	1,000	1,004
28/02/17	Credit Union Australia	TD	2.65%	28/06/17	2,000	2,000
01/03/17	Members Equity Bank	TD	2.60%	08/06/17	1,000	1,000
01/03/17	Members Equity Bank	TD	2.60%	14/06/17	1,000	1,000
22/03/17	AMP Bank	TD	2.75%	22/11/17	1,000	1,000
30/03/17	BankWest	TD	2.50%	06/06/17	2,500	2,500
04/04/17	BankWest	TD	2.50%	07/06/17	2,000	2,000
04/05/17	BankWest	TD	2.50%	06/07/17	1,000	1,000
11/05/17	BankWest	TD	2.50%	11/07/17	1,000	1,000
12/05/17	BankWest	TD	2.50%	18/07/17	1,000	1,000
12/05/17	BankWest	TD	2.50%	20/07/17	1,000	1,000
12/05/17	Commonwealth Bank Of Australia	Call	1.45%	08/06/17	6,000	6,000
23/05/17	BankWest	TD	2.50%	27/07/17	1,000	1,000
24/05/17	Defence Bank	TD	2.70%	28/11/17	1,000	1,000
25/05/17	Defence Bank	TD	2.75%	05/12/17	1,000	1,000
26/05/17	Auswide Bank	TD	2.80%	29/11/17	1,000	1,000
30/05/17	AMP Bank	TD	2.50%	29/08/17	1,000	1,000
30/05/17	Newcastle Permanent Bld Society	TD	2.60%	07/09/17	1,000	1,000
31/05/17	IMB Bank	TD	2.65%	30/11/17	1,000	1,000
<b>Totals</b>					<b>69,786</b>	<b>69,424</b>
CDA = Cash Deposit Account		FRN = Floating Rate Note				
FRTD = Floating Rate Term Deposit		TD = Term Deposit				

**RECOMMENDATION**

That Council notes the record of banking and investments for May 2017.

**Attachment(s)**

Nil

## 10.3 C Ward Committee - Membership

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### 10.3 C Ward Committee - Membership

**Delivery Program** Governance

**Objective** To approve additional membership of Council's C Ward Committee.

---

#### **Background**

Council at the September 2016 Ordinary meeting when appointing members to our Internal Committees, resolved, in part, as follows:

6. *That Council confirms it will retain the existing structure and membership of the three Ward Committees, with expressions of interest to be called for additional membership. These Committees have no delegated authority.*

At the April 2017 Ordinary meeting, Council gave consideration to two nominations, one for B and C Ward Committees respectively.

Council resolved to accept the nomination for the B Ward Committee from Preserving Lake Ainsworth Assoc (Inc), however the nomination for the C Ward Committee from the Rotary e-Club NextGen did not contain sufficient information as to its community based status.

The Rotary e-Club NextGen has now provided information on its status. A copy of the information is attached.

#### **Key Issues**

- Level of community representation on Council's ward committees

#### **Information**

The nomination is from a community based group and it is recommended that the nomination be supported.

#### **Sustainability Considerations**

- **Environment**  
Ward committees consider matters that relate to environmental, social and economic issues.
- **Social**  
As above
- **Economic**  
As above

#### **Legal / Resource / Financial Implications**

Nil



### **Consultation**

The ward committees are an important component of Council's community engagement process.

### **Options**

The options are to approve or not approve the nomination. Based on the information available the group may possibly have limited local membership, however it is a not for profit, charitable, community based group and as such the membership is recommended for approval

### **RECOMMENDATION**

That Council approves the nomination from the Rotary e-Club NextGen to the C Ward Committee.

### **Attachment(s)**

1. Information from Rotary e-Club Next Gen

## 10.4 Internal Audit Committee - Membership

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### 10.4 Internal Audit Committee - Membership

**Delivery Program** Governance

**Objective** To approve community representation on the Internal Audit Committee.

---

#### **Background**

The Office of Local Government (OLG) has provided guidelines that recommend that councils have an internal audit committee.

Council's internal audit program is largely delivered by an external provider, being Grant Thornton and Associates. This firm was appointed following a public tender process.

The Internal Audit Committee currently comprises two Councillors and two community representatives.

The OLG Guidelines state that a preferred membership is as follows:

- 1 or 2 councillors (excluding the mayor)
- 2 or 3 independent members, at least one with financial expertise and one of whom should be the chair.

Following the September 2016 Ordinary meeting where this membership was endorsed, expressions of interest were called for three community representatives, consistent with point 13 of the resolution from that report; i.e.

*13. That Council confirms the retention of the Internal Audit Committee based on the terms of reference as attached to this report. That Council appoint two Councillors as its representatives (Cr Ben Smith and Cr Stephen McCarthy) to the Internal Audit Committee, with expressions of interest to be called for a maximum of three independent members. The two Councillor representatives, and the General Manager have the delegated authority to determine the independent members following the expression of interest process.*

Two expressions of interest were subsequently received and Keith Johnson and John Rutledge were appointed to the Committee.

The Internal Audit Committee met on 17 May 2017 and Committee members were asked for ideas to encourage a third community representative to join.

The Internal Audit Committee sought nominations from Mr Col Lee and Mr Paul Worth as per the minutes of that meeting.

This report seeks Council approval for the additional membership.

## 10.4 Internal Audit Committee - Membership

---

### Key Issues

- Nomination of additional community member

### Information

The Internal Audit Committee requires a nomination form to be completed for interested parties and Mr Col Lee has submitted a completed nomination, a copy of which is attached.

Mr Lee is well known in the community and as per that application is a suitable candidate for the committee.

Despite the suggestion of the members of the Internal Audit Committee, Mr Worth has declined to lodge a nomination.

### Sustainability Considerations

- **Environment**  
The Internal Audit Committee will, at times, consider matters related to environmental, social and economic outcomes.
- **Social**  
As above
- **Economic**  
As above

### Legal / Resource / Financial Implications

Mr Lee has not sought payment for attending meetings which is the same as the other two community representatives.

### Consultation

The Internal Audit Committee was consulted during this process and Council originally called for expressions of interest.

### Options

With only one nomination being received the options are to approve or not approve the nomination from Mr Lee. The recommendation is for approval as Mr Lee is a more than suitable nominate for the Internal Audit Committee.

### RECOMMENDATION

That Council approves the appointment of Mr Col Lee to the Internal Audit Committee.

### Attachment(s)

1. Nomination - Colin Lee

## **10.5 Ordinary Meeting Date - December 2017**

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### **10.5 Ordinary Meeting Date - December 2017**

**Delivery Program** Governance

**Objective** To select an alternate date for Council's December 2017 Ordinary meeting.

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#### **Background**

Council's Ordinary meetings are held on the fourth Thursday of each month, with the December meeting being held on the third Thursday. The December 2017 Ordinary meeting date falls on Thursday 21 December.

As this date is one day before the official close-down date for Council (22 December), it is suggested that the Ordinary meeting for December 2017 be held one week earlier i.e. Thursday 14 December 2017.

As there are five Thursdays in November, the timing is reasonable as the November Ordinary meeting will be held on the fourth Thursday and there will be the normal three weeks between the November and December meetings.

#### **Legal / Resource / Financial Implications**

There are no legal or financial implications of changing the meeting date.

#### **Consultation**

No consultation has been undertaken to date. Advertising of the changed meeting date will take place.

#### **Options**

The options are to reschedule the meeting to Thursday 14 December or leave at Thursday 21 December 2017. The recommendation is to change the date to Thursday 14 December 2017.

#### **RECOMMENDATION**

That Council's Ordinary meeting for December 2017 be held on Thursday 14 December 2017.

#### **Attachment(s)**

Nil

## 10.6 Committees (Internal) - Review

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### 10.6 Committees (Internal) - Review

**Delivery Program** Governance

**Objective** To determine Councillor appointments to Council formed or managed committees.

---

#### **Background**

At the September 2016 Ordinary meeting, Council considered a report on the appointment of our Internal Committees and their structure. Key points in the resolution from that report are:

1. *That Council confirms it will retain the following Standing Committees:*

- *Commercial Services Committee*
- *Environmental and Sustainability Committee*
- *Finance Committee*
- *Facilities Committee*
- *Reserve Trust*

*with the existing Civil Committee disbanded due to a lack of meetings.*

6. *That Council confirms it will retain the existing structure and membership of the three Ward Committees, with expressions of interest to be called for additional membership. These Committees have no delegated authority.*

7. *That Council confirms it will retain the Aboriginal Community Committee, with three Councillors now appointed to this Committee, being Cr Jeff Johnson, Cr Nathan Willis and Cr Stephen McCarthy.*

10. *That Council confirms it will retain the Australia Day Committee, with membership consisting of all Councillors. This Committee has delegated authority to determine the recipients for the Australia Day Awards.*

12. *That Council confirms the General Manager's Performance Review Committee is to comprise the Mayor and Deputy Mayor.*

15. *That Council confirms it will retain the Port Ballina Taskforce and its membership structure.....*

17. *That Council confirms that the Ballina Ocean Pool Committee Inc is to be retained as a Committee of Council.....*

18. *That Council conduct a review of the Committees listed prior to 30 June 2017.*

This report is in response to point 18 of this resolution.

### Key Issues

- Effectiveness of the committee structure to date

### Information

Committees provide a strategy for councils to manage the wide range of information and responsibilities that are presented to the elected Council.

At the same time committees can consume resources and it is important to ensure that day to day operations do not become tied down with an overly cumbersome committee structure.

As mentioned in the September 2016 Ordinary meeting report the existing Committee Structure can be grouped into three main categories:

1. Standing Committees – Consist solely of Councillors to consider items of business before the Council.
2. Ward Committees – Consist of Councillors and community representatives to discuss items of interest for each Ward.
3. Miscellaneous Committees / Taskforces / Panels – Formed to carry out a specific task or function and can be disbanded when a task is completed.

Councillors have now been working with this committee structure for nine months and if there are areas for improvement they should be identified as part of this report.

### Sustainability Considerations

- **Environment**  
The various committees created by Council have a responsibility to consider environmental, social and economic issues.
- **Social**  
As above
- **Economic**  
As above

### Legal / Resource / Financial Implications

There are currently no direct legal, resource or financial implications arising from this report.

### Consultation

Committees provide one element of the many consultation methods available for Councillors and Council to consult with the community

## **10.6 Committees (Internal) - Review**

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### **Options**

The objective of this report is to provide an opportunity for the Council to determine whether it wishes to make any changes to the existing committee structure.

The options are to amend or make no changes to the existing structure.

Overall it is considered that Council has a reasonable balance of committees in place and no changes are recommended in conjunction with this report.

### **RECOMMENDATION**

That Council notes the contents of this report regarding the existing internal committee structure.

### **Attachment(s)**

Nil

## 10.7 Lighthouse Beach Cafe - Tenancy Works

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### 10.7 Lighthouse Beach Cafe - Tenancy Works

**Delivery Program** Commercial Services

**Objective** To seek Council's concurrence to undertake tenancy upgrade works to the Lighthouse Beach Cafe and amend the existing sub-lease to fund the same.

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#### **Background**

The Lighthouse Beach Café is located in the Ballina Surf Club and has been trading since late 2014. The sub-tenants have been trading seven days a week since opening and have worked hard to build up trade and offer a coastal dining experience for locals and visitors to the region.

The limiting factor for the business is the weather. A major drawback for the Café is the deck overlooking Lighthouse Beach however seating on the deck is weather dependent. Patrons cannot generally be seated on the deck when raining or the wind is blowing from the south or east. This makes it difficult for the operators to accept forward bookings and as such impacts on the growth of the business.

The operators have proposed the deck area be enclosed with large windows. Designs for the proposed works have been designed and costed, and lease terms have been renegotiated to fund these works.

Council's concurrence is now sought to undertake these works and amend the sublease accordingly to fund same.

#### **Key Issues**

- Building works
- Funding
- Sub-lease amendments

#### **Information**

The operators sub-lease the Lighthouse Beach Café and Kiosk from Council, and have been trading from these premises since late 2014.

The Café and Kiosk are held under separate sub-leases.

Details pertaining to the sub-lease are summarised in the confidential report on this matter included later in this agenda.

The operators have always honoured all lease conditions and been punctual in payment of rental and property outgoings.



## 10.7 Lighthouse Beach Cafe - Tenancy Works

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In 2016 the operators approached Council with concerns about adverse weather impacting upon the viability of their business. As noted patrons cannot generally be seated on the deck area pertaining to the café when it's raining or the wind is blowing the south or east.

This makes it difficult to accept forward bookings and as such impacts on the viability and growth of the business.

