



## 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 October 2020 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. Planning and Environmental Health Division Reports
9. Corporate and Community Division Reports
10. Civil Services Division Reports
11. Notices of Motion
12. Advisory Committee Minutes
13. Reports from Councillors on Attendance on Council's behalf
14. 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.
- Deputations, per person, will be limited to a maximum of two items on the agenda.
- 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.
- Deputations on the same matter will be listed together with the opposition first and the speaker in affirmative second.
- Members of the public are advised that 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.
- To avoid conflicts of interest, real or perceived, deputations will not be accepted from:
  - Tenderers during a public tender or request for quotation
  - Persons or representatives from organisations seeking financial support from Council that involves an expression of interest
  - Consultants who are engaged by Council on the matter the subject of the deputation.

### **Public Question Time – This Session Does Not Form Part of the Ordinary Meeting**

- A public question time has been set aside during the Ordinary meetings of the Council. The Ordinary meeting will be adjourned from 12.45 pm for Public Question Time. If the meeting does not extend to 12.45 pm Public Question Time will be held after the meeting closes.
- 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 Ordinary meeting agenda.
- 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 question before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, multiple questions can be invited and considered.
- Recording of the questions will not be verbatim and will not form part of the minutes of the Ordinary meeting.
- The standard rules of behaviour in the Chamber will apply.
- Questions may be asked from the position in the public gallery.

## **Recording and Livestreaming of Council Meetings**

- The meeting (with the exception of the confidential session) is being livestreamed and recorded for on-demand viewing via Council's website (***ballina.nsw.gov.au/agendas-and-minutes***) and a person's image and/or voice may be broadcast.
- Attendance at the meeting is taken as consent by a person to their image and/or voice being webcast.
- All speakers should refrain from making any defamatory comments or releasing any personal information about another individual without their consent.
- Council accepts no liability for any damage that may result from defamatory comments made by persons attending meetings. All liability will rest with the individual who made the comments.
- This meeting must not be recorded by others without the prior written consent of the Council in accordance with Council's Code of Meeting Practice.

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1. Australian National Anthem
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**1. Australian National Anthem**

The National Anthem will be played.

**2. Acknowledgement of Country**

In opening the meeting the Mayor provided an Acknowledgement of Country.

**3. Apologies**

An apology has been received from Cr Nathan Willis.

**4. Confirmation of Minutes**

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 24 September 2020 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 24 September 2020.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

**8.1 DA 2014/31 - Section 4.55(2) Modification - Lennox Rise**

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**8. Planning and Environmental Health Division Reports**

**8.1 DA 2014/31 - Section 4.55(2) Modification - Lennox Rise**

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<b>Applicant</b>	Lennox Rise Pty Ltd
<b>Property</b>	Lot 1 DP 829277, Lot 99 DP 755684, Lots 1 & 2 1070446
<b>Proposal</b>	Section 4.55(2) Application to Modify Consent - To amend development consent 2014/31 by modifying the road and lot layout of the approved subdivision to create 138 residential lots and eleven superlots.
<b>Effect of Planning Instrument</b>	The land is partly zoned RU1 – Primary Production, RU2 – Rural Landscape, R2 – Low Density Residential, R3 – Medium Density Residential, and RE1 – Public Recreation under the provisions of the Ballina LEP 2012, and partly zoned 7(a) Environmental Protection (Wetlands), and 7(l) Environmental Protection (Habitat) under the provisions of the Ballina LEP 1987
<b>Locality Plan</b>	The subject land is depicted on the cadastral plan attached (Attachment 1) and Figure 1

**Introduction**

DA 2014/31 relates to the residential estate of 'Lennox Rise' (previously known as 'The Outlook'). The subject land is shown in Attachment 1 (cadastral plan) and Figure 1 (aerial photo).



**Figure 1: Lennox Rise - Aerial photo (site shown marked by purple dot)**

The land subject to this application forms part of what is referred to locally as “the Henderson Farm”.

### **Background**

Deferred Commencement Consent was issued for Development Application No. 2014/31 on 27 November 2014. The proposal involved a residential subdivision comprising two stages, with stage one including 159 residential lots, five public reserve lots, tree removal, civil infrastructure works and associated easements, and stage two consisting of concept approval for nine residential lots and one public reserve lot at 78 Hutley Drive, Lennox Head. The approved plans are provided in Attachment 2.

The approval was subject to two deferred commencement conditions relating to the provision of adequate legal access to the development and the preparation of an Environmental Rehabilitation Plan. The deferred commencement period was for three years and was to lapse on 27 November 2017.

On 24 July 2017 Council approved an extension of the deferred commencement consent period by a further 12 months (four years in total). The two deferred commencement conditions were required to be satisfied by 27 November 2018 otherwise the consent would lapse.

The deferred commencement consent conditions were satisfied and the consent became operative on 24 September 2018.

### **Details of the Proposed Amendment**

Consent of Council is sought under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 to amend Development Consent 2014/31 by modifying the road and lot layout of the approved subdivision, as shown on the proposed plans (Attachment 3).

The key changes to the plans are summarised as follows:

- Change in yield from 159 residential lots to 138 residential lots and eleven super lots for future integrated housing.
- Revised entry road alignment to provide an improved road intersection and grades.
- A revised bus route that meets grade requirements.
- Introduction of a perimeter road along the southern boundary to increase separation from the undeveloped Ballina Shire Council landholding.
- Improve lot orientation to reduce significant or piece meal retaining wall solutions.
- A rotation of the block layout to better address contours and provide a permeable road network.
- Provision of more conventional block depths, lot frontages and sizes.
- Removal of all battle axe lots with long driveways.
- Increase of the central open space area (Lot 301) to cater for a Fig tree, an avenue of trees and create a green link to the Ballina Shire Council landholding to the south.

- Increase in the area of the western area of open space (Lot 302) to cater for the fig tree.
- Removal of all lots within LUCRA buffer to provide a consistent perimeter road to the adjoining western land parcel.
- Use of perimeter roads and a revised lot layout to significantly reduce Asset Protection Zones (APZs) within the lots.
- Location of all lots in the north west corner of the site above the flood planning level.
- A revised layout to avoid relocation of the water main.
- Introduction of more perimeter roads adjacent to areas of open space.
- A reduction in the number of irregular shaped lots along the curved southern boundary.
- Inclusion of a house site for the residual central private reserve lot (Lot 116).
- Locate dry stone wall heritage item (Wall A) wholly within Council managed public land (road reserve).

### **Planning Proposal**

Council considered a planning proposal request for the land at its Ordinary Meeting on 27 June 2019 in relation to the subject site. The main impediment to the planning proposal request progressing related to the proposed subdivision outcome not having adequately addressed cultural heritage values associated with a heritage listed rock wall on the property. In relation to the matter, the Council resolved as follows:

1. *That Council invite the proponent to submit a subdivision plan that demonstrates the protection of the heritage rock wall identified as Item 167 in the Ballina Local Environmental Plan 2012.*
2. *That upon receipt of a suitable subdivision plan from the proponent, that Council prepare a planning proposal to amend the minimum lot size map of the Ballina Local Environmental Plan 2012 to provide for residential subdivision with a minimum lot size of 450m<sup>2</sup> on parts of Lot 1 DP1070466.*
3. *That the draft planning proposal be reported to Council for endorsement prior to seeking Gateway determination.*
4. *That Council request a detailed plan showing the location and management approach for the heritage rock wall.*

The location of the wall has been amended under the subject modification application to address item four of this resolution. A separate report has been included in this business paper in relation to the planning proposal.

### **Reportable Political Donations**

There are no known reportable political donations.

### **Public Exhibition**

The application was placed on public exhibition from 25 September 2019 to 10 October 2019 in accordance with Council's Policy.



Three public submissions were received during the exhibition period. The relevant matters raised in the submissions have been addressed in detail further in this report.

**Matters for Consideration**

The proposed development has been assessed under the heads of consideration in Section 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979*.

The assessment has identified the following key issues in relation to this application which are elaborated upon for the consideration of the elected members of Council. This report should be read in conjunction with the attached assessment report (Attachment 4).

**Section 4.55(2) Other Modifications**

The subject application has been lodged under section 4.55(2) of the Environmental Planning and Assessment Act 1979. This section allows Council to modify a consent subject to the following:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: The applicant has provided legal advice in support of their contention that the proposed modification will result in a development which is substantially the same development for which consent was originally granted. The legal advice addresses the key principles which apply to the test of “substantially the same”. This information is considered adequate and therefore the application can be determined under section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

Comment: The following approval and concurrence bodies were consulted in the assessment of this modification application.

<b>Agency</b>	<b>Comments</b>
NSW Rural Fire Service	Bushfire Safety Authority issued on 27 July 2020 with General Terms of Approval.
NSW Natural Resources Access Regulator	Email response provided on 19 May 2020 indicating that previously issued General Terms of Approval are adequate, remain current, and no further assessment by the agency is necessary.
NSW Department of Planning, Industry and Environment	Email response provided on 3 October 2019 indicating that no further concurrence is required.

- (c) *it has notified the application in accordance with—*
  - (i) *the regulations, if the regulations so require, or*
  - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comment: The application was placed on public exhibition from 25 September 2019 to 10 October 2019 in accordance with the Ballina DCP 2012 (now in the Community Participation Plan).