The operators have proposed the deck area be enclosed with large windows to maintain views and ventilation but provide weather protection. Designs for the proposed works have been prepared. Cost estimates exclusive of GST are noted as follows:

Supply & fit windows	\$50,000
Supervise works including removal of existing glass balustrades and bifold doors, procure supply and installation of galvanised structural steel work, supervise installation of windows, undertake make good works for removal of bifold doors, undertake finishing detail around windows, painting as required, erection of safety barriers during works so café trade can continue. Indicative estimate subject to final quotes being obtained; say	\$50,000
<b>Total</b>	<b>\$100,000</b>

There are at least two options open for funding these works:

- The tenant pays for the works or
- Council as landlord pays for the works upfront and recoups the cost from the tenant over the remaining lease term (including options to renew) by increasing the rental accordingly.

Discussions with the operators indicate that their preference would be for the second option which would provide a repayment structure that they can finance from their business.

Two further options were then put forward whereby the repayment plan was structured to match the remaining lease term and provide a 5.00% p.a. return to Council on its capital investment.

Details on these options are included in the confidential report on this matter later in this meeting agenda.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
The weather protection proposed for the Café enhances one of the prime beachfront venues in the Shire and adds to what Ballina has to offer tourists to the area.

## **10.7 Lighthouse Beach Cafe - Tenancy Works**

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### **Legal / Resource / Financial Implications**

If Council were to endorse the recommended option, amendments to the two sub-leases would be required.

Funding for the \$100,000 would need to be drawn from Council's Property Development Reserve.

This reserve is forecast to have a closing balance of \$400,800 as at 30 June 2018 due to large expenditures required in 2016/17 and 2017/18 on the Russellton Industrial Estate (\$500,000), Southern Cross Industrial Estate (\$2,500,000), Wollongbar Urban Expansion Area (\$2,864,000) and North Creek Road (\$1,020,000).

These expenditures highlight that Council needs to be careful with the management of this reserve as cost increases in the projects listed could effectively drain that reserve.

Nevertheless this is the only viable funding option if Council wishes to support this proposal.

### **Consultation**

Council staff have conducted negotiations with the operators.

### **Options**

The confidential aspects of the existing tenancy agreement are outlined in the confidential report on this matter along with the recommended course of action.

Based on the contents of the confidential report the only recommendation required for this report is to note the contents.

### **RECOMMENDATION**

That Council note the contents of this report in respect to the proposed tenancy works for the Lighthouse Beach Café.

### **Attachment(s)**

Nil

## 10.8 Code of Conduct - Review

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### 10.8 Code of Conduct - Review

**Delivery Program** Governance

**Objective** To review the adopted Code of Conduct.

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#### **Background**

Section 440 (7) of the Local Government Act states as follows:

##### ***Codes of conduct***

*A council must, within 12 months after each ordinary election, review its adopted code and make such adjustments as it considers appropriate and as are consistent with this section.*

This report complies with this Section of the Act.

#### **Key Issues**

- Obligations for Councillors and Council staff under the Code

#### **Information**

Council last reviewed the Code of Conduct at the January 2016 Ordinary meeting as a result of the Office of Local Government (OLG) issuing a new model code.

Council subsequently adopted that model code.

In summary councils can adopt a “stronger” code than the model, however they cannot adopt a more lenient code.

The two attachments to this report are:

- OLG Summary of the Code of Conduct
- Council’s adopted Code which is the model Code of Conduct

It is essential that Councillors ensure they remain conversant with the Code of Conduct as breaches, which are instigated through a Code of Conduct complaint, can result in sanctions against a Councillor, as well as possible suspension.

In respect to reviewing the Council’s adopted Code of Conduct, as it is the OLG model code, no changes are recommended.

This report also provides an opportunity to review how the elected Council is performing in respect to the model Code of Conduct, at least from a staff perspective, with particular reference to Parts 3 to 7 of the Code; i.e.

## 10.8 Code of Conduct - Review

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- Part 3 – General conduct obligations – Good level of compliance with Councillors acting respectfully, excluding the occasional instances of emotion, not unreasonably, that may occur during debates!
- Part 4 – Conflicts of interest – As per this section the onus is on Councillors to declare if you have a conflict of interest, either pecuniary or non-pecuniary.

Pecuniary interests are relatively straight forward in that such an interest exists where a Councillor (including partners, relatives, employer etc) has a reasonable likelihood or expectation of appreciable financial gain or loss to the person from the matter before Council. If you have a pecuniary interest you must not participate in that matter (i.e. must leave the room).

In respect to partners and relatives clause 4.15 a) helps to define that by providing the following examples:

*a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household.*

Non-pecuniary interests, which can be significant or non-significant, relate to private or personal interests that are not pecuniary (not an appreciable financial gain or loss), however they arise from family or personal relationships or involvement in sporting, social or other cultural groups and they can include an interest of a financial nature.

Significant non-pecuniary interests are outlined in clauses 4.15 a) to c) and where a significant non-pecuniary interest exists you must either remove the conflict or have no involvement in the matter.

For non-significant non-pecuniary interests you must declare it and then determine how you will manage that interest (i.e. you can still partake in the matter or you may wish to have no involvement).

Overall it is this section of Code that typically results in the majority of Code of Conduct complaints against Councillors and resultant breaches. Importantly, as per clause 4.1, it is about perception of that interest by a reasonable and informed person. Therefore even though you may believe you have no interest, any complaint will be assessed against that perception benchmark, with that determination made by an independent reviewer.

- Part 5 – Personal benefit – As per Part 5 you (including your immediate family) must ensure that **you do not** accept any gift or benefit of more than token value (clause 5.5 d)). The value of token is not defined, however all Council staff are aware that token typically relates to very small value items such as pens, occasionally caps etc.

If you are not in a position to refuse or return a gift of more than token value you must advise the Mayor or General Manager to allow that gift to be recorded in the Council gift register. The gift or benefit must be surrendered to Council.

- Part 6 – Relationship between Council officials – High level of compliance with Councillors and staff respecting the differing roles.
- Part 7 – Access to information and resources – There has not been any instances of Councillors placing unreasonable demands on Council resources or trying to access information that may not be relevant to the role of Councillor.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The Code of Conduct relates the standards of conduct for Council officials, which includes councillors, council staff, administrators, council committee members, conduct reviewers and delegates of council.
- **Economic**  
Not Applicable

### **Legal / Resource / Financial Implications**

The Local Government Act provides legislation that must be followed in respect to the Code of Conduct.

### **Consultation**

The model code provided by the OLG was based on extensive consultation.

### **Options**

In accordance with Section 440 (7) of the Local Government Act the Council must review its Code and make any amendments considered necessary prior to adopting the Code.

As the adopted Code is based on the model code provided by the OLG, and as no areas for improvement have been identified, it is recommended that Council re-adopt the existing Code as per the second attachment to this report.

### **RECOMMENDATION**

That Council adopts the Office Of Local Government's model Code of Conduct, as per attachment two, to this report.

### **Attachment(s)**

1. Office of Local Government - Model Code of Conduct Summary
2. Model Code of Conduct

## 10.9 Community Strategic Plan - 2017 to 2027

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### 10.9 Community Strategic Plan - 2017 to 2027

**Delivery Program** Governance

**Objective** To adopt the Community Strategic Plan 2017 to 2027.

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#### **Background**

The Office of Local Government's Integrated Planning and Reporting Framework (the IPR Framework) has a number of steps that a council must follow after an election in respect to corporate documents that support the IPR Framework.

Some of the key steps listed in the Local Government Act are:

- A council must review the Community Strategic Plan (CSP) before 30 June following the election (section 402). The endorsed CSP must be exhibited for 28 days for public comment before formal adoption.
- A council must establish a Delivery Program after each ordinary election to cover the principal activities of the four year period commencing on 1 July following the election (section 404)
- A council must have an adopted Operational Plan each year, detailing the activities to be engaged in by the council, as part of the implementation of the Delivery Program, for that year (section 405).

The CSP was reported to the March 2017 Finance Committee meeting, and was subsequently placed on exhibition. This report addresses the submissions received and seeks formal adoption of the Community Strategic Plan 2017 to 2027.

#### **Key Issues**

- Feedback from the exhibition process
- Intention of the CSP
- Compliance with the *Local Government Act 1993*

#### **Information**

A briefing held with Councillors in November 2016 outlined the IPR Framework, which includes the Community Strategic Plan (CSP), Delivery Program and Operational Plan. These documents are essential as they advise the community how Council intends to, or has, allocated its resources.

Under the IPR Framework Council must have an adopted CSP, Delivery Program and Operational Plan in place by 30 June 2017.

## 10.9 Community Strategic Plan - 2017 to 2027

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The CSP is a very broad document that identifies the main aspirations and future vision of the community.

It outlines four agreed key directions that we will follow to deliver the future aspirations to the community. These themes are a Connected Community (Social), Prosperous Economy (Economic), Health Environment (Environment) and Engaged Leadership (Governance).

These themes are used throughout the CSP and they have been applied in preparing the Delivery Program and Operational Plan.

The final phase of the process is the consideration of the submissions received during the exhibition period.

Although limited in number, the submissions received were extensive and highlighted that the draft CSP had been studied closely. Copies of all the submissions are attached to this report.

The major submission was from the Northern NSW Local Health District (NNLHD). This submission generally supports the CSP and the Health Service acknowledges it needs to consider how it will meet the challenge of providing services to the increasing obesity rates and healthy eating initiatives in the Ballina Shire.

The NNLHD reviewed the CSP using the NSW Government's 'Healthy Urban Development Checklist'. Key considerations from this review are recommended to be incorporated in the Community Strategic Plan with particular reference to including additional detail in the *Measuring Our Progress* section (pages 28 to 31).

There has also been feedback from a number of Council staff in respect to the document and changes recommended on all the feedback received are as follows (the CSP attached to this report is the document as exhibited).

Page 6 – Slightly amend the community's vision to a more streamlined version which now reads:

*The Ballina Shire is safe, with a connected community, a healthy environment and a thriving economy.*

Page 22 – Amend CC3.3 to read:

*Support improved health outcomes by providing equitable access to **sporting, recreational** and community facilities.*

Page 22 – Additional *Relevant Council Documents* including: Captain Cook Park Masterplan, Pop Denison Park Masterplan, Companion Animals Management Plan, Emergency Management Plan, Playground Upgrade and Renewal Plan, Disability and Inclusion Action Plan

Page 23 - Additional *Relevant Council Documents* including: Ballina Marina Masterplan, Ballina Shire Economic Development Strategy, Regional Boating Strategy

Page 24 - Additional *Relevant Council Documents* including: Annual Procurement Plan, Fleet Procurement Plan

Page 25 - Additional *Relevant Council Documents* including: East Ballina Cemetery Masterplan, Section 94 and 64 plans, Urban Storm water Management Plan, Local Growth Management Strategy, Ballina Major Regional Centre Strategy, Killen and Tosha Falls Management Plans, Local Environmental Plan.

Page 28 – Connected Community Measures additional items:

- Improve visitation to our Community Facilities

Page 30 – Engaged Leadership Measures additional items:

- Customer requests responded within allocated timeframe
- Improve revenue generated from commercial property

### **Sustainability Considerations**

- **Environment**

Environmental, social and economic factors represent a key part of the Integrated Planning and Reporting Framework.

The four agreed directions in the CSP are based on the quadruple bottom line.

- **Social**

As above

- **Economic**

As above

### **Legal / Resource / Financial Implications**

Council is required to adopt a new CSP by 30 June 2017 to ensure it complies with the Integrated Planning and Reporting Framework from the Office of Local Government.

### **Consultation**

Consultation undertaken to date in preparing the CSP, which is included as an attachment to this report, includes the following:

- Community Satisfaction Survey undertaken in August 2016 (500 people)
- Ward Committees (51 community organisations)
- Youth Forum undertaken January 2017 (8 people)
- Civic Panel undertaken January 2017 (5 people)
- Community Strategic Plan survey December 2016 (105 respondents)
- Feedback sought via Community Connect (21,000 copies distributed)
- Councillor feedback from the briefings held to date
- Existing strategies and plans
- Exhibition of the draft CSP from March to April 2017
- Community survey open during the exhibition period
- Implementation of a corporate Facebook page with CSP posts



### Options

The options are to adopt the CSP, as amended as per this report, or to make further changes.

A number of changes have been recommended within this report and it is difficult to list all of these in the final recommendation. The changes recommended are largely fine tuning the document based on the feedback received and on this basis it is recommended that Council adopt the document, as exhibited, subject to the changes identified within this report.

If there any are other particular changes or improvements that Councillors would like to see implemented, or that may have been missed from the submissions provided, they should be added to the recommendation.

### RECOMMENDATION

That Council adopts the Community Strategic Plan, as attached and exhibited, subject to the additional changes outlined within this report.

### Attachment(s)

1. Draft Ballina Shire Community Strategic Plan 2017 to 2027 (Under separate cover)
2. Submission to CSP - Alstonville Agricultural Society
3. Submission to CSP - Ballina Heights Residences Action Group (BHRAG)
4. Submission to CSP - NSW Health Northern NSW Local Health District

## **10.10 Delivery Program and Operational Plan - Adoption**

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### **10.10 Delivery Program and Operational Plan - Adoption**

**Delivery Program** Governance

**Objective** To report on submissions received in response to the exhibition of the draft Delivery Program and Operational Plan and to adopt the documents inclusive of any amendments.