The matters raised in the three submissions (Attachment 5) are addressed as follows:

- 1) *The increase in density can only mean an increase in the amount of stormwater being discharged to North Creek. The bulk of the runoff should be directed into the proposed stormwater outlets and not the neighbouring property.*

Comment: An increase in impervious areas resulting from the development will increase the overall volume of stormwater entering North Creek from a number of discharge locations. However, stormwater volumes and flows that discharge onto the neighbouring property to the west (Lot 8 DP 772192) via existing flow paths have been reduced under the proposed amendment.

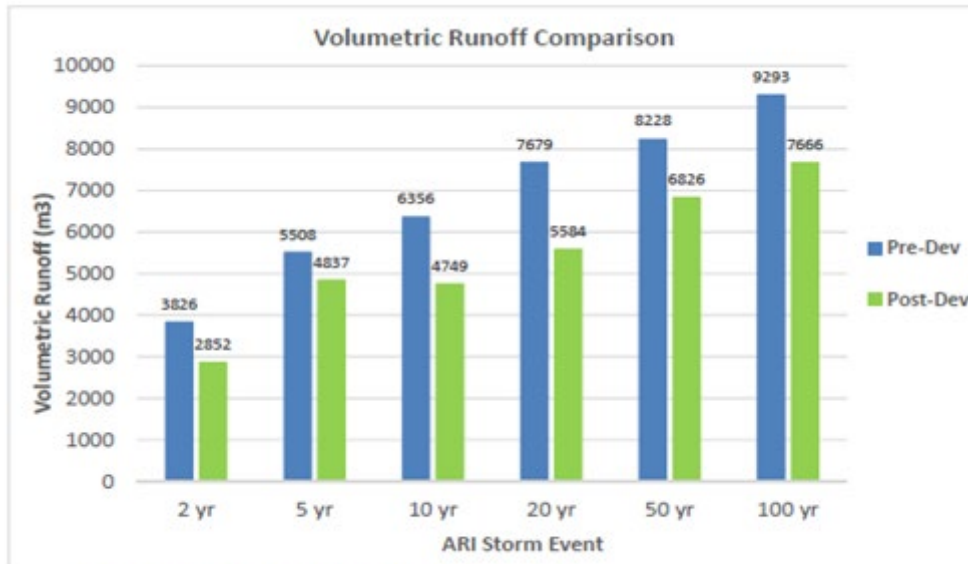
Generally, subdivision developments are required to match post-developed flows to pre-developed levels from a development site but not necessarily volume. In this case, Council has required the developer to match pre-developed flows and volume onto the neighbouring property. This has been achieved by redirecting existing flows through the development site to Hutley Drive and outlet 1 as illustrated by the following extract from the stormwater management plan (Figure 2). The reduction in volume and flows to the western drainage system on Lot 8 should reduce the pressure on the tidal gates referred to below and improve overall drainage on Lot 8.

Stormwater from catchment 9 that has existing overland flow paths towards Lot 8 is undeveloped with no change in impervious areas. Developed catchments 7 and 8 discharge via the northeastern corner of the subdivision lot to Birrung Creek via land owned by the developer.

### **3.8 Volumetric Runoff to Agricultural Drain on Adjoining Land**

Further DRAINS analyses has been undertaken to predict if the proposed stormwater network can achieve the objective of not increasing of volume of stormwater runoff entering the agricultural drain in the adjoining western property (Lot 8 DP 772193).

This has been quantified through a comparison of the combined runoff volumes of Outlet 2 and Outlet 3 between pre-developed and post-developed conditions. Runoff volumes per catchment and storm event were obtained as a function in DRAINS from the calculation of area under the median hydrograph. Figure 5 illustrates the comparison and highlights that the stormwater measures from the development will be limited to volumes in the pre-development scenario across the full range of storm events.



- Comparison of Volumetric Runoff to Lot 8 DP 772193

Figure 2: Extract from the Stormwater Management Plan

2) *As North Creek and the portion of drain that connects it to my floodgates are tidal, the floodgates can only discharge water runoff from my property at low tide. As the tide rises, so the floodgates close and allow no further drainage of my property until the next low tide. My concern is that during periods of significant rainfall, the scouring out of the drain from the increased flow from the proposed 190 block subdivision will cause blockage of the drain resulting in a rise in the water level precluding my floodgates from opening, resulting in my property flooding. What happens when the drain blocks and my property floods?*

Comment: Scour protection is required at all discharge locations from the development to maintain stream integrity and is generally addressed during the construction certificate phase of the development. Scour will not cause a blockage of the tidal drain connecting to North Creek. Generally, scour is caused by high velocity flows gouging out banks as opposed to creating blockage issues, however sedimentation from uncontrolled development can cause downstream blockages of a stormwater network.

In this case the upstream catchments entering the tidal drain are all protected by bio-retention basins, on site detention basins and gross pollutant traps in accordance with the required stormwater management plan and Council's stormwater treatment targets.

3) *Dry Stone Wall*

- *Concerns over the location and protection conservation of the dry stone wall given it is to be located becomes jointly owned by adjoining neighbours on private property.*
- *integrity of the stone wall to be compromised during construction and ongoing maintenance of fences.*
- *Private structures may protrude into the 'no built' zone.*
- *There appears to be roughly a one metre space between the wall and the water supply easement on the western side which could give rise to gardens or other structures being built against the stones.*

Comment: The approved plan for the original application showed the dry stone wall (Wall A) being located on the rear property boundary of 11 lots, adjoining Road 1. The amended plans for the modification initially proposed to locate Wall A along the rear boundary between residential allotments.

Due to concerns raised by Council in relation to the ongoing conservation and maintenance of this wall, treatment of boundary fencing in these lots and the subsequent impacts on the dry stone wall (i.e. if residents construct fencing up to and around this wall), the plans were amended again to position the wall entirely within Council's road reserve for Road 2 (refer to Attachment 3 and Figure 3).

The ongoing maintenance responsibilities relating to the wall for Council are considered reasonable relative to the benefits associated with the location of the wall in this circumstance. If the application is approved, suitable conditions are to be imposed regarding the restoration of the wall and final design of the road reserve.

An existing Rous County Council water main is located within close proximity to Wall A. This water main will also be positioned within the road reserve.

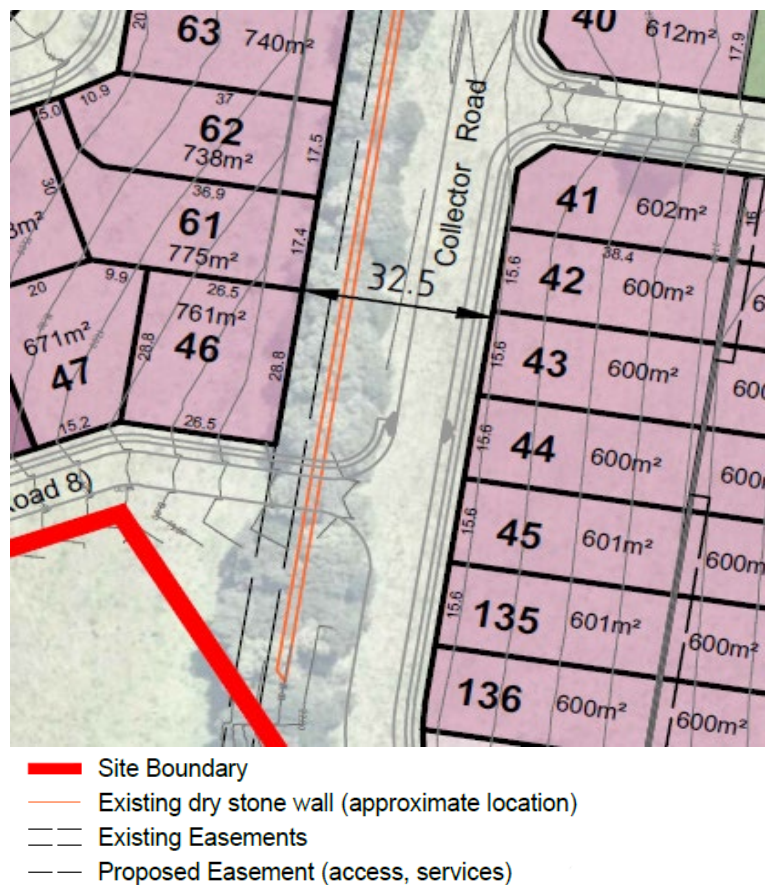


Figure 3 – Plan Showing Location of Heritage Wall A within Proposed Road Reserve

- 4) *Heritage records – Any photographic record of the original buildings on the site which are to be demolished as part of the development should be provided to the Lennox Head Heritage Committee.*



Comment: Under Part 4 of the VPA the landowner is to cause a Heritage Item Archival Recording to be prepared to the satisfaction of Council before a Subdivision Certificate is issued for any part of the Development on land on which a Heritage Item is situated. These records can be made available to the Lennox Head Heritage Committee.

**Matters for Consideration**

The consent authority must take into consideration the matters referred to in section 4.15(1) which are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

No reasons were given by the consent authority in the granting of consent to the original application.