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#### **Background**

The draft Delivery Program (2017/18 to 2020/21) and Operational Plan (2017/18) have been placed on public exhibition, with two public meetings held as part of the exhibition process. It is now incumbent upon Council to adopt the documents prior to 30 June 2017, subject to any matters arising during the exhibition period.

The draft Delivery Program and Operational (including the supporting documents such as the Fees and Charges, Long Term Financial Plan (LTFP), LTFP (Overview) and the Workforce Plan) were placed on exhibition following a series of Finance Committee meetings during March and April.

As the documents are extensive they have not been reproduced for this report. Copies of the documents, as exhibited, are available on Council's website. Additional hard copies can be obtained from Council if needed. Final copies of the documents will be reproduced in full once adopted.

#### **Key Issues**

- Contents of submissions
- Additional amendments

#### **Information**

This report has been dissected into two main components being:

- A. Submissions to the draft Delivery Program / Operational Plan and details of the two public meetings held during June.
- B. Further amendments to the draft documents based on updated information.

#### **A. Submissions**

The submissions can be categorised under three main headings:

1. Submissions for funding assistance in response to Council's donations programs (i.e. general donations, public hall capital works, sporting group facilities)
2. Submissions to fees and charges
3. Submissions for works and services

## 10.10 Delivery Program and Operational Plan - Adoption

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### 1. Submissions for Funding Assistance

The draft budget includes the following allocations for funding assistance / donations:

<b>Donation Description</b>	<b>Budget (\$)</b>
1. Donations – Community Groups	66,000
2. Capital Works Assistance for Community Halls	41,000
3. Capital Works Assistance for Sporting Groups	20,000
4. Richmond Room – Donation for Chair Set Up	5,200
5. Donations - Rates and Charges for Community Facilities	32,000
6. Assistance with Council Fees - Community Groups	3,000
7. Southern Cross University – Scholarship	10,000
<b>Total</b>	<b>177,200</b>

All of these items, excluding the Southern Cross Scholarship and Richmond Rooms, are supported by Council policies.

The submissions received relate to items 1 to 3, where Council called for applications for funding under these policies.

The Council policies state that to allocate these monies a working party will be formed, consisting of at least one Councillor from each ward plus the Mayor, to provide recommendations on the allocation of the monies to the July Ordinary meeting.

Even though only one Councillor from each ward is often appointed, all Councillors are entitled to attend the meeting where a review of the applications is undertaken.

This process has worked well for many years in determining a preferred allocation of the funding available as the applications are always in excess of the available funds.

Details of the applications received are summarised in the next two tables.

Applicants are required to complete a standard form that seeks to provide Councillors with consistent information.

As part of the exhibition process Council also writes to all the Public Hall Committees and Sporting Groups advising that there is funding available under our halls and sporting groups assistance programs.

### **General Donations – Community Groups**

Table one outlines the submissions received for general donations assistance.

Council has already allocated \$5,000 to the Ballina Riverside Carols as per resolution 241116/30.

**Table One: Submissions for Funding Assistance**

## 10.10 Delivery Program and Operational Plan - Adoption

Ref	Organisation / Person	Project / Activity	\$
1	Ballina Lions Club	Fundraising for various organisations	1,000
2	Northern Rivers Branch Ulysses Motorcycle Club	Traffic control for the 2017 Toy Run	800
3	Ballina RSL Sub Branch	Council rates for RSL Youth Club 5 Piper Drive, Ballina	3,968
4	Ballina Jet Boat Surf Rescue	Insurance and survey costs for rescue vehicles	6,000
5	Ballina Jet Boat Surf Rescue	Consumables for rescue vehicles	3,000
6	Northern Rivers Womens Bowling Association Inc	Operational costs towards Lawn Bowls Carnival October 2017	1,000
7	Ballina Breast Cancer Support Group	Room hire at Kentwell Community Centre	480
8	Lennox Head National Surfing Reserve Assoc Inc	Costs associated with producing a publication regarding Ballina and Lennox Head surfing history to coincide with State Government declaration of the reserve	1,000
9	Australian Native Orchid Society FNC NSW Inc	Annual exhibition held at Ballina Fair costs	490
10	Our Kids	Costs associated with running Our Kids Day Out 2018	5,000
11	Ballina Fox Street Preschool	Costs towards bringing 'Miss Billie Walker' to the preschool	4,000
12	Wollongbar Community Preschool	Upgrade of playground	5,000
13	United Hospitals Auxiliary Ballina Branch	Hire of a venue for the annual craft show and associated advertising costs	1,843
14	Hope Haven Women's Refuge	Purchase of ingredients and preparation of meals for the refuge	1,000
15	Ballina High Schools' Historical Society	Costs associated with archiving and preserving memorabilia	968
16	1 <sup>st</sup> Ballina Scout Group	Costs associated with training leaders	1,500
17	Alstonville Orchid Society Inc	Annual hall hire for shows and meetings	400
18	Ballina Region for Refugees Inc	Public Liability Insurances	2,000
19	Westpac Rescue Helicopter	Lennox Community Markets hall hire and cleaning and rubbish removal	6,170
20	Ballina and District Ministers Assoc	Ballina Riverside Carols	5,000
21	Lions Club of Lennox Head	Costs associated with holding fundraising BBQs for charities	1,724
22	Alstonville Plateau Historical Society	Requesting Council to pay Rates for Crawford House, Alstonville	3,083
23	Michael O'Connor	Repair and reseal car parking area at Empire Vale Post Office	5,000
24	TS Lismore Naval Cadets Unit Support Committee	Requesting Council to pay Rates and Charges (includes rates, services and consumption charges) for Endeavour Close, Ballina	9,381
<b>Total Requests</b>			<b>69,807</b>

### Donations - Capital Works for Community Halls

## 10.10 Delivery Program and Operational Plan - Adoption

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The policy states that the maximum donation shall be \$10,000 per hall and that the Council donation needs to be matched either on a dollar for dollar basis or 'in-kind'.

**Table Two: Submissions for Community Halls Assistance**

Ref	Organisation	Project / Activity	Project Value (\$)	Amount Requested (\$)
1	Pearces Creek Public Hall inc	Upgrade and repair toilet facilities to provide better access	6,123	6,123
2	Ballina Shire Concert Band for Wigmore Hall	Improve acoustics by sound proofing the ceiling and walls in the band area.	6,838	5,838
3	Wardell and District War Memorial Hall	Internal painting of the hall.	10,000	7,000
4	Rous Mill and District Memorial Hall Inc	New gutter guard for roof to improve quality of water.	5,440	2,720
<b>Total</b>				<b>21,681</b>

### **Donations - Capital Works for Community Sporting Groups**

In July 2016 Council adopted a new 'Donations – Capital Works Assistance for Community Sporting Groups' policy to assist sporting groups with their various buildings / facilities.

Direct correspondence was also sent to the various sporting groups inviting them to apply for funds. As this is a new program the closing date for applications has been extended to 7 July 2017 as there has been limited response to date.

All applications received will be reported to the working party.

Copies of all the submissions for Tables One and Two have not been included with this report.

These submissions will be distributed to all Councillors as part of the working party process.

Copies are available from Council if needed.

### **2. Submissions Fees and Charges**

The following submission is included as an attachment to this report.

#### **Ms L Truman – Trulea Fit**

Ms Truman requests review and amendment to the fees and charges for low impact use of Council land (for group fitness classes). Currently low impact use is defined as 1-2 clients. Ms Truman requests that the low impact category be amended to include small group fitness classes (of up to around 10 clients).

## 10.10 Delivery Program and Operational Plan - Adoption

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### *Staff Comment:*

The licences and associated fee structure for personal trainers and group training is managed under Council's Commercial Activities on Public Land Policy. The fee structure was determined taking into account the nature of the activity, scale of its operation, use and impact on the reserve, and impact on the community - both beneficial and detrimental.

The current policy recognises the difference between personal training (1-2 clients) and group training (up to 20 clients maximum) and are identified as very low impact and medium impact, with associated fees per annum of \$130 and \$1,040 respectively.

The Commercial Activities on Public Land Policy is due for review in 2018, with a review from staff expected to commence early in the 2017/18 financial year.

It is recommended that Council consider the request for an additional smaller group (up to 10 clients maximum) training category under a broader review of the policy, and ensure that the policy remains contemporary and achieves best practice.

Council could deem it appropriate in the interim to assess and approve an interim category and fee (low impact, \$600 per annum) and adjust the policy accordingly based on this request.

### **3. Submissions to Works and Services**

The following submissions are included as attachments to this report.

#### Wardell Progress Association

The Wardell Progress Association have expressed "general euphoria here in Wardell with the amount of capital works being undertaken and of course the near completion of the beautiful Boardwalk".

This is a very pleasing turnaround from last year, at which time the Association had noted a high level of disappointment at the level of capital works and distribution of resources to the Wardell area.

Whilst the Association have expressed their appreciation for works completed in the current financial year, the following specific works have been noted for inclusion or prioritisation within the 2017/18 to 2020/21 Delivery Program:

- Byron Street, Wardell – Road reconstruction. This section of road has been included in the Delivery Program for 2020/21. It is requested that this road be given a higher priority and the works be brought forward.
- River Street (from Byron Street to the Bridge underpass) – Road reconstruction. This section of road adjoins the works noted above and is badly in need of repair, however is not listed in the four year Delivery Program. It is requested that this road be given a higher priority and be included in the Delivery Program.

## 10.10 Delivery Program and Operational Plan - Adoption

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- Wilson Street – Drain. This is noted as a topic of continual complaint letters to Council and is requested to be included in the Delivery Program.
- Carlisle Street Footpath and Bridge Drive Footpath. It is requested that these works are completed whilst Council's construction team is currently in Wardell.

### *Staff Comment re Byron and River Streets:*

Byron Street, Wardell is currently listed for reconstruction in year four (2020/21) and comprises a 200m length of Byron Street / River Street from near Raglan Street to the recently sealed section of River Street, Wardell.

This particular road project and the priority ranking system for the road reconstruction delivery program were discussed at the March 2017 Finance Committee meeting.

This was subsequently followed-up with more information about the ranking system process in the 17 March 2017 Councillor Bulletin, which also included a summary of how Byron Street, Wardell was positioned within the Delivery Program.

The ranking system process applies a consistent assessment approach, and is a technically based formulation for the Delivery Program priority ranking of road reconstruction projects.

The Councillor Bulletin item from 17 March 2017 is attached to again respond to this enquiry. No change is recommended based on that Councillor Bulletin.

### *Staff Comment re Wilson Street Drain:*

Council has previously received notification about this drain, and has undertaken maintenance at the culvert locations where access is available.

Also, this particular drainage system has been placed on the design program for further investigation and assessment.

This investigation will assist to determine if any upgrade is required, and in particular of any requirement for open drain profiles through to the Richmond River.

Environmental constraints will likely be a significant consideration during this process.

At this stage resources have allowed for survey to be completed and the investigation is yet to commence.

This investigation is being completed when resources are available and this is the recommendation of staff from an overall drainage network perspective.

## 10.10 Delivery Program and Operational Plan - Adoption

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To respond to the Wardell Progress Association it is recommended that Council include the investigation as a task within the Operational Plan and staff will respond with update reporting in future quarterly reviews on progress. This will include advice in regards to the need for any financial resources or deferral in other investigation work to support this priority, if in the end that is required.

### *Staff Comment re Carlisle Street Footpath and Bridge Drive Footpath:*

Council staff are currently working on the footpath connections along Bridge Drive, to connect the boardwalk to the jetty, and also to connect the boardwalk to Cedar Street. This work will continue until completion.

The footpath along Carlisle Street is complete from Bath Street through to the bus shelter, except for a single driveway location. It is proposed to complete the driveway location following the Bridge Drive works, subject to the owner's co-operation on this occasion.

### Mr Stead – Reconstruction of Riverbank Road Pimlico

Mr Stead advises that (segment 50) Riverbank Road is in a worse state than ever. This is further to Mr Stead's submission to the Delivery Program and Operational Plan for 2016/17, wherein the works were at that time scheduled for 2017/18.

### *Staff Comment:*

This section of road is included in the Delivery Plan with estimated works to be completed across 2018/19 and 2019/20. Council is still awaiting Federal Government advice in respect to funding promised at the 2016 Federal election that will allow Council to undertake works on another segment of Riverbank Road.

### Ms M & Mr B Wilcox - Lennox Head Village Renewal and Williams Reserve

Ms M & Mr B Wilcox have expressed concern with:

- Lack of acknowledgement of the Lennox Head Main Street upgrade
- No plan of management for Williams Reserve and
- Ensuring works not completed in 2016/17 are completed.

For the Lennox Head Village Renewal, these works are noted as urgent with particular concern over the growing population, traffic and parking issues and pedestrian safety.

Williams Reserve was noted as in serious decline and requiring a POM, with a proposal that the \$26,000 unexpended funds from the Main Street Upgrade concept design be reallocated to a Williams Reserve POM.

The incomplete works specifically enquired on were a) Park Lane traffic refuge b) Megan Crescent and Dodge Lane stormwater c) Allens Parade footpath and d) request over centre line marking for Montwood Drive.

### *Staff Comment re Lennox Head Village Renewal:*

Refer below



## 10.10 Delivery Program and Operational Plan - Adoption

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*Staff Comment re Williams Reserve:*

Refer below

*Staff Comment re works not completed:*

- (a) The Park Lane pedestrian refuge project is being deferred. This has been reported to Council at the last two quarterly Capital Expenditure reviews where design investigations have shown inadequate space for a refuge.

The future Lennox Head main street project will consider pedestrian access (and vehicle movement) in an overall design process.

At the March 2017 Capital Expenditure review the Park Lane budget was re-allocated to the Gibbon Street footpath project to partly cover the extra cost of extending the length of the Gibbon Street footpath.

- (b) The Megan Crescent and Dodge Lane project will continue beyond the current year. The immediate works comprise the extension of the pipe system at the catchment outlet (in conjunction with the waste water pump station reconstruction) and a detailed hydraulic assessment is in the design program to determine the extent of any further works.
- (c) The Allens Parade footpath project is complete. The scope of work for this project, and adopted in the current PAMP, comprises the connection of the existing Allens Parade path (off Ballina Street) with the coastal pathway at Lions Park, via the public walkway.
- (d) Regarding the request for road centreline marking it is not a traffic engineering practice to place centreline marking on urban residential roads. Normal low speed traffic manoeuvring occurs on these roads such as dealing with parked vehicles and passing vehicles, without centreline marking.

### Ms Shaun Eastment – Vice President Lennox Head Residents Association – Lennox Head Village Renewal

Ms Eastment notes disappointment in the lack of evidence for any commitment to fund and carry out the Lennox Head Town Enhancement Program.

Particularly noted are the need to proceed with community consultation, poor footpaths, hazards on the streets adjoining Ross Park, traffic and parking issues and the upcoming centenary.

*Staff Comment re Lennox Head Village Renewal:*

Refer below

### Ms Shaun Eastment – Lennox Head Village Renewal and Williams Reserve

Ms Eastment also submitted a separate submission in her own right.

Ms Eastment notes concern over the lack of mention of a Management Plan for Williams Reserve and the implementation of the Lennox Head Town Centre project.

## 10.10 Delivery Program and Operational Plan - Adoption

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Particularly noted are the upcoming centenary, poor footpaths, parking and traffic issues, pedestrian safety and need for improvement to open spaces and a request for community consultation to be commenced to allow this to proceed.

*Staff Comment re Lennox Head Village Renewal:*  
Refer below

*Staff Comment re Williams Reserve:*  
Refer below

### Debbie Smith – President Lennox Chamber of Commerce - Lennox Head Village Renewal

Ms Smith requests that consideration be given to funding of the Lennox Head Main Street Upgrade to allow this to proceed, rather than continue to be prioritised behind other projects.

*Staff Comment re Lennox Head Village Renewal:*  
Refer below

### Mr H Marley - Lennox Head Village Renewal

Mr Marley expresses disappointment that there has been no funding allocated for this project in the Delivery Plan and notes that Lennox is in need of many improvements, specifically noting a preference for this to be completed by the 100 year anniversary in 2022.

*Staff Comment re Lennox Head Village Renewal:*  
Refer below

### Ms B Thirkell - Lennox Head Village Renewal

Ms Thirkell expresses disappointment that there has been no funding allocated for this project in the Delivery Plan ahead of the 100 year anniversary and implores Council to reconsider prioritising this project.

*Staff Comment re Lennox Head Village Renewal:*  
Refer below

### Mr M Milner - Lennox Head Village Renewal and Williams Reserve

Mr Milner notes the continuing growth in Lennox Head and indicates traffic flow, car parking, footpath renewal, pedestrian crossings and improved open spaces as requiring consideration. Mr Milner also proposes that Williams Reserve could be better used as parkland and possibly shaded markets. Lastly, it is generally noted that the village requires upgrade prior to the 100 year anniversary.

*Staff Comment re Lennox Head Village Renewal:*  
Refer below

## 10.10 Delivery Program and Operational Plan - Adoption

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### *Staff Comment re Williams Reserve:*

The Williams Reserve Plan of Management has been prepared under the Crown Lands Act 1989 and endorsed by the Minister of Lands in 2007. The adopted land management objectives and reserve management provisions have been determined in accordance with the Act, and the identified management units of conservation, community and recreation remain contemporary.

From an overall Council perspective the expenditure of monies on the preparation of a new Plan of Management is difficult to justify over other priorities in the Delivery Program, and there is no funding allocated for that Reserve in the four year plan to implement any actions arising from such a plan.

### Mr B Pollard - Lennox Head Village Renewal

Mr Pollard expresses surprise that there is currently no funding for this project and notes that small businesses in the Lennox Village Centre will struggle and holiday makers will bypass Lennox Heads if these works are not completed urgently.

*Staff Comment re Lennox Head Village Renewal:*  
Refer below

### Ms F Jom - Lennox Head Village Renewal

Ms Jom requests Council to include funding to allow this project to proceed urgently. Specifically, Ms Jom notes pedestrian safety and the upcoming 100 year anniversary as her main reasons.

*Staff Comment re Lennox Head Village Renewal:*

This project is currently not included within the Long Term Financial Plan (LTFP).

A report was submitted to the 16 March 2017 Finance Committee meeting regarding the potential upgrade options for the Lennox Head Village Renewal.

This report suggested a preliminary cost estimate of \$5.5 million.

The majority of this budget is required for utility relocations and renewal, as well as the civil works associated with adjusting kerb levels and roadworks.

Due to the excavation and other work required to complete these renewals, and the expected changes in level and location of kerb for the entire length of the project, it is not practical or economic to develop the project in discrete segments or stages.

The only way a project of this nature can be funded is through loans or significant transfers from Council's property reserves.

## 10.10 Delivery Program and Operational Plan - Adoption

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The repayments on a loan of \$6m, over 15 years, at 4% (Council is currently able to access loans from NSW Treasury Corporation at approximately 3.7% as a Fit for the Future Council for asset renewal – this project would be classified as asset renewal) is approximately \$540,000.

An existing loan for the Ballina Town Centre works is repaid in full in 2018/19 freeing up funds of \$324,000. However the LTFP has this loan being replaced by a new loan for the completion of the Ballina Town Centre works being the remaining segment of River Street between Moon and Grant Streets. The repayments for that loan are estimated at \$308,000 so there is no real funding freed up for the Lennox Head Town Centre.

Council also has significant liabilities in the medium term in respect to works identified in the Roads Section 94 Plan being the four laning of River Street and the completion of Hutley Drive.

Both of these projects may require part loan funding as it is unlikely that the full amount of developer contributions required for the value of the projects will be collected by the time the projects are needed, based on traffic and population growth.

The practice followed with loan funding in the overall roads program is that where loans are needed, any net impact of loan repayments is offset by a reduction in the capital works program, to ensure that Council's cash financial position does not deteriorate.

However, at the same time, Council needs to minimise reducing the roads capital works program as that program is already under-funded based on the annual depreciation expense.

Council has already resolved to receive a report on deferring funding allocated to the Captain Cook Master Plan (\$750,000 in 2019/20 and \$2,100,000 in 2020/21) and the Ballina Town Entry Statement (\$800,000 in 2018/19) to examine funding other projects. The funds for these two projects are totally dependent on land sales so it is uncertain when and if those funds will be available.

Nevertheless it may be possible to reallocate part of these funds, combined with loan funds, to undertake the Lennox Head Village renewal.

The draft Delivery Program already has the following action for 2017/18 albeit there is no funding allocated in the LTFP:

Progress Lennox Head Town Centre enhancement plan	Progress made
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In response to the submissions the recommendation is to amend this item as follows in the Operational Plan for 2017/18:

Progress Lennox Head Town Centre Village Renewal and confirm funding strategy for preferred completion by December 2021	Progress made to confirm preferred design and funding strategy
-------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------

## **10.10 Delivery Program and Operational Plan - Adoption**

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The other real issue with this project is that there is still no agreed design and based on previous experiences the elected Council will need to make a firm decision on the preferred option as there will not be unanimous community support for either of the designs considered at the March 2017 Finance Committee meeting.

### Wollongbar Rugby Club - New Clubhouse

The Wollongbar Rugby Club submitted a proposal to Council in March 2017, requesting Council to partner with them in the construction of a multi sports club facility.

A representative from the Club has recently contacted Council staff again and have requested that this proposal be included as a submission to the Delivery Program.

#### *Staff Comment:*

The Wollongbar Rugby Club proposes to construct a clubhouse facility at the new Wollongbar Sports Fields.

The Club has secured some funds for this project, including a grant of \$500,000 from the Federal Government.

The Club has made a number of submissions to the Council requesting \$250,000 which is required to match proposed NSW Government grant opportunities.

The response from Council has been to advise the Club that the LTFP does not currently contemplate an allocation from Council to this project.

Clearly the provision of a club house at this location is desirable and would make an excellent addition to the new sports fields.

The Council has provided change rooms and amenities for the rugby field and further infrastructure was not possible for the sports fields project from the available funds.

The Council has many change rooms and toilet facilities at its sports fields which are in need of renewal or upgrade.

These projects are considered to be a higher priority for Council funds than supporting new club house facilities and no change is recommended to the existing LTFP.

### Scott Turner - Ballina Touch Bull Sharks - Saunders Oval Flood Lighting

Mr Turner notes the movement of the Saunders Oval Flood Lighting from the 2017/18 year to the 2018/19 as very disappointing, resulting in a large number of potential junior competitors being declined due to limited capacity and also possibly impacting on grant funding secured through NSW Sport and Recreation.

Request is made for Council to reconsider the timing of this project and include it in the 2017/18 year.

## 10.10 Delivery Program and Operational Plan - Adoption

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### *Staff Comment:*

Council considered a report to the April 2017 Finance Committee on alternative funding options needed to finalise the Wollongbar Sports Fields. The installation of sports field lighting at Saunders Oval remains a priority project however it has been deferred to 2018/19 to address that funding shortfall.

### **Public Meetings**

Council held two public meetings to outline the draft 2017/18 to 2020/2021 Delivery Program and 2017/18 Operational Plan.

The meetings were advertised in the local paper, on Council's website and via community access points. Brief descriptions of the meetings follow.

#### *Wardell Community Hall: 29 May 2017*

There were only four people in attendance excluding staff, Mayor Wright and Cr Cadwallader.

The attendees included two members of the Wardell and District Progress Association who noted that the low attendance was the result of a strong feeling of satisfaction amongst the Wardell community with the level of capital works completed in the current financial year, in particular with the boardwalk nearing completion.

A summary of discussion points is as follows:

- Boardwalk nearing completion

The design and look of the boardwalk is nearing completion and residents (and visitors alike) are appreciative of the beauty and functionality of this new community asset.

- Public Amenities

It was noted that the Delivery Plan included \$112,000 in 2019/20 for the rebuild of the public amenities adjacent to the Wardell tennis courts.

- Roads

A number of local roads were noted, including Byron Street, River Street, Raglan Street and Wilson Street. It was suggested to those present that a submission be made to Council regarding these matters. A submission was subsequently received from the Wardell and District Progress Association, as noted earlier.

- Drainage

Specific mention was made of the drain in Wilson Street. A submission was subsequently received from the Wardell and District Progress Association, as noted earlier.

## **10.10 Delivery Program and Operational Plan - Adoption**

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*Lennox Head Community and Cultural Centre: 30 May 2017*

There were 12 people in attendance excluding staff, Mayor Wright and Cr Cadwallader.

A summary of discussion points is as follows:

- **Hutley Drive**

Note there is \$17.2 million in the 2019/20 financial year to construct Hutley Drive. Discussion flowed around these works and the meeting was advised that the timing of the works will depend on growth rates and Section 94 road contribution collections.

This an indicative budget only and Council may well need to work with the developers in this locality to have this project delivered through the provision of in-kind works in lieu of future payment for Section 94 contributions.

- **Main Street Lennox**

The meeting was advised that the Draft Delivery Program includes no funding for the Lennox Town Centre. Several submissions have subsequently been received in relation to these works.

- **Williams Reserve**

It was noted generally that Williams Reserve required a new management plan

- **Tennis Courts**

There was some discussion of tennis courts. The meeting was advised that there are no current plans to build additional tennis courts within the shire.

### **B. Amendments to the Draft Delivery Program and Operational Plan**

#### **Long Term Financial Plan (LTFP - Budget)**

During the period that the draft Delivery Program and Operational Plan has been on exhibition numerous budgets have been adjusted and fine-tuned, particularly following the March 2017 Quarterly Financial Review.