The proposed development, as amended, has been assessed under the heads of consideration in Section 4.15 of the Environmental Planning and Assessment Act 1979 (refer to Attachment 4 for detailed assessment). The proposal is considered to be generally compliant with the BLEP 2012, Council's DCP 2012 and the remaining matters listed within Section 4.15 of the Act. The assessment has identified the following key issues which are elaborated upon for Council's information and consideration.

**Section 4.15(1)(a)(i) provisions of any environmental planning instrument**

<b>Relevant State Environmental Planning Policies (SEPPs)</b>	
SEPP 55 – Remediation of Land SEPP – (Coastal Management) 2018	No issues are raised in relation to any applicable SEPP. Refer to Attachment 4 for further comment and assessment.
<b>Local Environmental Plans (LEPs)</b>	
Ballina LEP 2012 <ul style="list-style-type: none"> <li>• Zoning under BLEP 2012, and regard for zone objectives (Clause 2.3)</li> <li>• Minimum subdivision lot size (Clause 4.1)</li> <li>• Heritage Conservation (Clause 5.10)</li> <li>• Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones (Clause 5.16)</li> <li>• Acid Sulfate Soils (Clause 7.1)</li> <li>• Earthworks (Clause 7.2)</li> <li>• Flood Planning (Clause 7.4)</li> </ul>	Zone R2 – Low Density Residential R3 – Medium Density Residential RE1 – Public Recreation RU1 – Primary Production RU2 – Rural Landscape  <i>Objectives</i> The proposal generally complies with the aims of the BLEP 2012 and achieves the objectives of the applicable zones.  <i>Part 4 and 7</i> The development complies with the relevant development standards and is acceptable having regard for the relevant additional local provisions in the Plan.

<ul style="list-style-type: none"> <li>• Airspace Operation (Clause 7.5)</li> <li>• Essential Services (Clause 7.7)</li> <li>• Strategic Growth Area (Clause 7.8)</li> </ul>	<p>Refer to Attachment 4 for further comment and assessment of the relevant provisions.</p>
<p>Ballina LEP 1987</p> <ul style="list-style-type: none"> <li>• Aims, objectives of BLEP (Clause 2)</li> <li>• Development of land at Henderson Farm, Lennox Head (Clause 33)</li> </ul>	<p><b>Zone</b></p> <ul style="list-style-type: none"> <li>• 7(a) Environmental Protection (Wetlands)</li> <li>• 7(l) Environmental Protection (Habitat)</li> </ul> <p>The urban footprint of the development will not encroach into the 7(a) and 7(l) zoned areas. These areas will be rehabilitated in accordance with the requirements of the Voluntary Planning Agreement (VPA) and the approved Environmental Rehabilitation Plan.</p> <p>Once rehabilitated, the 7(l) portion of the site (east) will be dedicated to Council.</p> <p><b>Objectives</b></p> <p>The development, as amended, remains generally consistent with the aims and objectives of the BLEP 1987 and the relevant zones.</p> <p>Refer to Attachment 4 for further comment and assessment of the relevant provisions.</p>

**Section 4.15(1)(a)(ii) the provisions of any proposed instrument**

Planning Proposal BSCPP 19/002 was lodged on Lot 1 DP 1070446 and is directly related to the subject modification application. It seeks to change the minimum lot size of the proposed superlots (zoned R3 under the BLEP 2012) from 600m<sup>2</sup> to 450m<sup>2</sup>. A separate report is included in this business paper in relation to the Planning Proposal. The current status or ultimate outcome of this planning proposal does not prevent the approval of the current modification application. That is, although not the preferred outcome for the applicant, development of the land for residential purposes can proceed under the current lot size provisions.

**Section 4.15(1)(a)(iii) provisions of any development control plan**

The proposed application is subject to the provisions of the Ballina Shire Development Control Plan 2012. The development, as amended, is acceptable when assessed against the relevant provisions of Chapter 2 of the Ballina DCP 2012.

There are no issues raised in this section that would specifically preclude the development from being amended in the manner proposed.

Refer to Attachment 4 for an assessment of the provisions that are relevant to this application.

**4.15 (1) (a) (iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4**

The site and development is subject to a Voluntary Planning Agreement (VPA) between the landowner and Council. The Henderson Farm Planning Agreement relates to Development Contributions (Part 2), Environmental Rehabilitation Works (Part 3), and Archival Recording of Local Heritage (Part 4). The landowner is obliged to satisfy the terms of the VPA in undertaking the development.

**4.15 (1) (a) (iv) – any matters prescribed by the regulations**

No issues raised.

**4.15 (1) (b) – the likely impacts of that development**

The development footprint will remain the same as previously approved. The development, as amended, is not expected to result in significant additional adverse impacts on the environment or broader locality. Refer to Attachment 4 for further assessment in relation to the likely impacts of the development.

**4.15 (1) (c) – The suitability of the site for the development**

The subject site has been identified and zoned for urban subdivision, and approval has been issued previously for this form of development. The amended residential subdivision has regard for the site constraints and physical characteristics of the land and is considered to be of a suitable density, configuration and character, (as anticipated when the land was rezoned) and generally complies with the Ballina Local Environmental Plan and Development Control Plan. The site is suitable for the development and will fit in the locality.

**4.15 (1) (d) Any submission made in accordance with this Act or the Regulations?**

Addressed previously in this report.

**Physical Commencement**

The original development consent was issued by Council on 27 November 2014 and would have therefore lapsed on 27 November 2019 unless it is otherwise physically commenced in accordance with section 4.53(4) of the Environmental Planning and Assessment Act 1979.

The applicant has provided evidence that engineering works were undertaken for the development, prior to the lapsing date. The development has therefore physically commenced in accordance with section 4.53(4) of the Environmental Planning and Assessment Act 1979.

**Options**

*Option 1 – Grant consent to the application*

It is recommended that Council grant consent to the modification application, subject to details of Amendment 2 set out in Attachment 6.

*Option 2 – Refuse the application*

Council could determine the application by way of refusal. This option is not recommended given that the assessment has concluded that the proposal, as amended, meets the applicable planning requirements and will not result in unreasonable adverse impacts on the environment. If the modification application is refused, the developer may still undertake the development in accordance with the original approval.

*Option 3 – Defer determination of application*

Council could defer determination of the application to obtain additional information or hold a Councillor briefing of the matter. This option is not recommended on the basis that sufficient information has been submitted to undertake a comprehensive assessment of the application.

**Conclusion**

The amended development has been assessed and consideration has been given to all the relevant matters listed in Section 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979, including the provisions of the Ballina Local Environmental Plan 1987 and 2012, the Ballina Shire Development Control Plan 2012 and submissions made in response to the exhibition and notification of the application.

Having regard for the outcomes of the assessment, it is recommended that the application for the modification of development consent 2014/31 be determined by way of approval in the manner described in Attachment 6.

**RECOMMENDATION**

That the modification application to Development Application 2014/31 to amend the road and lot layout of the approved subdivision including the creation of eleven super lots for future integrated housing and a final overall yield of 189 lots at Lot 1 DP 829277, Lot 99 DP 755684 and Lots 1 & 2 DP 1070446 Henderson Lane and 78 Hutley Drive, Lennox Head be **APPROVED** in the manner set out in Attachment 6.

**Attachment(s)**

1. Cadastral Plan
2. Approved Plans
3. Proposed Amended Plans
4. Assessment Report
5. Public Submissions
6. Details of Amendment No.2



## 8.2 Planning Proposal - Lennox Rise, Lennox Head

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### 8.2 Planning Proposal - Lennox Rise, Lennox Head

#### Delivery Program

Strategic Planning

#### Objective

To seek direction on a proposed amendment to the Ballina Local Environmental Plan 2012 (BSCPP 19/002) relating to minimum lot size for subdivision associated with the Lennox Rise residential estate in Lennox Head.

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#### Background

Council considered an LEP amendment request in relation to the Lennox Rise development area (formerly known as the “Henderson Farm”) at its Ordinary meeting held 27 June 2019.

The location of the land is shown in Figure 1.



**Figure 1: Lennox Rise Location (site shown marked by purple dot)**

The request involved the application of a 450m<sup>2</sup> minimum lot size for subdivision to parts of the subject land (areas zoned R3 Medium Density Residential) to provide for an increased diversity in residential block sizes within the future estate.

At the time, Council was concerned that the revised subdivision plan did not adequately take into account the practical protection of a heritage listed rock wall located on the property.

In relation to this matter, Council resolved as follows:

## 8.2 Planning Proposal - Lennox Rise, Lennox Head

1. That Council invite the proponent to submit a subdivision plan that demonstrates the protection of the heritage rock wall identified as Item 167 in the Ballina Local Environmental Plan 2012.
2. That upon receipt of a suitable subdivision plan from the proponent, that Council prepare a planning proposal to amend the minimum lot size map of the Ballina Local Environmental Plan 2012 to provide for residential subdivision with a minimum lot size of 450m<sup>2</sup> on parts of Lot 1 DP1070466.
3. That the draft planning proposal be reported to Council for endorsement prior to seeking Gateway determination.
4. That Council request a detailed plan showing the location and management approach for the heritage rock wall.

Following the Council's resolution, the proponent lodged a revised subdivision plan. This revised plan forms the basis of a proposed modification to DA 2014/31 that is the subject of a report at Item 8.1 of this agenda. A copy of the subdivision plan is included in Appendix 5 of the planning proposal provided as Attachment 1 to this report.

The purpose of this report is to present the planning proposal with the revised subdivision plan and seek direction on progressing the proposed amendment.

### Key Issues

- Urban growth area development outcomes and housing diversity

### Information

As indicated above, and further detailed report at Item 8.1 of this agenda relating to DA 2014/31, a revised subdivision layout has been prepared and lodged having regard to the practical protection of the heritage rock wall located on the site. The revised subdivision plan addresses the protection of the heritage rock wall via an expanded road reserve incorporating the wall into the public domain (Figure 2).

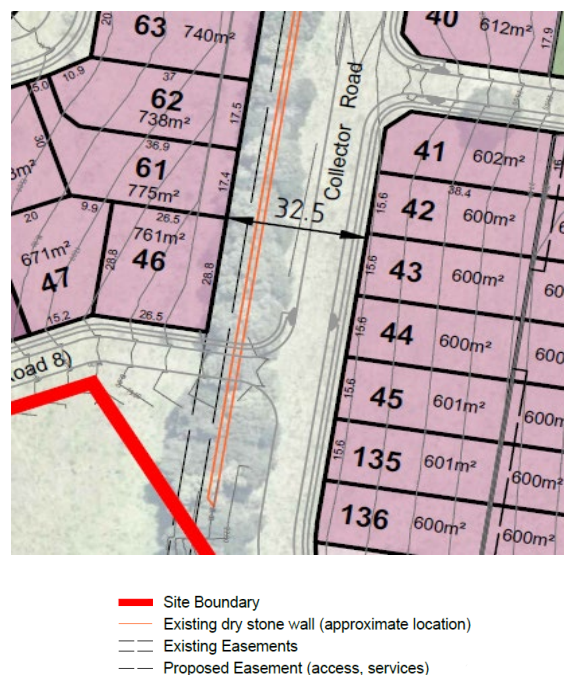


Figure 2: Location of Heritage Wall Within Road Reserve

## 8.2 Planning Proposal - Lennox Rise, Lennox Head

Whilst the amended arrangement will involve increased Council maintenance of this widened public reserve, the proposal appears to achieve an improved design outcome, preserving the heritage values of the site and facilitating improved public access to the heritage features of the site.

Having regard for the above, a planning proposal has been prepared that would provide for the application of a 450m<sup>2</sup> minimum lot size to parts of the site (Figure 3).



**Figure 3: Existing (left) and Proposed (right) Minimum Lot Size Maps**

The areas proposed for the application of a 450m<sup>2</sup> minimum lot area for subdivision align with eleven superlots proposed under the modification to DA 2014/31.

No change to the zoning of the land is proposed (the areas the subject of the proposed lot size standard amendment are currently zoned R3 Medium Density Residential).

The proposed amendment is consistent with principles relating to housing diversity and choice applicable under the strategic planning framework applying to the land (as outlined in the draft planning proposal contained in Attachment 1).

A copy of the draft planning proposal is provided as Attachment 1 to this report.

With respect to the proposed modification to DA 2014/31, although the modification and the planning proposal are related in so far as the planning proposal relates to proposed superlot areas, the determination of the DA modification is not dependent on the LEP amendment.

That is, subdivision of the land can proceed under the modified DA if approved (subject to the existing minimum lot size standard that applies to the land).

### Sustainability Considerations

- **Environment**  
Matters of environmental heritage protection have been addressed through redesign of the proposed subdivision.
- **Social**  
The planning proposal request would result in a greater diversity of dwelling types available within the locality.
- **Economic**  
The planning proposal does not have any significant implications on the economic wellbeing of Ballina Shire.

### Legal / Resource / Financial Implications

The preparation of a planning proposal can be accommodated within existing resources, including through the receipt of associated fees.

The legal effect of a planning proposal applying to the subject land, would be to enable the lodgment of development applications for subdivision of land to create lots with a minimum area of 450m<sup>2</sup> (reduced from a minimum of 600m<sup>2</sup>) in the areas so designated through the LEP amendment (being the areas marked G and shown green in Figure 3).

### Consultation

No community or agency consultation has occurred to date with respect to this matter.

The matter would be subject to the usual community and agency consultation requirements associated with planning proposals and would be subject to the terms of any Gateway determination issued by the NSW Department of Planning and Environment should one be received.

Due to Council's interest in land directly adjacent to the subject site, it is recommended that Council not seek to exercise plan making delegations in relation to this matter.

### Options

The following options are presented for the Council's consideration:

*Option 1 - Council could resolve to refer the planning proposal provided in Attachment 1 to the Department of Planning and Environment for Gateway determination.*

The planning proposal seeks to amend the minimum lot size map of the Ballina Local Environmental Plan 2012 to provide for residential subdivision down to 450m<sup>2</sup> on parts of Lot 1 DP1070466 zoned R3 Medium Density zone, as outlined in the planning proposal in Attachment 1.

## **8.2 Planning Proposal - Lennox Rise, Lennox Head**

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This option is recommended on the basis that the provision of a portion of residential allotments with an area of 450m<sup>2</sup> over parts of the site provides for increased housing diversity and choice within the estate, consistent with the strategic planning framework applicable to the site.

This approach also supports the maximisation of the use of existing residential zoned land in Lennox Head for housing.

*Option 2 - Council could resolve to decline the LEP amendment request.*

Under this option, Council would write to advise the landholder that the request is not supported.

This option is not recommended for the reasons detailed with respect to Option 1.

*Option 3 - Council could defer consideration of the matter.*

If further information is desirable, the matter could be deferred in favour of a briefing or provision of additional details. This option is not recommended for the reasons detailed with respect to Option 1.

### **RECOMMENDATIONS**

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 19/002 – Lennox Rise) contained within Attachment 1 to apply a 450m<sup>2</sup> minimum lot size standard to parts of the Lennox Rise development area for submission to the Department of Planning and Environment for a Gateway determination.
2. That the Department of Planning, Industry and Environment be advised that Council does not wish to exercise its delegated plan making functions for this LEP amendment due to Council having a land holding adjacent to the land the subject of the planning proposal.
3. That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
4. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

### **Attachment(s)**

1. BSCPP 19/001 - Lennox Rise Planning Proposal (v1 Council Report)

### 8.3 Planning Proposal - Rural Function Centres

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#### 8.3 Planning Proposal - Rural Function Centres

**Delivery Program**

Strategic Planning

**Objective**

To seek direction on a proposal to amend the Ballina Local Environmental 2012 to alter the local planning framework for function centres (including wedding venues) in rural parts of the Shire.

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**Background**

Council considered a report at the Ordinary meeting held 25 October 2018 regarding the planning framework applying to function centres within rural areas of the shire. A copy of the October 2018 report is provided in Appendix 1 of the planning proposal provided at Attachment 1 to this report.

Council resolved as follows:

- 1. That Council prepare a planning proposal to introduce a special provision to identify matters to be considered in association with the assessment of development applications for function centres on land zoned RU2 Rural Landscape under the provisions of the Ballina Local Environmental Plan 2012.*
- 2. The planning proposal be referred to Council for endorsement prior to being forwarded to the Department of Planning and Environment for a Gateway determination.*
- 3. That suitable draft development controls be prepared for inclusion within Ballina Shire Development Control Plan 2012 which relate to premises which are proposed to be used for the holding of wedding receptions in rural and environmental zones, such as function centres, food and drink premises, refreshment rooms and places of assembly. The proposed draft DCP controls be reported to the Council for consideration together with the planning proposal referred to in Item 2 above.*

At the time, Byron Shire Council was undergoing the initial public exhibition process associated with an amendment to the Byron Local Environmental Plan 2014 which sought to provide for improved development controls in association with wedding venues.

It was considered prudent to observe the passage of the Byron Shire amendments through the public exhibition process and liaison with the Department of Planning, Industry and Environment, prior to progressing this matter.

The Byron Shire Rural Functions Centres Planning Proposal and associated development control plan amendment was finalised on 7 August 2020 following several rounds of public exhibition.

Byron Shire's approach to the LEP and DCP amendments has gone through a number of iterations during this process, with the outcome forming the basis of the proposed approach for regulating functions centres outlined in this report, with a minor exception.



### Key Issues

- Economic development
- Tourism
- Rural amenity
- Agricultural productivity

### Information

As outlined in the October 2018 Council report, the operation (and proposed operation) of function centres in rural areas has often given rise to concerns regarding the impacts of wedding events on rural amenity and farm production. The approach outlined below has been developed having regard for this.

#### *Planning Proposal*

A planning proposal has been prepared in accordance with the Council's resolution drawing on Byron Shire's experience in progressing their planning proposal through public exhibition and liaison with the Department of Planning, Industry and Environment.

The recommended LEP amendments and supporting development control plan provisions for Ballina Shire are set out in the planning proposal contained in Attachment 1.

The planning proposal involves the introduction of a new clause in the LEP (the Ballina Local Environmental Plan 2012) that seeks to minimise the impacts associated with function centres occurring in rural parts of the shire.