Adjustments include:

#### ***Staff Resources***

The 2017/18 Workforce Plan was submitted to the April 2017 Finance Committee and the LTFP has been amended to reflect these changes.

### ***Plant Capital Expenditure for Rangers Vehicle***

The Development and Environmental Group has requested the purchase of an additional vehicle, with a one-off initial capital cost of \$25,000, plus annual running costs, for use by the rangers. This will improve productivity and timeliness as there is currently only two vehicles for four rangers plus a parking officer.

This purchase is being funded from internal reserves that have been generated from savings achieved in previous years by the Development and Environmental Health Group.

### **Fees and Charges**

#### ***Ferry Fees***

At the April 2017 Council meeting, Council resolved as follows:

*“That Council trial, for a period of 12 months, the introduction of a 50% pensioner/health care card holder discount for ferry season tickets by altering current ferry fees applicable to caravans and trailers to replace the current relevant fee and introduce two new fees. The first fee to be \$11.60 for vehicle and 1-axle trailer and the second fee to be \$17.40 for vehicle and 2-axle trailer and all caravans”.*

The draft Fees and Charges was updated and exhibited accordingly.

Following further analysis by staff there are a number of further considerations in applying this discount, namely:

- Council's Fees and Charges, as exhibited, include Ferry Season Tickets and also Ferry Quarterly Season Tickets. Clarification is required as to whether Quarterly Season Tickets are also subject to the pensioner/health care card holder discount.

If the discount were applied to annual season tickets only, this may cause financial disadvantage for some users who can only afford to purchase quarterly tickets. Therefore it is recommended it be applied to quarterly tickets.

- Ferry Season Tickets includes the subcategories of Motor Vehicles (under 3 tonnes carrying capacity), Motor Cycles and Agricultural Tractors. It is noted that Agricultural Tractors already receive a 50% discount on annual and quarterly tickets. Clarification is required as to whether all subcategories of Ferry Season Tickets are subject to the pensioner/health care card holder discount.

The recommendation is to apply it to Motor Cycles only as Agricultural Tractors represent a business use.

- Season Tickets are also available for Bicycles. Clarification is required as to whether Bicycle Season Tickets are also subject to the pensioner/health care card holder discount. The recommendation, for consistency, is to apply it to Bicycles.



## 10.10 Delivery Program and Operational Plan - Adoption

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- The eligibility of various cards needs to be clarified.

It is proposed that Council policy would extend availability of this discount to holders of the following:

- Commonwealth Seniors Health Card
- Health Care Card
- Ex-Carer Allowance (Child) Health Care Card
- Foster Child Health Care Card
- Low Income Health Care Card
- Department of Veteran Affairs' Health Card and
- Pensioner Concession Card

- Concession cards have expiry dates, for example some Health Care cards have a three month expiry.

It is proposed that Council policy would allow purchase based on the current (i.e. day of purchase) validity of the concession card, irrespective of whether the card's expiry date fell before or after the season end.

- It is recommended that purchase can only be made from Council's Customer Service at 40 Cherry Street, Ballina, with presentation of the pensioner/health care card together with Vehicle Registration papers in the same name/over details as the pensioner/health care card a requirement of purchase (not required for Bicycles).

### Other Matters

#### *Ordinary Rate Revenue*

Council needs to formally adopt the ordinary rates to be levied in the 2017/18 financial year. The rates in the dollar and base amounts in the following table reflect an increase of 4.9%, which is based on an approved (temporary) special variation application for 2017/18.

The application has been approved by IPART on the condition that this is a temporary (one year) increase only and the funds are applied in accordance with the application for asset renewal and healthy waterways programs.

#### **Rates in the Dollar and Base Amounts – 2017/18**

Rate Category	Rate in Dollar (cents in \$)	Base Amount (\$)	% Income from Base Amount
Residential	\$0.16583	491	49.8
Business	\$0.75581	491	14.6
Farmland	\$0.14128	491	32.4
Mining	\$0.75581	491	0.0

The recommendations that form part of this report include specific resolutions in respect to the making of the rates.

A recommendation is also included to make the various annual charges (i.e. waste, water etc) included in the fees and charges.

## **10.10 Delivery Program and Operational Plan - Adoption**

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### ***Application for Special Rate Variations for 2018/19 and 2019/2020***

The exhibited Delivery Program and the LTFP were prepared based on the presumption of permanent special rate variations of 4.9% in 2017/18, 5.9% in 2018/19 and 5.9% in 2019/20.

Subsequent to exhibition, IPART approved only a (temporary) increase of 4.9% for 2017/18, inclusive of a rate peg of 1.5% for 2017/18 (i.e. an increase of 3.4% over and above the rate peg).

In order to retain the 2017/18 4.9% as a permanent increase, as well as achieve the proposed additional 5.9% in 2018/19 and 2019/20 as per the current LTFP, Council will need to submit a further application to IPART.

To be consistent with the current LTFP, this submission will need to apply for a permanent increase to Council's rate income of 9.3% for 2018/19 (i.e. the 3.4% from 2017/18 plus the 5.9% for 2018/19) and 5.9% for 2019/20.

The basis for IPART's temporary approval, rather than for the full approval of the application for three year permanent increases, was due to shortcomings within the adopted Delivery Program and Operational Plan in that there was insufficient detail as to how the additional funds were to be utilised.

IPART provided feedback to Council management that the need and affordability considerations of the application were proven and that the public consultation process was considered more than sufficient.

From Council management's perspective, the shortcomings within the Delivery Program have subsequently been addressed, in that the detailed capital works programs are now provided for both scenarios (i.e. with and without the special rate variation).

Furthermore, the updated Delivery Program, inclusive of the two scenarios, has now been publicly exhibited and discussed as part of the recent public meetings held.

Council management has commenced discussions with IPART to determine minimum requirements in relation to a further special rate variation application for 2018/19 and 2019/20.

These preliminary discussions have indicated that whilst a further application must be a stand-alone document, information in relation to need and affordability of the rate rises can largely rely on resubmission of evidence provided in the initial application.

That is, it is expected that the community surveys already completed will provide sufficient evidence and there is currently no expectation that further surveys would be required.

Further discussions with IPART are expected to clarify requirements in relation to required community consultation. Of preliminary note by IPART is the need to ensure that the community is made aware of the two alternate scenarios, i.e. assumed rate peg rises of 2.5% versus permanent special rate variations of 9.3% for 2018/19 and 5.9% for 2019/20.

## 10.10 Delivery Program and Operational Plan - Adoption

A recommendation is included within this report to confirm Council's intention to submit a further application to IPART consistent with the current LTFFP. If this recommendation is not adopted, the LTFFP will require revision to exclude the additional income and expenditure.

The updated Delivery Program and Operational Plan, as well as including the works program also now includes the following actions:

Operational Plan Activity		Measures /Targets	17/18	18/19	19/20	20/21	Responsibility
EL2.1g	Pursue compliance with the Fit for the Future Program	Improve our overall financial sustainability	X	X	X	X	Financial Services
EL2.1h	Apply for a permanent increase to Council's total rate income of 9.3% for 2018/19 and 5.9% for 2019/20 (cumulative 15.75%) with a rate peg assumed and included of 2.5%	Approval of application(s) by IPART	X	X	X		Financial Services

There has also been an entirely new page included in the Delivery Program, titled "Funding our Future". That page provides an overview of the reasons for Council applying for the additional rate revenue.

The Revenue Section of the Operational Plan also includes details on the special rate variation.

### ***Elizabeth Ann Brown Park Alstonville***

The March 2017 Ordinary meeting resolved that "*consideration of implementation of the masterplan for Elizabeth Ann Brown Park, with focus on the plinth*" be given in preparation of the Delivery Program and Operational Plan.

This project is currently not funded and not included within the Delivery Program.

A meeting was held with representatives for the Alstonville RSL Sub-Branch on 8 June 2017.

At the meeting it was expressed that the RSL's preference was for the marble tablets in the memorial at E.A. Brown Park to be returned to their original location in the Tintenbar Memorial Gates and a new memorial constructed in the park generally in accordance with the adopted master plan.

The reason for relocation of the existing plaques is to return them to their original location and to create a more inclusive memorial, similar to the one in Ballina using only the armed forces symbols.

## 10.10 Delivery Program and Operational Plan - Adoption

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Priority items for implementation of the master plan with a new memorial were inclusion of vandal proof power supply to the park and a sound system to improve communication on Memorial Day events.

Improvement in the display and maintenance of the memorial garden plaques is also required.

A detailed estimate to complete the master plan will be required but the RSL has proposed that they will be seeking grant funding for an estimated \$300,000 to have the master plan works detailed and carried out.

No change is recommended to the LTFP.

### ***Installation of BBQs***

The March 2017 Ordinary meeting resolved that “*consideration of installation of BBQs at Missingham Beach/Shaws Bay and any other appropriate sites*” be given in preparation of the Delivery Program and Operational Plan.

Investigation into the potential installation of BBQ facilities at Missingham Beach, Shaws Bay and any other appropriate public open space areas has been carried out with inclusion of Faulk’s Park at the request of Cr McCarthy.

The following items need to be considered in the investigation and development of an implementation program to ensure cost effective installation and ongoing sustainability of the assets:

- Demand and desirability of the location
- Availability of electricity and water services
- Proximity to public toilets
- Proximity to picnic settings
- Climate change and seasonal weather
- Access for maintenance and waste management services
- Relevant legislation
- Installation costs and annual maintenance costs.

In order to properly consider the proposed sites and equitable consideration for the installation of new BBQ facilities within Ballina Shire, a brief analysis of existing BBQ assets and the suitability of locations has been carried out using the above criteria.

The following analysis could be further developed into a guideline for the ongoing delivery of BBQs.

In developing program for BBQ facilities at the proposed locations, existing programs have also been taken into consideration.

A park classification system has already been established for the shire in relation to open space parks with playground facilities.

The classification system analysed park size, location, catchment population and results from asset inspections to determine the best management and upgrade program for playgrounds.

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This classification system can be utilised to further examine suitable sites for BBQ facilities, giving additional consideration to foreshore parks as desired locations, usage of parks as destination features for tourism, average visitation times and existing infrastructure.

The following table has been developed to establish levels of embellishment in parks relevant to the installation of public BBQ facilities to help identify suitable locations based on existing infrastructure.

### Recreation Park Embellishments

Embellishment	Local Parks	District Parks	Regional Parks	Foreshore Parks (≥5000m <sup>2</sup> )	Sports Grounds
Barbeques	By exception	1	2	1	By exception
Bins	1	2	4	2	As required by waste management strategy
Drinking fountains	0	1	2	1	1
Electrical switchbox	0	1	2	1	1
Maintenance taps	1	1	2	1	1
Picnic nodes	By exception	1	2	1	As required
Toilet blocks	By exception	1	1	1	1

In addition to identifying suitable levels of embellishment based on the status of parks, specific requirements need to be considered in the location and siting of BBQs. Barbeque facilities should:

- comply with relevant legislation and standards
- be made from robust materials that are vandal and corrosion resistant
- be designed to bolt to the finished surface
- have food grade low maintenance finishes
- include in-built safety features
- contain a secured, weather-proof power outlet
- include a tap
- have a wheelie bin and stand located nearby, but not within 5m of the BBQ, and preferably downwind of it
- be located in proximity to picnic units, preferably in a downwind location;
- be located in proximity to public amenities, but not within 10m
- be positioned so that maintenance doors and buttons are located opposite to the water and prevailing conditions in foreshore parks
- be positioned to avoid exposure to wind and
- be installed on a reinforced concrete slab with falls to ensure all surfaces are free draining. Provide a 10 millimetre radius trowel finish to the slab edge. The slab must have a minimum Class W slip resistance in conformance with AS/NZS 4586.

Based on the criteria outlined the proposed potential sites of Missingham Beach/Shaw's Bay and Faulk's Reserve along with other prominent open space sites are identified as being suitable for potential installation of new BBQ facilities.

## 10.10 Delivery Program and Operational Plan - Adoption

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Based on this analysis the sites within the shire that meet the criteria, subject to further detailed site investigation are:

- Faulks Reserve
- Riverview Park
- Captain Cook Memorial Park
- Missingham Beach/Shaw's Bay - Pioneer Memorial Park
- Pop Denison Park (1 existing BBQ)
- Ross Park and
- Geoff Watt Oval

The cost of installing and maintaining BBQs has many variables. Purchase price, site conditions, access and location, availability of services for electricity, water connection and contractor rates.

Using current rates, assumptions regarding site conditions and the availability of required services; the average installation of a two plate BBQ on a reinforced concrete slab is estimated at approximately \$16,750 or for a single plate BBQ approximately \$10,500. If a shelter is required with the installation, an additional cost of approximately \$11,500 may be required, and an additional \$3,000 if lighting is also required.