As outlined in the October 2018 Council report, function centres (which typically encompass development involving the provision of weddings) are permissible in a number of urban zones. In the non-urban environment, however, function centres are permissible only on land zoned RU2 Rural Landscape zone under the Ballina Local Environmental Plan (LEP) 2012. Function Centres are prohibited in the RU1 Primary Production zone and will remain so under the terms of the planning proposal as drafted.

The planning proposal involves listing function centres as a prohibited land use within the RU2 zone land use table, but enabling it via a special clause that requires the satisfaction of a number of assessment requirements and development standards. The clause would also limit the development consent for function centres on RU2 land to no longer than three years.

In considering development applications for rural function centres, the proposed LEP provision requires that the consent authority be satisfied that the development will:

- not comprise a convention centre, exhibition centre or music festival;
- be small scale and low impact;
- not generate noise, traffic, parking or light spill that would significantly impact on surrounding residential uses; and
- not impair the use of the surrounding land for agriculture or rural industry.

### 8.3 Planning Proposal - Rural Function Centres

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The LEP will also require that the operation of function centres involve:

- No more than 1 event will be held at the function centre on any one weekend;
- No more than 20 events will be held at the function centre in any period of 12 months; and
- No more than 150 guests will be permitted to attend an event at the function centre at any one time.

The detailed wording of the draft clause is provided in Section 3.1.2 of the attached planning proposal.

Whilst this approach does not address wedding events that occur within approved food and drink premises (such as restaurants and cafes) located in rural areas, the development assessment process for such activities (including consideration of amenity impacts, access arrangements, hours of operation and capacity) should address as a matter of course the potential impacts associated with the use of such facilities as occasional wedding venues.

The prohibition of function centres in the RU2 zone with the use of a special clause to enable the use in the zone in certain circumstances allows Council to further narrow the application of the function centres definition (in particular by excluding convention centre, exhibition centre and music festival uses).

#### *Temporary Use Clause*

As noted in the October 2018 Council report in some situations rural wedding venues in Ballina Shire have been proposed and operate as a 'temporary use of land', subject to clause 2.8 of the Ballina LEP 2012.

Clause 2.8 allows for temporary uses, occurring for periods no greater than 52 days in any 12 month period, provided that the land is returned to its original condition after use and the activity does not adversely impact on adjoining land or the amenity of the neighbourhood.

This approach has also been used in other North Coast local government areas with respect to rural wedding venues.

With the proposed change in approach to rural function centres outlined in this report, it is also recommended that Council change the maximum number of days set in the temporary use clause to limit the application of this provision.

Ideally, the maximum number of days for a temporary use should be set at a lesser period than that provided for by the function centres provisions in order to remove the incentive for potential applicants to continue to seek approval of rural function centres under the temporary uses provisions.

It is also considered reasonable that the reliance upon the temporary use clause should apply only to infrequent low-impact activities that are otherwise prohibited by virtue of being unusual or difficult to define in land use planning terms.

The original basis for the temporary use of land clause enabling such uses for up to 52 days included consideration of provision for weekly markets. However,



### 8.3 Planning Proposal - Rural Function Centres

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markets (and other special events) are subject to various exempt and complying development provisions that have developed since the original consideration of the clauses construction. That is, there are other planning pathways for these types of use now available.

It is noted that beyond use in association with rural wedding venues, the temporary use clause is not often relied upon.

The rural function centre provisions set out in this report and the attached planning proposal set a maximum period of use for rural wedding venues at no more than 20 days per 12 month period. Having regard for this, it is recommended that the temporary use clause be amended to provide for temporary uses at a maximum of 14 days per 12 month period.

The provision for a maximum of 14 days would, for example, provide for a once per month activity (with two additional days for flexibility) or a continuous activity occurring over a two week period.

This approach has been included in the attached planning proposal.

#### *Development Control Plan*

Proposed amendments to the Ballina Development Control Plan 2012 (Chapter 7 – Rural Living & Activity) are included in Appendix 2 of the attached planning proposal.

The development controls address matters of site suitability and the management of events/functions.

Site suitability criteria include the consideration of acoustic assessments (to be undertaken by qualified acoustic consultants), traffic impact assessments and rural land use conflict assessment.

The event management provisions include requirements and guidance with respect to the preparation of a site management plan addressing matters such as the transport of guests to and from the site, hours of operation, notification of neighbours, and other measures to mitigate environmental impacts and the potential for land use conflict to arise.

The approach outlined in the planning proposal mirrors that of Byron Shire Council's planning proposal, with the exception of the following. The Byron Shire DCP amendment advised that:

*“A condition of approval will be applied for all development consents for a function centre in Zone RU2 specifying that development consent would cease if three substantiated complaints were received in relation to functions and/ or events at the site within a twelve-month period.”*

This approach is not recommended. The preferred approach is to apply conditions of consent relative to the circumstances of the particular development and undertake enforcement activity if and as required.

With the time limited consent in place, a history of non-compliance may be taken into account should the applicant seek a further development consent after the initial three year period.

A key intention of the time limited consent approach is to encourage function centre operators to ensure their own (and their guests') compliance.

This approach would also avoid challenges in court that may occur should there may be disagreement over whether instances of non-compliance are adequately 'substantiated' so as to void the development consent.

#### **Sustainability Considerations**

- **Environment**

This matter has implications for the carrying out of development on land within rural zones that may impact on the natural environment. Notwithstanding, the draft LEP and DCP provisions seek to cause detailed consideration of environmental matters and identification of mitigation measures to address identified impacts.

- **Social**

The holding of wedding events can have positive and negative social impacts associated with a sense of place, rural and neighbourhood amenity and social cohesion.

- **Economic**

Commercial wedding events can have positive economic impacts as well as negative impacts associated with neighbourhood amenity and impacts on agriculture.

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

The processing of a planning proposal and DCP amendment can be accommodated within existing resources.

It is anticipated that the amendment of the LEP and DCP will provide a greater level of certainty regarding the legal status of wedding venues in the Shire.

#### **Consultation**

If Council resolves to proceed to prepare a planning proposal, the usual community consultation processes would apply.

Typically, this involves the public exhibition of the planning proposal for a minimum of 28 days, or otherwise in accordance with the terms of the Gateway determination.

#### **Options**

*Option 1 – Council could resolve to endorse the planning proposal and associated DCP amendment.*

This option would involve updating the planning proposal to incorporate the Council's decision, followed by referral to the NSW Department of Planning, Industry and Environment (DPIE) for Gateway determination.

### 8.3 Planning Proposal - Rural Function Centres

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Subject to the receipt of an affirmative Gateway determination, the planning proposal would then be publicly exhibited and referred for Government agency response. Following the public exhibition, the planning proposal and public submissions received would be reported to the Council for further consideration.

This option is recommended on the basis that the proposed approach seeks to balance the needs of industry for improved clarity regarding the permissibility of rural function centres, while providing appropriate protections for rural amenity and agricultural production. This option is also recommended given that the approach proposed has been endorsed by DPIE in relation to Byron Shire.

Alternatively, Council could endorse amendments to the LEP and DCP in line with the principles set out in the planning proposal in Attachment 1 but with amendments as determined by Council.

Should Council proceed with this option, Council also needs to determine whether to exercise its delegated plan making functions for this LEP amendment. It is recommended that Council seeks agreement from the DPIE to exercise the plan making delegation in this instance.

*Option 2 – Council could resolve to prohibit function centres in the RU2 Rural Landscape zone.*

This option would have the result of making function centres prohibited in all rural parts of the Shire. This would involve the preparation of a planning proposal to amend the Ballina Local Environmental Plan 2012 to list Function Centre as a prohibited land use within the RU2 Rural Landscape zone, with no special enabling clause as is the case in the planning proposal referred to in Option 1 above.

This option is not recommended for the reasons set out under Option 1 above and as outlined in the October 2018 Council report. In addition, it is not clear whether the Department of Planning, Industry and Environment would support such a planning proposal having regard for the objectives of the North Coast Regional Plan.

*Option 3 – Council could defer this matter to a Council briefing.*

Whilst this option is not recommended, it is available should Council wish to receive further information on this matter.

### **RECOMMENDATIONS**

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 relating to function centres and temporary use of land as outlined in the planning proposal (BSCPP 18/005) for submission to the Department of Planning, Industry and Environment for a Gateway determination.
2. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
3. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
4. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

### **Attachment(s)**

1. BSCPP 18/005 - Function Centres Planning Proposal - Oct 2020 - Council Report Version

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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### 8.4 Planning Proposal - 23 Compton Drive, East Ballina

#### Delivery Program

Strategic Planning

#### Objective

To inform the Council of the outcomes of the public exhibition of Planning Proposal BSCPP 17/012, 23 Compton Drive, East Ballina and adjacent public land and to seek direction on the finalisation of this LEP amendment.

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#### Background

Council, at the Ordinary meeting held 25 January 2018 considered a report on an LEP amendment request relating to Lot 3 DP 525783, 23 Compton Drive, East Ballina and the adjacent public land (Lot 1 DP 781542).

The application proposed to rezone part of this land from Deferred Matter 7(d) Environmental Protection (Scenic / Escarpment) zone under Ballina LEP 1987) to R2 Low Density Residential under the Ballina Local Environmental Plan 2012 (BLEP 2012) and to apply a 600m<sup>2</sup> minimum lot size to the area proposed for the R2 zoning.

Council subsequently resolved as follows:

1. *That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 17/012 – 23 Compton Drive East Ballina) contained in Attachment 2.*
2. *That Council submit BSCPP 17/012 – 23 Compton Drive East Ballina to amend the Ballina Local Environmental Plan 2012 to the NSW Department of Planning & Environment for Gateway determination.*
3. *That the Department of Planning & Environment be advised that Council does not wish to exercise its delegated plan making functions for this LEP amendment as the planning proposal involves Council owned land.*
4. *That upon an affirmative Gateway determination being received from the Department of Planning and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.*
5. *That the planning proposal be reported to the Council for further consideration following the completion of the public exhibition of the proposed LEP amendments.*

The planning proposal has been publicly exhibited following the receipt of an affirmative Gateway determination.

This report further considers the merits of the planning proposal following consultation and public exhibition and seeks direction on the finalisation of the matter.

Attachment 1 contains a copy of the exhibited planning proposal.

The technical reports which formed part of this document will be distributed to Councillors separately.

### Key Issues

- Outcomes of the public exhibition and consultation process
- Suitability of the site for the proposed residential zoning
- Finalisation of the LEP amendment

### Information

#### *Planning proposal details*

The proposed LEP amendment relates to part of Lot 1 DP 781542 (Lot 1) and part of Lot 3 DP 525783 (Lot 3).

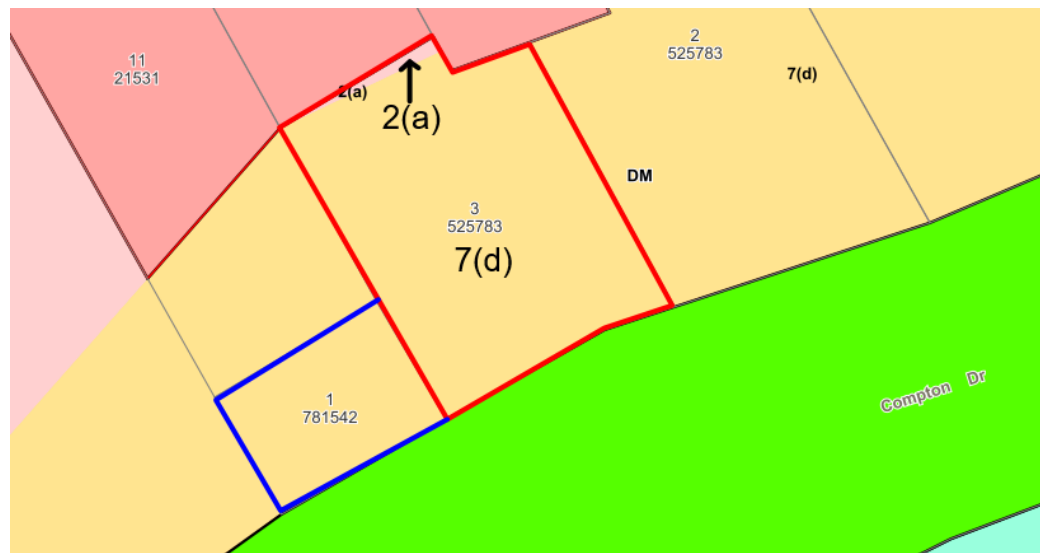
Lot 1 is council owned and has an area of 158.1m<sup>2</sup>.

Lot 3 is in private ownership and has an area of 537.5m<sup>2</sup>.

Lot 3 is substantially zoned 7(d) Environmental Protection (Scenic / Escarpment) zone under the provisions of BLEP 1987. A small triangular section located within Lot 3, having an area of approximately 12m<sup>2</sup>, is zoned Residential 2(a) Living Area also under the provisions of BLEP 1987. The whole of Lot 1 is zoned 7(d).

The 7(d) and 2(a) zoned areas are deferred matters under the provisions of BLEP 2012. As such the provisions of BLEP 1987 continue to apply.

The zones as they currently apply to Lots 1 and 3 are shown in Figure 1 below. Lot 1 is depicted by the part blue outline and Lot 3 is outlined in red.

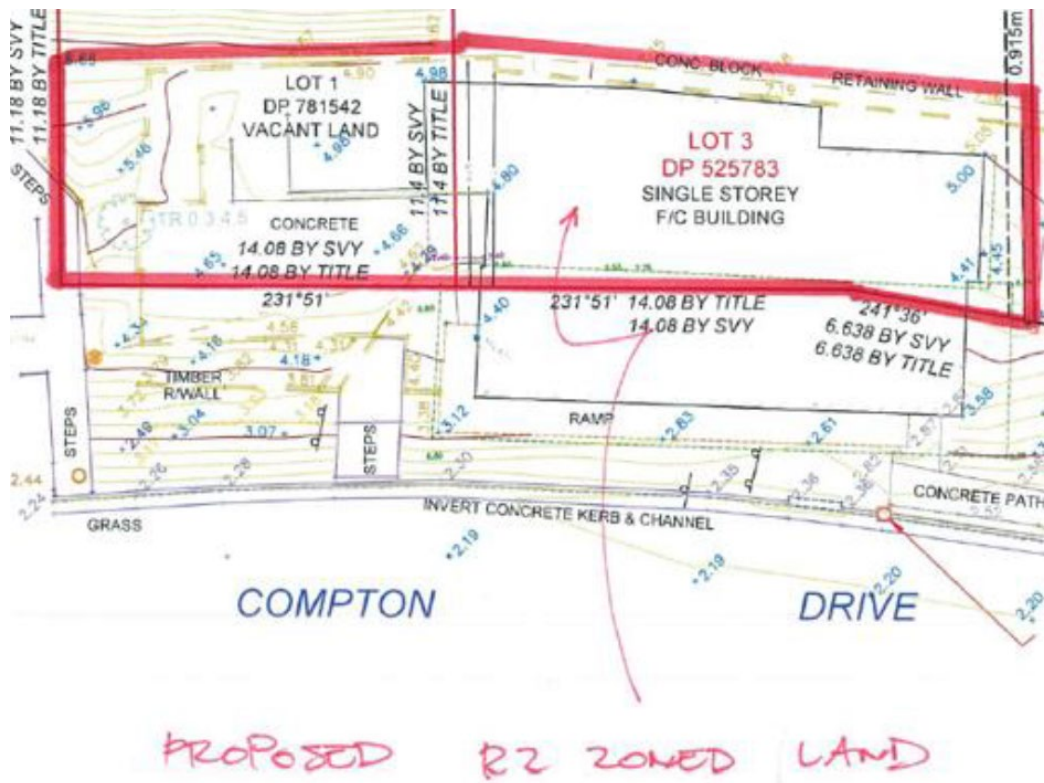


**Figure 1: Existing Zoning Diagram**

The planning proposal as exhibited provides for the rezoning of part of lots 1 and 3 to R2 Low Density Residential zone under the provisions of BLEP 2012. It also provides for a 600m<sup>2</sup> minimum lot size, and 8.5m building height limit, to be applied to the rezoned areas. Consequential amendments to the Acid Sulfate Soils Map and the Land Application Map under the provisions of BLEP 2012 would also be required.

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

Figure 2 is an extract from the exhibited planning proposal which shows by red outline the extent of the area proposed to be rezoned to R2. This area is less than the area the subject of the Gateway determination as it excludes the northern part of Lot 1 and the corresponding adjacent area on Lot 3.



**Figure 2: Extract from exhibited planning proposal showing extent of proposed R2 zone.**

Figure 3 contains an extract from a revised survey plan submitted by the proponent in April 2020. It indicates by the grey colour a reduced area (12m<sup>2</sup> approx) for the proposed R2 zoned area located within Lot 1.

The reduction occurred so as to ensure that a small portion of the existing stairs and a sewer main are located outside of the proposed R2 zone.

The revised survey plan also excludes the northern section of Lot 1, which contains some of the Endangered Ecological Community vegetation (Littoral Rainforest and Coastal Vine Thicket).