One of the greatest variables that can increase the cost of installation is the availability of suitable electrical supply. If there is no existing suitable supply within proximity of the proposed BBQ site, upgrade of the service may cost upward from \$20,000 to establish. Further investigation of the proposed sites will be required to establish if these additional costs may apply.

In considering the installation of new BBQs, the ongoing cost of cleaning and maintaining the assets also needs to be analysed. Based on the financial data for existing assets the average annual cost of cleaning and maintaining the shires current BBQ's is approximately \$33,000 in total or \$2,300 per BBQ each year.

If a program for installation of BBQs is agreed to for the proposed sites, installation costs may be able to be reduced by combining installation with existing works. This may reduce site preliminaries and site establishment costs as well as contract labour rates. It is noted that a number of these locations have other works proposed for the Delivery Program and Operational Plan.

All of this information will be applied moving forward to install BBQs where feasible within the available budgets.

### ***Bulwinkel Park Alstonville***

The March 2017 Ordinary meeting resolved *“that Council arrange a meeting with relevant stakeholders in relation to proposed improvements and if a plan of management is required, that consideration be given at the June meeting to the preparation and implementation of such a plan.”*

A meeting was held onsite between Council officers and representatives of the Bulwinkel Landcare and Lions Club groups on 6 June 2017.

## **10.10 Delivery Program and Operational Plan - Adoption**

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Discussion about the desired outcomes for the park and advantages and disadvantages of creating a specific Plan of Management for the park were undertaken.

It was agreed that development of a new Plan of Management for the park is not the preferred option as management of the park is sufficiently covered under the existing Plan of Management for Community Land 2015.

The community groups actively working to improve Bulwinkel Park will continue to liaise with Council regarding works within the park as well as discussing any potential funding and grant opportunities.

Council is in the process of relocating and upgrading the playground on the site to remove it from the flood affected area, as part of the Playground Upgrade Plan.

The relocation will also take into consideration spacing to allow for the potential future co-location of a new shelter and picnic setting in the same vicinity. Pruning of surrounding trees is to occur in conjunction with the installation works to ensure safety for playground users.

Other items discussed at the meeting that are request to be reviewed and considered are:

- Development of a concept/master plan for the park
- Pruning of trees around the public toilets
- Renewal of the public toilets
- Removal of the old shelter and construction of a new shelter out of the flood zone
- Improved car parking with equitable access to the park
- Improved drainage to redirect concentrated overland flows away from the active area of the park
- Installation of informative signage and
- Installation of BBQ facilities

It is not proposed to amend the existing Delivery Program or LTFP specifically for these items as some will be carried out within existing operating budgets and the larger capital items will be on-going considerations, as part of the recurrent capital budgets for items such as public toilet renewals,

### ***Swimming Pool Upgrades***

The redevelopment of the swimming pools is allocated over the 2016/17 and 2017/18 financial years with a total budget in the LTFP of \$14,018,500. Unfortunately asbestos has been located in significant amounts under the existing pool structures and this will result in a contract variation.

Details on that variation will be reported to Council early in the new financial year.

## 10.10 Delivery Program and Operational Plan - Adoption

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### Sustainability Considerations

- **Environment**  
This report encompasses the entire Council budget and proposed activities and operations.
- **Social**  
As above
- **Economic**  
As above

### Legal / Resource / Financial Implications

This report deals with all of Council's operations. Legal, resource and financial implications are all relevant to this report.

Based on the adjustments identified in this report the revised working capital deficit forecast for the General Fund for 2017/18 is \$192,000.

There remain significant concerns that the LTFP forecasts working capital deficits for the entire ten years as follows:

17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27
(192,000)	(250,900)	(411,000)	(478,500)	(389,900)	(363,200)	(223,100)	(220,000)	(256,500)	(146,000)

Council does budget conservatively however with the construction of the Ballina Indoor Sports Stadium, which should be fully operational by 2019/20, the net cost of operating that facility results in a significant jump in the forecast deficit.

The other concern is that the income figures in the LTFP for programs such as Development Assessment and Building Services are relatively high compared to long term trends, and when that income does fall, as the level of building activity slows, it will place further pressure on Council's finances.

Council is not in a position to reduce its capital expenditure funding as many asset classes are already not fully funded to their depreciation expense, therefore the pressure remains on staff and Councillors to aim to reduce existing service levels and achieve cost savings where possible.

Councillors should not be looking for expanded services unless matching or greater savings are identified.

From an operating result perspective the inclusive of the special rate variation monies means that an operating surplus should be achieved for the first time for the General Fund in 2018/19.

### Consultation

The Draft Delivery Program and Operational Plan have been advertised for public comment during May and June.



## 10.10 Delivery Program and Operational Plan - Adoption

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### Options

Council has a legal obligation to adopt the Operational Plan and Delivery Program. Two Finance Committee meetings have been held to develop the strategies contained within these documents and Council is also in a position to consider community input.

The recommendations that follow encompass all the items addressed in this report, along with a recommendation to endorse the rating structure for 2017/18.

### RECOMMENDATIONS

1. That Council adopts the 2017/18 to 2020/21 Draft Delivery Program and 2017/18 Operational Plan which includes the Long Term Financial Plan (budget) and Fees and Charges, as exhibited, inclusive of any amendments determined at this meeting.
2. That Council approves the formation of a Committee of a minimum of three Councillors, with at least one from each Ward, plus the Mayor, to consider the applications for the General, Public Hall and Sporting Group Donations for 2017/18. The representatives on the Committee are as follows (to be determined).
3. That Council endorses the following action in respect to the one submission on the draft fees and charges:

That, on review of the Commercial Activities on Public Land Policy during 2017/18, consideration is given at that time to including smaller fitness training groups as a low impact category.

4. That Council notes the contents of this report in respect to the submissions received for works and services, with the inclusion of the following amendments to the Operational Plan:
  - Wardell Progress Association – Include an action to investigate Wilson Street drain, Wardell, to determine the preferred management solution.
  - Various submissions – Amend the existing reference to the Lennox Head Town Centre enhancement plan to the following:

Progress Lennox Head Town Centre Village Renewal and confirm funding strategy for preferred completion by December 2021	Progress made to confirm preferred design and funding strategy
-------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------

5. That Council endorses the following amendment to the Long Term Financial Plan:
  - Plant capital expenditure – budget increased by \$25,000 for purchase of Rangers vehicle, with this initial one-off expenditure funded from the Development and Environmental Health internal reserve.

## 10.10 Delivery Program and Operational Plan - Adoption

6. That Council endorses the following actions in relation to the 50% pensioner/health care card holder discount for Ferry Fees:
- (i) The discount applies to motor vehicle, motor cycle and bicycle seasons and quarterly season tickets.
  - (ii) The discount applies to the following cards:
    - Commonwealth Seniors Health Card
    - Health Care Card
    - Ex-Carer Allowance (Child) Health Care Card
    - Foster Child Health Care Card
    - Low Income Health Care Card
    - Department of Veteran Affairs' Health Card and
    - Pensioner Concession Card
  - (iii) The discount can only be obtained by purchasing from Council's Customer Service at 40 Cherry Street, Ballina.
  - (iv) The discount can only be obtained by presenting one of the listed eligible cards together with vehicle registration papers in the same name as the card holder and the card must be valid as at the day of purchase (excluding bicycles).
7. That Council resolves to make a base rating structure applicable to all rateable land in the Shire for the levy of the 2017/18 Ordinary Rates as per the following structure.

Rate Category	Rate in Dollar (cents in \$)	Base Amount (\$)	% Income from Base Amount
Residential	\$0.16583	491	49.8
Business	\$0.75581	491	14.6
Farmland	\$0.14128	491	32.4
Mining	\$0.75581	491	0.0

The rate in the dollar for 2017/18 applies to the land value of all rateable land in the Shire within the relevant category.

8. That Council resolves to make the annual charges for 2017/18 as detailed in the Fees and Charges document that forms part of the Delivery Program and Operational Plan for Domestic Waste Management, Stormwater, Waste Management Operations, Water Services and Wastewater Services.
9. That Council confirms its intention to submit a further application to IPART, consistent with the current Long Term Financial Plan, being permanent special rate variations of 9.3% for 2018/19 and 5.9% for 2019/20 and authorises the General Manager to take all necessary actions to comply with the special variation application criteria.

### Attachment(s)

- 1. Submissions
- 2. Extract from Councillor Bulletin 17 March 2017

## **11.1 Sugar Cane Harvest Management Scheme - Permit Application**

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### **11. Civil Services Group Reports**

#### **11.1 Sugar Cane Harvest Management Scheme - Permit Application**

**Delivery Program**      Operations Support

**Objective**              To determine if Council will accept the proposed scheme by issuing a permit to NSW Sugar.

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#### **Background**

Local and regional roads make up almost 90% of the NSW road network. These roads are managed by councils who are responsible for granting route approval for any Restricted Access Vehicle (RAV). Hence local councils play a critical role in improving freight productivity for regional NSW.

NSW Sugar is a grower owned cooperative with around 500 grower members operating sugar mills located in Broadwater, Condong and Hardwood. The cooperative employs 400 people directly and 250 additional seasonal employees during harvest. The industry accounts for \$230 million of regional economic output.

NSW Sugar approached the Transport for NSW for a mass concession scheme to assist in managing their transport needs during harvest seasons. Harvesting typically occurs early June up to December.

In response, Transport for NSW and RMS have been assisting NSW Sugar in a proposal for a Sugar Cane Harvest Management Scheme (SCHMS).

Since the scheme requires approval for their Restricted Access Vehicles, Ballina Shire Council is to review and determine if a permit will be issued to operators under this scheme.

The SCHMS was first proposed for the 2016 harvest season. Following a report to Council, that considered the impact to road infrastructure and local industry, the following determination was made:

- 1. That the application for the Sugar Cane Harvest Management Scheme to permit an additional 5% concessional mass on the gross mass load (GML) on State and Council roads which are currently approved for a 4.6 m high vehicles, be approved for a trial period of one year, i.e. 2016.*
- 2. Further, the General Manager is authorised and tasked to raise this matter with other LGA General Managers/NOROC and Sunshine Sugar to present a case to State and Federal Governments for those bodies to compensate LGAs for any extra road maintenance costs arising from the increased wear on local roads.*

The Transport for NSW has issued Council another application on behalf of NSW Sugar for permits under this scheme to be issued for the 2017 season.

### Key Issues

- Impact to road assets – increased damage and reduced lifespan
- Impact to local industry – the industry contributes to the local community

### Information

The decision of Council to support the trial examined a number of issues.

The key points in favour is the scheme potentially provides safety benefits as the increased mass limits will result in a reduced number of total truck movements on local roads during the harvest.

The other key factor was the local mills were considered to have a competitive disadvantage when compared to Queensland mills as the concessional mass loads have been approved there.

As discussed below, there are concerns the additional mass limits result in a reduction in the expected pavement life of Council's road assets and this raises the question as to whether the NSW Government and the sugar industry as the proponents of the scheme should pay a compensation to Council, as Council is being asked to address a commercial disadvantage or economic development issue that it did not create.

As per the resolution noted earlier, a permit was issued to NSW Sugar for a trial period of one year under SCHMS allowing for an additional 5% concessional mass on the gross mass load (GML) on Council roads, which are currently approved for 4.6m high vehicles. This brings the transport vehicles mass to 44.63 tonnes, as opposed to a maximum GML of 42.5 tonnes.

## 11.1 Sugar Cane Harvest Management Scheme - Permit Application

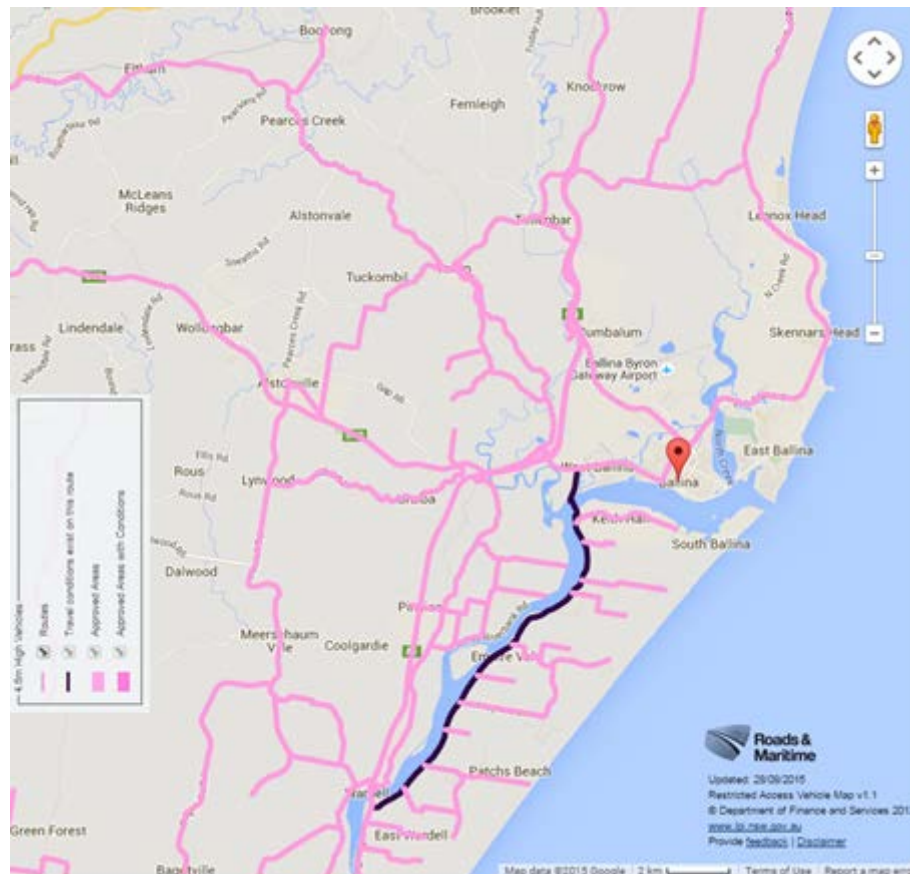


Figure 1: Approved routes under the SCHMS trial permit.