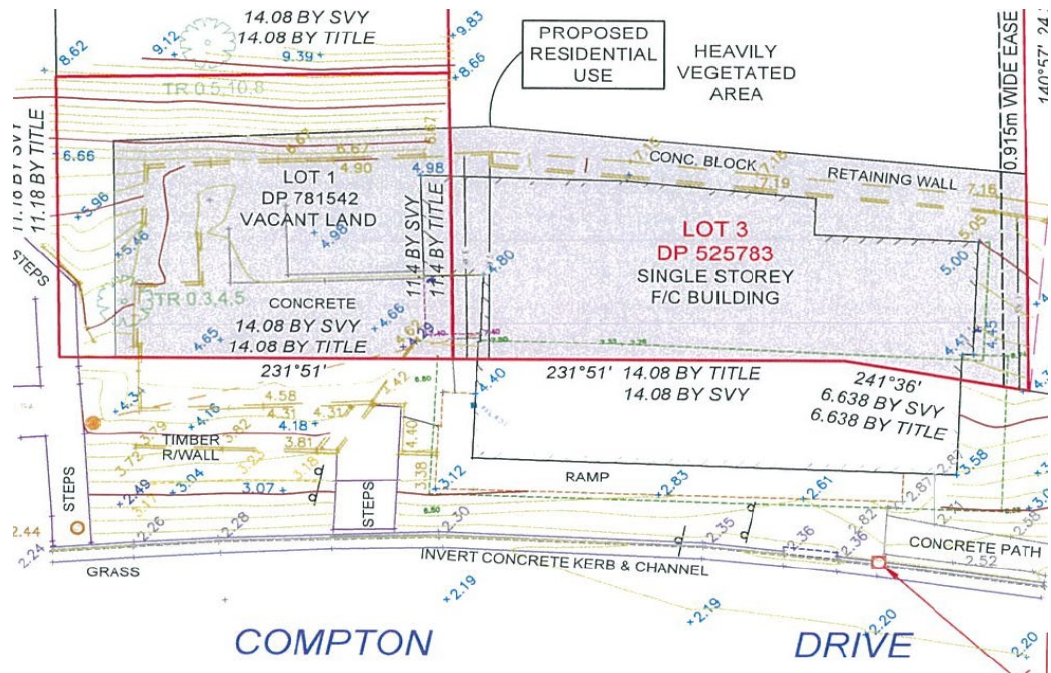
The minor reduction in the extent of the proposed R2 zoned area located on Lot 1 is of no great consequence. The benefit of not zoning this section R2 is that it reinforces that the steps will remain in public ownership.

In total the area occupied by the proposed R2 zone, as depicted in the amended survey plan, is approximately 286m<sup>2</sup>. This consists of approximately 108m<sup>2</sup> within Lot 1 and an additional 178m<sup>2</sup> within Lot 3.

The proposed zone boundary, as shown in the exhibited planning proposal, extends 1 metre beyond the northern edge (top) of an existing retaining wall located within Lot 3.

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

Should Council determine as part of a separate process that it is desirable to sell part of Lot 1, to enable consolidation with Lot 3, then it would assist that process if the proposed 600m<sup>2</sup> minimum lot size provision does not apply to Lot 1. This is because a subdivision would be required to excise from Lot 1 the 108m<sup>2</sup> (approx.) that is proposed to be zoned R2. This area being substantially below the minimum 600m<sup>2</sup> lot size nominated within the exhibited planning proposal.



**Figure 3: April 2020 survey plan extract showing proponent's requested rezoning area**

### *History of development on Lot 3*

Lot 3 was created in August 1966 and at that time contained no building improvements.

A café was erected on part of Lot 3 after the 1966 subdivision but the date on which this occurred is unknown. It may have occurred in the late 1960s according to notes contained within Council files.

The café / restaurant located on Lot 3, known at one time as the Shaws Bay Café and the Sandbar Restaurant, was extended a number of times with Council approval.

Alterations approved to the restaurant in 1991 (DA1991/256) extended an existing terrace area and incorporated a roof over the existing and extended terrace. A new ramp structure linking the restaurant with the Compton Drive footpath was also shown on the submitted plans. The plans clearly indicated that both the terrace that existed prior to consent being granted, as well as the proposed works, were substantially located outside of the boundaries of Lot 3 i.e. within the Compton Drive Road reservation area.



## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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Extensions approved to the restaurant in 1999 (DA1999/22) resulted in a small kitchen extension at the rear of the restaurant, a concrete slab on Lot 1 (leased from council) and an awning over the ramp structure to Compton Drive.

Following a fire in 2013, Council approved, on a deferred commencement basis (DA 2013/211), alterations and additions to the restaurant. This consent expired on 10 October 2018. Had this consent been enacted it would have resulted in the substantial demolition of the existing building structure and its replacement with a modern contemporary building providing seating for 52 patrons.

The consent conditions included a requirement for a minimum two metre wide Inner Protection Area (IPA) to be established behind the restaurant building. The IPA was required to be managed in accordance with the requirement for Asset Protection Zones. It was required to control bushfire risk. The impact of the IPA would have resulted in existing vegetation including overhanging branches being cleared.

The deferred commencement condition contained in the 2013 consent required a Deed of Approval under the Roads Act 1993, for a minimum 5 year period. This deed was required to be in force for the establishment and use of the encroaching enclosed verandah area and access ramp within the Compton Drive road reserve prior to the consent becoming operative.

The deed was not obtained and Lot 3 was subsequently sold to the current owners in October 2015.

### *Land classification considerations*

Council in March 2016, resolved to endorse amendments to Ballina LEP 2012, which resulted in the land classification of Lot 1 changing from Community to Operational land under the provisions of the Local Government Act.

The reclassification was supported by Council as it enabled greater flexibility should the land be proposed to be leased by the adjoining owner of the restaurant use. Alternatively, it also enabled Council to consider the sale of Lot 1 to the adjoining owners.

Council also specifically resolved in March 2016 that prior to any leasing or disposal of Lot 1 that the General Manager take appropriate action to ensure that the Coogee Street stairs remain in public ownership and accessible to the community.

This was done as a small portion of Lot 1 extended over the area occupied by the stairs.

### *Deferred matters transitioning considerations*

In November 2016 a request to consider the rezoning of Lot 3 to R2 Low Density Residential zone was submitted. This request also contained advice that a request to purchase the adjoining Lot 1 (Council owned) had been submitted to Council's Commercial Services Section for consideration.

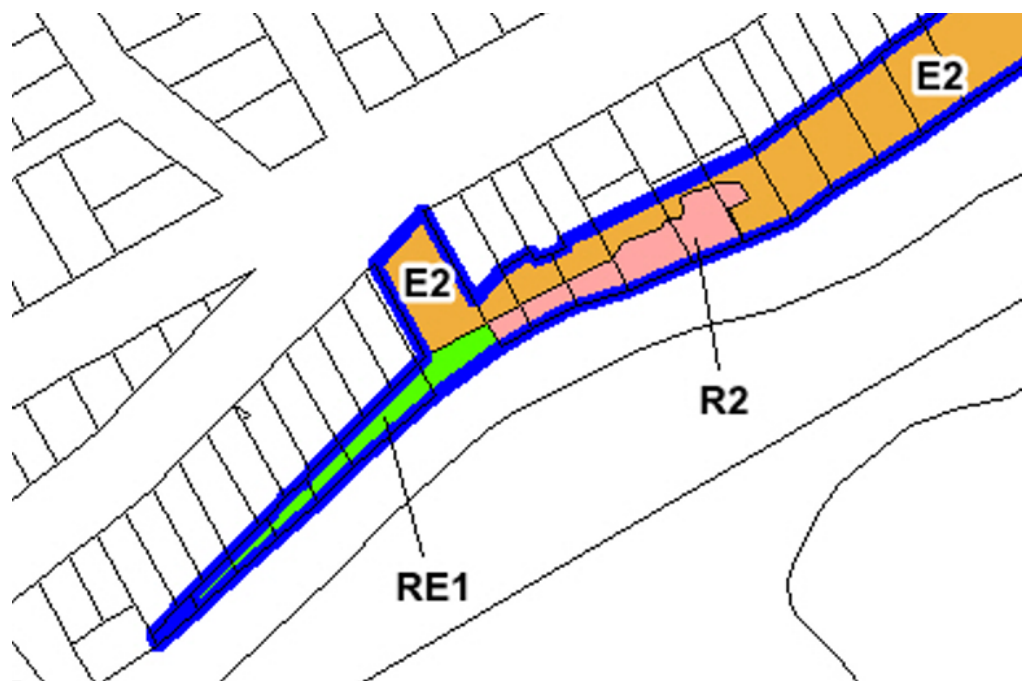
## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

The rezoning request was deferred pending the Council establishing a position in respect to addressing deferred matters under BLEP 2012. Specifically the manner in which council would respond to the *Northern Councils E Zone Review Final Recommendations Report*.

In April 2017 Council considered the deferred matter issue. Council resolved to retain all deferred areas the subject of an environmental protection zone (EPZ) under BLEP 1987 and to only seek to integrate deferred areas not subject to an EPZ. In such cases the criteria contained within the *Northern Councils E Zone Review Report* was to apply.

The draft planning proposal attached to the April 2017 Council report included discussion of the properties which had frontage to Compton Drive, East Ballina.

The April 2017 draft planning proposal sought to apply a R2 zone to part of Lot 3 as well as the whole of Lot 1. It also applied to certain properties to the east of Lot 3. An extract from the then indicative zoning plan is reproduced in Figure 4 below.



**Figure 4: Indicative Zoning Plan Compton Drive Properties Area 2H – draft Planning Proposal**

The draft planning proposal considered by Council in April 2017 contained a number of comments in relation to the deferred land in the vicinity of Shaws Bay at East Ballina. These comments have been reproduced in full and are contained within Attachment 2. It is relevant to note that whilst the draft planning proposal nominated an R2 zone for some sites it did so in the context that:

*given the topography, geotechnical and other constraints identified within this area (landslip, bush fire), further investigation will be required in relation to the land proposed to be zoned R2 to demonstrate the suitability of the application of an R2 zone.*

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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It is relevant to note that an E zone was not intended to apply to the areas designated as R2 within the draft 2017 planning proposal. This is because it was considered that these areas would not meet the criteria required for land to be zoned for environmental purposes (E2 or E3).