The scheme operated within multiple local government areas, and for this reason, staff facilitated a working group to discuss the trial of the scheme. This working group included representatives from: Ballina Shire, Byron Shire, Lismore City, Clarence Valley, Richmond Valley, and Tweed City. It is preferred if possible for all of the councils to share a joint view on this matter.

The increased impact on local road and bridge assets are assessed through equivalent standard axles (ESA) calculations. ESA is used within asset management to assist in determining pavement damage. From these calculations it is reasonable to expect a result in the scheme increasing damage or wear to infrastructure by 25%, which would likely result in a reduction in the life of our road pavements.

The purpose of the trial was to assess the compliance of the sugar industry with the conditions associated with the trial and to see if the trial period allowed a more accurate and location specific assessment of the likely pavement damage.

As per the advice to Council at the time this matter was previously reported, following the implementation of the one year permit, the working group has been unable to conclusively assess the level of increased damage that occurred to the road pavement.

This is due to the limited likelihood of visually seeing the long term reduction in the pavements life over a one year period.

## 11.1 Sugar Cane Harvest Management Scheme - Permit Application

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Challenges were also identified in distinguishing impacts to the road infrastructure by SCHMS vehicles and other travelling on these roads.

In respect of compliance with the trial conditions, at the end of the harvest period, NSW Sugar provided Transport for NSW, RMS and the Council working group a presentation of their activities during the permit trial.

At the implementation of the scheme, NSW Sugar noted that the performance early in the season was not acceptable due to overloading above the SCHMS limits. Strategies were implemented by NSW Sugar to mitigate the overloading. This was done in consultation with growers, harvesters, mills and the transport company.

In September 2016, a policy was put in place where overloaded bins would not be accepted by the mills, with the cane being rejected. This resulted in the average breaches dropping from 50 per week to 2 per week, with overloaded bins returning to their pad to be unloaded.

When looking at mass limits it is important to consider both gross load and axle loads as the distribution of the load is an issue that can lead to pavement damage even for loads under the approved mass limit.

In November 2016, one vehicle was equipped with weigh cells hooked up to air bag suspension. This allowed for monitoring of axle and gross weights of the vehicle when loaded. Due to the placement of cane affecting the axle weights of a vehicle, trials were performed on the loading of bins to determine the most appropriate loading procedure.

Through the issuing of the trial permit in 2016, the above strategies were implemented to effectively manage vehicle mass movements under the SCHMS.

For the 2017 harvest season, NSW Sugar has indicated that they will be looking to continuing their work in managing mass movements. This will include:

- Installing weigh cells to all their transport vehicles, allowing for the monitoring of axle and gross weights
- Arrangements being put in place to determine loading targets and loading procedures with each harvesting contractor
- Develop an incentive scheme based on 75% compliance with loading targets.

Following the issuing of the trial permit, a letter was sent to the State Government, RMS, notifying them of our one year trial, and following the trial we will be requesting monetary compensation to be provided to Council for the accelerated road wear that will result from participation in the scheme.

RMS have communicated that they feel Council is able to seek funding for local roads through various sources, including special grants for infrastructure projects from the Commonwealth and State.

This is a disappointing response as grant programs for roads are historically structured around either general purpose grants to all councils or safety upgrade works.

## 11.1 Sugar Cane Harvest Management Scheme - Permit Application

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The reason for this policy approach by Government is due to the overwhelming demand from councils for financial assistance for their road networks.

The response therefore ignores the specific nature of our request, which originates from SCHMS being a government and industry proposal.

### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
NSW Sugar is a grower owned cooperative. It is also a local industry which operates and provides jobs in the northern NSW region.
- **Economic**  
The proposed SCHMS will result in increased damage to the LGA infrastructure (the various 4.6m routes), resulting in a reduced pavement life. This would increase operating budgets and bring forward pavement replacements.

However, the proposal supports improved efficiencies for an important local industry.

### Legal / Resource / Financial Implications

If the SCHMS is approved and a permit issued to NSW Sugar, road maintenance plans and future pavement replacements will need to be reconsidered.

### Consultation

Consultation has occurred with the other local government areas that are within the NSW Sugar's operational transportation area. This was done through the working group that was developed. Including: Ballina Shire, Byron Shire, Lismore City, Clarence Valley, Richmond Valley, and Tweed City.

Members of the working group provided in principle support to recommend the approval of another one year trial permit while NSW Sugar to refine their current strategies and implement mass weighing equipment into all of their vehicles.

### Options

1. To participate in the SCHMS, issuing a permit to NSW Sugar.

Under this option it is preferred to issue a trial permit for a single harvest period to allow NSW Sugar to refine their strategies and implement weighing equipment in the vehicles.

## 11.1 Sugar Cane Harvest Management Scheme - Permit Application

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To facilitate the trial, Council will continue to monitor conditions of road pavement under the approved routes of the SCHMS. However there are limitations to these assessments as the trial may or may not show immediate damages to the infrastructure; and the long term (reduced lifespan) may not be able to be reliably determined.

The SCHMS working group, consisting of the other local government areas issuing a permit, will liaise closely with NSW Sugar on their activities and the improvement they implement during the second trial period. There would be specific interest in NSW Sugar demonstrating that the increased mass allowance is resulting in a reduction of truck movements on our roads during the cane harvest period.

2. To not be involved in the SCHMS, rejecting the permit from NSW Sugar.

It is recognised that it is important to support local industry to the extent possible in their endeavours to become more efficient in their operations. However, without including the additional maintenance costs and reduced life of our infrastructure assets, arguably this proposal represents a subsidy from Council to industry, not an overall efficiency gain.

The staff recommendation to the first report regarding this matter was to decline to participate in the scheme due to the risk of long term financial impacts.

In response to this recommendation Sunshine Sugar representatives presented to Council and outlined in more detail the broader economic issues that need to be considered and ultimately this direction was the one preferred by Council.

Unfortunately the goals of protecting our road pavements and supporting economic development are mutually exclusive for this matter, and our request to Government to resolve this situation did not receive a favourable response.

On balance Option One is recommended for the following reasons:

- The expected damage for one more year is not likely to be an issue for the long term and therefore there is an opportunity to continue to work through this issue with Government and the other councils in the region to see if a more satisfactory outcome can be achieved.
- It is preferred to retain a consistent approach with the other councils and seek support for a change in Government response by working together.
- To remove the permit now may expose the industry to additional and unexpected costs and this may have an impact on viability or support for jobs in the Shire, albeit it is noted the approval last year was for one year only.
- The sugar industry aims to be proactive in improving its level of compliance with the scheme including developing further procedures for their mass management and implement the new technology into their vehicles.



## **11.1 Sugar Cane Harvest Management Scheme - Permit Application**

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As noted in the introduction of this report, the previous resolution of Council at point two said:

*Further, the General Manager is authorised and tasked to raise this matter with other LGA General Managers/NOROC and Sunshine Sugar to present a case to State and Federal Governments for those bodies to compensate LGAs for any extra road maintenance costs arising from the increased wear on local roads.*

As the response to this process was unsatisfactory, the recommendation to this report also includes a proposed notice that Council will not participate in the scheme any further without an agreed level of funding support from the NSW Government.

**RECOMMENDATIONS**

1. That the application for the Sugar Cane Harvest Management Scheme to permit an additional 5% concessional mass on the gross mass load (GML) on State and Council roads which are currently approved for a 4.6 m high vehicles, be approved for an additional trial period of one year during the 2017 harvest period.
2. That further to point one above, Council also advise the NSW State Government, Sunshine Sugar and the other councils in the Northern Rivers that it will not consider a third trial period (or permanent approval) for the 2018 harvest period unless there is an agreed level of funding support to Council as the current arrangement, which was implemented in response to the needs and requests of the NSW Government and commercial industry, represents a cross subsidy provided by the Shire's ratepayers and this will result in unreasonable financial pressures for Council in terms of the management of our road network in the long term.

**Attachment(s)**

Nil

12. Public Question Time

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**12. Public Question Time**

### **13.1 Rescission Motion - Wollongbar Skate Park**

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#### **13. Notices of Motion**

#### **13.1 Rescission Motion - Wollongbar Skate Park**

**Councillor**                      Cr Johnson  
                                                 Cr Meehan  
                                                 Cr Smith

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That resolution 250517/4, as follows, be rescinded:

1. That Council authorises the General Manager to commence detailed design and construction of the Alstonville Wollongbar skate park in accordance with concept design Option B at the Wollongbar Sports Field site.
2. The Council authorises the General Manager to lodge the required application to support point one above.

In the event that the rescission motion is carried, we intend to move the following alternative motion, being the staff recommendation for the report to the May 2017 Ordinary meeting:

1. That Council authorises the General Manager to commence detailed design and construction of the Wollongbar skate park in accordance with concept design Option B at the Plateau Drive site.
2. The Council authorises the General Manager to lodge the required application to support point one above.

#### **COUNCILLOR RECOMMENDATION**

That resolution 250517/4, as follows, be rescinded:

1. That Council authorises the General Manager to commence detailed design and construction of the Alstonville Wollongbar skate park in accordance with concept design Option B at the Wollongbar Sports Field site.
2. The Council authorises the General Manager to lodge the required application to support point one above.

#### **Attachment(s)**

Nil

## 13.2 Notice of Motion - Donation - Beach Sounds Event

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### 13.2 Notice of Motion - Donation - Beach Sounds Event

**Councillor**

Cr Cadwallader

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I move

That Council donate the venue (\$500) and equipment hire (\$320) fees for the proposed Beach Sounds Event at the Lennox Head Community Centre.

#### **Councillor Comments**

This is a signature event for the community and it is not expected to generate a profit. It is being put on for the youth and there is certainly a need for this type of event in our community.

#### **Staff Comments**

The Beach Sounds Event is an event scheduled to be held at the Lennox Head Community Centre. Details of the event are as per the attached email from Nathan and Ben Luke.

As this is a donation request, consistent with a Council resolution from July 2016, the applicant has been advised that the donations budget has been fully expended and no further donation requests are being reported to Council, other than by Councillor notice of motion.

Council staff have assessed the event as a community based event and the fees quoted are the community event hire fees, not the commercial hire fees for the Lennox Head Community Centre. A comparison between the community and commercial hire fees for this event is as follows (the one difference being venue hire):

<b>Item</b>	<b>Community (\$)</b>	<b>Commercial (\$)</b>
Venue Hire	500	750
Equipment Hire	320	320
Security (1)	260	260
Staff	240	240
<b>Total</b>	<b>1,840</b>	<b>2,090</b>

(1) Depends on attendance numbers - \$260 per 100 people; i.e. 300 people equals \$780

The approach taken by Council's Community Facilities staff is that individuals are able to be charged the community event hire fee when an event is a community or fund raising event, or an event not generating a profit.

If Council was going to provide a donation, the waiver of the hire fees (venue and / or equipment) is the preferred approach as this does not involve a direct outlay of funds, whereas security and staff costs results in actual expenditure being incurred.

### **13.2 Notice of Motion - Donation - Beach Sounds Event**

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Decisions to provide one-off donations need to be carefully assessed, as throughout the year there have been a number of other requests for financial assistance which have been provided advice that no further requests are being considered during 2016/17.

#### **COUNCILLOR RECOMMENDATION**

That Council donate the venue (\$500) and equipment hire (\$320) fees for the proposed Beach Sounds Event at the Lennox Head Community Centre.

#### **Attachment(s)**

1. Donation Request - Nathan and Ben Luke

### **13.3 Notice of Motion - Boral Asphalt Plant**

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### **13.3 Notice of Motion - Boral Asphalt Plant**

**Councillor**

Cr Parry

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I move

That Council make representation to the NSW Environment Protection Authority to undertake increased independent monitoring of odour emissions and noise impacts arising from the Boral Asphalt Plant and the Gap Road Quarry so as to assist in responding to community concerns about the adverse amenity impact and possible health risks associated with continued operation of the Plant and the Quarry.

#### **Councillor Comments**

There is a concern shared widely by residents living in the immediate vicinity of the Plant and the Quarry that the noise levels associated with truck movements and with asphalt processing, and the odours associated with asphalt processing, are impacting adversely on their well-being, their health and, potentially, the value of their properties.

There is ample evidence that these concerns are long-standing. Council's decision taken last year to permit Boral to use the Asphalt Plant as a processing centre for material from any other quarries, rather than simply the Gap Road Quarry, has added to the level of community concern, and it is now widely reported by residents that the level of noise from truck movements to and from the Plant has increased significantly.

The concern about the health risks associated with the odours must be taken seriously by the Council. The residents affected by the odours have neither the scientific expertise nor the equipment to determine unequivocally the extent to which the odour emissions may be toxic. That the Plant gives off fumes with a heavy acrid odour, which affects a significant proportion of Alstonville, and which is most obvious during particular weather conditions, is an indisputable fact. The extent to which these fumes are dangerous for residents living within, say, a 2 kilometre radius of the Plant must be investigated.

The concern about the noise has two aspects. First, there is the noise of heavy trucks coming and going to the Plant and the Quarry. Residents report that the extent of truck movements has increased significantly over recent months. Second, there is the noise of the gravel-crushing process, which extends well into the early hours of the morning when Boral elects to operate the Plant all night long. The impact of both aspects is most acute at night, when noise travels further, and when residents expect to be able to get to sleep in peace.

### 13.3 Notice of Motion - Boral Asphalt Plant

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I can attest from personal experience to the validity of the concerns being raised by residents. There have been many evenings this year when it has been extremely difficult to get to sleep because of the noise coming from the Plant, both from the rolling of the gravel and from the crunching of gears on heavy trucks. I have also on several occasions had to close all the windows of my home because of the foul-smelling odour from the fumes that come from the Plant. I worry about this situation, especially for families with young children.

[WMS.Admin@environment.nsw.gov.au](mailto:WMS.Admin@environment.nsw.gov.au) has reported receiving many complaints about truck noise, particularly at night, and about acid emissions at night that sometimes lingering on into the early morning. The extent of these complaints is not known, but comments made recently by an EPA staff member suggest that they are increasing in number.

The Council must advocate on behalf of Alstonville's residents to ensure that the EPA undertakes a comprehensive monitoring of the noise and the odours coming from the Plant, and of noise coming from the Quarry.

I sincerely ask for your support in this motion so that Council can be seen to do all within its capacity to ensure that the good health and amenity of existing and future residents are not compromised intentionally or unintentionally by actions taken under our auspices.

#### **Staff Comments**

Council's Public and Environmental Health Section is aware that the EPA has been liaising with Boral to discuss the monitoring requirements for air, odour and noise, including any subsequent management proposals at the Asphalt Plant at Gap Road, Alstonville. Given the EPA is the regulatory authority for these matters at the Asphalt Plant, it is considered appropriate for Council to request the EPA to develop and implement a suitable monitoring program in response to local resident concern.

In relation to road traffic noise Council is the responsible regulatory authority and if Boral is in breach of their issued development consent, Council will investigate complaints and follow through on any action to rectify any non-compliances that are identified.

It has also been confirmed with the EPA Officer specially dealing with all the Boral matters that there has not been any significant increase in complaints relating to air/odour and or noise to the EPA. The EPA has confirmed that they have not received any direct truck noise complaints since the granting of the recent Section 96 to modify the existing consent.



**COUNCILLOR RECOMMENDATION**

That Council make representation to the NSW Environment Protection Authority to undertake increased independent monitoring of odour emissions and noise impacts arising from the Boral Asphalt Plant and the Gap Road Quarry so as to assist in responding to community concerns about the adverse amenity impact and possible health risks associated with continued operation of the Plant and the Quarry.

**Attachment(s)**

Nil

### **13.4 Notice of Motion - 4WD Access at Angels Beach**

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### **13.4 Notice of Motion - 4WD Access at Angels Beach**

**Councillor** Cr Meehan

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I move

That Council take no further action in respect to the provision of a new 4WD access at Angels Beach.

#### **Councillor Comments**

Council has asked staff to investigate options for the provision of a new 4WD at Angels Beach. A number of options have already been presented to Council and the advice from staff is that the cost any new access will be up to \$50,000 in planning and initial consultancy fees, with tens of thousands of dollars, if not more, then required to construct a new access, if planning consent is eventually obtained.

The expenditure of these monies, as well as the impacts on this environmentally and culturally sensitive area, cannot be justified from a whole of community perspective, especially when there remains an access available at Sharpes Beach.

There is close pedestrian access to Angels Beach for fishermen and other beach users from formal carparks at Flat Rock tent park (north end of beach), The Coast Road (centre of beach) and from an informal car park at Black Head (south end of beach).

At the Coast Road car park, the area suggested for 4WD access, the current new car park is 50 metres from the beach sand. It is not unreasonable for a small number of night fishermen or women to walk this small distance, just as they would from a car parked on a beach to the water's edge.

Our resources are limited and the cessation of this proposal will allow our staff and financial resources to be focused on the many other important projects that we are undertaking as a Council.

#### **COUNCILLOR RECOMMENDATION**

That Council take no further action in respect to the provision of a new 4WD access at Angels Beach.

#### **Attachment(s)**

Nil

**14. Advisory Committee Minutes**

**14.1 Commercial Services Committee - 14 June 2017**

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**Attendance**

Crs David Wright (Mayor - in the chair), Phillip Meehan, Sharon Parry, Jeff Johnson, Stephen McCarthy, Nathan Willis, Keith Williams, Sharon Cadwallader (arrived at 4.02 pm) and Ben Smith.

Paul Hickey (General Manager), Matthew Wood (Acting Strategic and Community Facilities Group Manager), Paul Tsikleas (Manager Commercial Services), Linda Coulter (Manager Financial Services), Leanne Harding (Property Officer Commercial) and Sandra Bailey (Secretary) were in attendance.

There were three people in the gallery at this time.

**1. Apologies**

An apology was received from Cr Eoin Johnston.

**RECOMMENDATION**

(Cr Ben Smith/Cr Keith Williams)

That such apology be accepted and leave of absence granted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Eoin Johnston and Cr Sharon Cadwallader

**2. Declarations of Interest**

Nil

(Cr Sharon Cadwallader arrived at the meeting at 04:02 pm.)

**3. Deputations**

- **Ralph Mamone** – spoke in relation to Item 4.1 – Shellys on the Beach Lease – Update.

Cr Phillip Meehan left the meeting at 04:10 pm.

**Standing Orders**

**RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Nathan Willis)

That the Committee suspend standing orders to allow open conversation with Mr Mamone.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Eoin Johnston

Cr Phillip Meehan returned to the meeting at 04:14 pm.

Cr Phillip Meehan left the meeting at 04:24 pm.

**Standing Orders**

**RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Ben Smith)

That the Committee resume standing orders.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Eoin Johnston

**4. Committee Reports**

**4.1 Shellys on the Beach Lease - Update**

**RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Nathan Willis)

That Council notes the contents of this report regarding the status of the Shellys on the Beach lease.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Eoin Johnston

4.2 **Disposal of Surplus Council Land**

**RECOMMENDATION**

(Cr Ben Smith/Cr Sharon Cadwallader)

That Council notes the contents of this report in respect to the disposal of surplus parcels of land.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Eoin Johnston

5. **Confidential Session**

**RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Nathan Willis)

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

5.1 **Shellys on the Beach Lease - Update**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as commercial leasing matters are to be discussed.

5.2 **Disposal of Surplus Council Land - Pricing**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as Council is in the process of negotiating a sale for the properties in question.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Phillip Meehan and Cr Eoin Johnston

(The Council moved into Confidential Session at 4.26 pm).

(Cr Meehan returned to the meeting during the confidential session at 4.30 pm during the debate on Item 5.1.)

**Open Council**

**RECOMMENDATION**

(Cr Ben Smith/Cr Sharon Cadwallader)

That Council move into Open Council and out of Committee of the Whole.

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

(The Council moved into Open Council at 4.55 pm).

The General Manager reported to the Open Meeting the recommendations made while in Confidential Session:

**5.1 Shellys on the Beach Lease - Update**

**RECOMMENDATION**

(Cr Keith Williams/Cr Nathan Willis)

1. That Council reaffirms its previous decisions that it will not be providing any financing for the reconstruction of a restaurant / café on the Shellys on the Beach lease site.
2. That Council confirm its preferred position is for the existing tenant to surrender the lease to allow Council to call expressions of interest for the lease of the land, which will also allow the existing tenant to submit a new offer for the lease of the property.
3. That Council withdraw its previous offer of an extended lease.
4. That Council also obtain an independent valuation for the lease of this land.

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

**5.2 Disposal of Surplus Council Land - Pricing**

**RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Ben Smith)

1. That Council approves the sale of Lot 1 DP 850774 and Lot 104 DP 871675 at the negotiated prices.
2. That Council authorises the General Manager to fix the Council seal and execute all contract documentation for the sale of Lot 1 DP 850774 and Lot 104 DP 871675.

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

**Adoption of Recommendations from Confidential Session**

**RECOMMENDATION**

(Cr Keith Williams/Cr Sharon Cadwallader)

That the recommendations made whilst in Confidential Session, be adopted.

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

**MEETING CLOSURE**

4.57 pm

**RECOMMENDATION**

That Council confirms the minutes of the Commercial Services Committee meeting held 14 June 2017 and that the recommendations contained within the minutes be adopted.

**Attachment(s)**

Nil

## 15.1 Mayoral Meetings

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### 15. Reports from Councillors on Attendance on Council's behalf

#### 15.1 Mayoral Meetings

**Councillor** David Wright

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Activities since the May 2017 Ordinary meeting:

<u>Date</u>	<u>Function</u>
21/5/17	DPI – Lennox Head
22/5/17	Meeting – Potential Rural Development - Tuckombil
24/5/17	Love Lennox Launch
26/5/17	Funeral – Lawrie Kennedy
29/5/17	Meeting – Ben Franklin – High School Parking
30/5/17	Maggie and Mrs Jones – 81 Tamar
1/6/17	Meeting Lyn Walker
1/6/17	Meeting with Planners and DA Applicant for School
1/6/17	Meeting Steve Posselt – Bagot Park
2/6/17	Tree Planting Lennox Head
2/6/17	Ballina Art Society - 45 <sup>th</sup> Annual Exhibition
3/6/17	Love Lennox Festival
3/6/17	Scope 40 <sup>th</sup> Celebration Dinner
6/6/17	Alstonville/Wollongbar Chamber Meeting – SDA
6/6/17	Meeting Kevin Hogan – Paddy Bugden
6/6/17	Briefing – Ocean Breeze Reserve Masterplan
6/6/17	Briefing – Ballina Marina Masterplan
7/6/17	Art Advisory Panel Meeting
7/6/17	Wollongbar Progress Association
8/6/17	Meeting Settlers' Motel
10/6/17	Anniversary Philippine Independence Celebrations
11/6/17	Alstonville Markets
11/6/17	Commemoration Park Markets
11/6/17	Lennox Head Markets Site Inspection
11/6/17	Ellis Road Inspection
12/6/17	Jet Rescue Boat Vehicle Hand-over
13/6/17	Public Citizenship Ceremony
13/6/17	Briefing - ALEC Management
14/6/17	Traffic Committee
14/7/17	Briefing West Ballina Treatment Plant
14/6/17	Commercial Services Committee
16/6/17	Ballina Players – Joseph and the Amazing Technicolor Dreamcoat
17/6/17	Hospital Auxiliary Annual Craft Show
18/6/17	Commemoration Park Markets
18/6/17	Refugee week launch
19/6/17	Church Group
21/6/17	Alstonville Lions Changeover
22/6/17	Council Meeting
24/6/17	Tsunami Training – Shaws Bay



## **15.1 Mayoral Meetings**

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24/6/17	Heartfelt House Open Day
24/6/17	Ballina Lighthouse Surf Club Presentation
27/6/17	Ballina Lions Changeover
29/6/17	CWA International Day
30/6/17	View Clubs Area Gala Day
30/6/17	Ballina Food and Wine Festival Dinner

### **RECOMMENDATION**

That Council notes the contents of the report on Mayoral meetings.

### **Attachment(s)**

Nil

**16. Confidential Session**

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

**16.1 Lighthouse Beach Cafe - Tenancy Works and Lease Details**

Refer to Item 10.7 of this agenda.

**RECOMMENDATION**

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

**16.1 Lighthouse Beach Cafe - Tenancy Works and Lease Details**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as commercial leasing matters are to be discussed.