The proponent was advised of Council's position in respect to deferred matters. The result of which would mean that the land at 23 Compton Drive, East Ballina (Lots 1 and 3) would continue to be predominantly zoned 7(d).

The proponent was also advised that it was open to them to request a site specific LEP amendment having regard to the specific circumstances that applied to these properties.

In December 2017 the proponent lodged a formal LEP amendment request in respect to Lot 3. They subsequently prepared a planning proposal incorporating a reference to Lot 1, as the owners of Lot 3 had expressed an interest in the purchase of Lot 1.

### *Gateway Determination*

The then NSW Department of Planning and Environment (DPE) issued a Gateway determination which allowed the planning proposal to proceed to public exhibition on 6 June 2018.

The Gateway determination was subject to conditions, which included the following requirements:

- i) Prior to public exhibition the following site investigations are to be undertaken,
  - a) a site contamination assessment
  - b) a bushfire assessment
  - c) a geotechnical assessment of land slip hazards, and
  - d) a revised survey plan and ecological assessment if the revised survey plan identifies that the land to be zoned R2 will include land containing the Littoral Rainforest Endangered Ecological Community vegetation or the Littoral Rainforest and Coastal Vine Thickets community.
- ii) A minimum exhibition period of 14 days
- iii) Consultation to take place with the NSW Rural Fire Service, NSW Office of Environment and Heritage and the Local Aboriginal Land Council.
- iv) The time frame for completion of the LEP was specified as 18 months following the date of Gateway determination (an altered Gateway determination was issued on 13 November 2019 which extended the completion period until 6 June 2020. This timeframe was again extended on 2 June 2020 to require completion by 6 December 2020).

The DPE also advised Council that the Department Secretary had agreed that no further approvals were required in respect to the planning proposals inconsistency with section 9.1 Directions 2.1 Environmental Protection Zones, 2.3 Heritage Conservation and 4.1 Acid Sulfate Soils. In respect to Direction 4.4 Planning for Bushfire Protection the agreement of the Secretary may still be required.

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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In addition to the documentation required to be submitted by the DPE, Council staff also required the proponent to prepare concept architectural plans of how part of Lot 3 is envisaged to be developed for dwelling purposes.

Attachment 3 contains a copy of the concept architectural plan. The plan's value relates more to the consideration of building envelopes and related controls. There is no suggestion that the design shown on this plan is proposed to be built.

### *Site Suitability Assessment – Land slip and geotechnical issues*

Lots 1 and 3 have been identified (Coffey 1986) as having a medium to high risk of landslip instability.

In accordance with the requirements of the Gateway determination, a geotechnical assessment has been prepared in respect to the proposed residential use of part of Lots 1 and 3. The assessment has been prepared by GHD consultants in September 2019. This assessment updates a 2013 Slope Hazard Assessment for Lot 3 prepared by Coffey Geotechnics Pty Ltd. The same officer prepared both assessments.

The 2019 assessment found that site conditions were largely similar to those observed in 2013. The review of slope conditions, and the 2013 report, identifies slope instability hazards. The consultant indicates that these are not insurmountable. Advice is contained within the report which states:

*..that given suitable geotechnical advice and structural engineering solutions, the site can safely be developed as a residential site. The residual risks can be managed to 'Low' which is in line with community expectations for residential land.*

*In summary informed development in line with modern engineering standards and community expectations is possible within the bounds of commonly used engineering principles.*

The GHD report also contains advice as to the further steps required for the management of geotechnical constraints. These steps are appropriate for the development application stage once the final building design has been developed.

Based on the submitted geotechnical assessments at this rezoning stage it is considered that the site slope and instability constraints on Lot 3 may be appropriately mitigated through engineering solutions.

Attachment 1 contains a copy of the geotechnical assessment reports.

### *Site Suitability Assessment – Contamination issues*

In accordance with the requirements of the Gateway determination a site contamination assessment has been required to be prepared.

Environmental Engineering Solutions (EES) prepared a Preliminary Contamination Assessment (PCA) in September 2019. The assessment included a review of site history and soil sample analysis in respect to Lots 1 and 3.

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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Council's Environmental Health Officer (EHO) has reviewed the PCA assessment and has advised as follows:

*The assessment has been undertaken generally in accordance with the guidelines made and approved by the NSW EPA.*

*Eight surface soil samples were collected in a grid pattern across the site for analysis of the chemical of potential concern (Organochlorine pesticides and heavy metals), an additional two targeted surface soil samples were collected and analysed for the presence of asbestos.*

*The results of the analysis showed that the eight grid soil samples complied with the HIL residential A (residential with garden/accessible soil) however one of the targeted soil samples came back positive to the presence of (chrysotile) asbestos, believed to be associated with the existing building on the property.*

*Therefore the property is found to be contaminated with asbestos and requires remediation prior to a residential land use occurring.*

Based on the submitted PCA the EHO was satisfied that suitable arrangements can be put in place to ensure demolition of the existing building occurs and the land is remediated to ensure removal of all asbestos prior to a residential land use occurring if the land is rezoned.

The EHO also provided advice in respect to acoustic amenity issues likely impacting any dwelling built on the rezoning site. In this respect the following advice has been provided:

*Adjoining the subject property is a steep public stairway that links Compton Drive to Hill Street. This is a popular exercise location for the community and Council has previously received complaints from neighbouring residents in relation to early morning noise associated with the use of the stairs and there has been limited options for Council to regulate these activities when undertaken by individuals (rather than commercial operators). Therefore it would be good to flag this if the property is rezoned and require the design and construction of any dwelling to take into consideration the potential impacts.*

The issue of the extent to which any adverse acoustic amenity impacts that may arise, and the manner such impacts may be mitigated, is a matter to be considered at the development application stage.

The sale of part Lot 1 may or may not assist this issue and is partly dependent on the location of any future dwelling as well as the design of the wall facing the steps.

Attachment 1 contains a copy of the land contamination assessment.

### *Site Suitability Assessment – Bushfire risk*

Lots 1 and 3 are identified as Bushfire Prone Land (Category 2 Vegetation and Buffer). To meet the requirement of the Gateway determination, a Bushfire Assessment Report (BAR) was required to be prepared and consultation undertaken with the NSW Rural Fire Service (NSWRFS).

## **8.4 Planning Proposal - 23 Compton Drive, East Ballina**

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The BAR prepared by Bushfire Consultancy Australia classified the proposal as infill development.

The BAR concluded that the site is suitable for residential use when assessed against the requirements contained in Chapter 7 of Planning for Bushfire Protection 2018 (PBP2018).

Attachment 1 contains a copy of the Bushfire Assessment Report.

When assessed in accordance with the infill development requirements of PBP2018 the Bushfire Consultant indicates that the applicable width of the required Asset Protection Zone (APZ) may be able to be reduced to as low as 0 metres.

Such a reduction, it is indicated, would require flame zone construction to be utilised. Minimising the width of the required APZ reduces the impact of any proposed residential development on the adjoining rainforest vegetation.

Consultation with the NSWRFSS in March 2020 resulted in advice that the planning proposal was not supported.

This was because the land does not have a dwelling entitlement and, in the opinion of the NSWRFSS, the proposal could not be considered as infill development.

Attachment 4 contains the correspondence received from the NSWRFSS in March 2020.

The NSWRFSS requested that Council satisfy itself that the vegetation hazard within Lot 3 can be managed for a 4 metre distance from the north-western elevation of any future dwelling.

A 4 metre separation distance, it was indicated, would meet the requirements of Planning for Bushfire Protection 2019 for new development.

Following additional consultation with the NSWRFSS, which included their consideration of a revised survey plan and amended ecological assessment (discussed below), no objection to the planning proposal was raised.

This was subject to any future dwelling on the land not exceeding a heat exposure limit of 29k/W (BAL29).

A copy of the correspondence from the NSWRFSS date 4 September 2020 is contained within Attachment 5.

To achieve the 29k/W heat exposure limit the NSWRFSS recommended that Council set a number of requirements which would be applicable to the future residential development of the land.

These requirements were recommended to be set using the mechanism of either a s88B instrument, Voluntary Planning Agreement or other regulatory instrument. The requirements as recommended by the NSWRFSS are detailed in Table 1 together with comments relating to how they may be addressed.

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

**Table 1 – NSWRFs recommended requirements to mitigate bushfire risk**

<b>NSWRFS Requirement</b>	<b>Comment</b>
1. Use 88B, VPA or other instrument to implement requirements.	<p>Section 88B of the Conveyancing Act may be utilised to place suitable restrictions on the title of Lot 3. Restrictions such as the location of the APZ, the extent of the building envelope including its height, and land subject to a Vegetation Management Plan, may be placed on title utilising s88B. Using s88B is a more expedient solution as it does not involve the legal drafting and subsequent public exhibition of the VPA document.</p> <p>88B restrictions are, as is also the case with a VPA, registered on the title of land (Lot 3) prior to the finalisation of the planning proposal.</p>
2. Amalgamate lots 1 and 3 to create 1 dwelling opportunity only	<p>The incorporation of part Lot 1 within the planning proposal was designed to facilitate the sale of this land and its future consolidation with the proposed residential zoned section of Lot 3. In the event that part Lot 1 is not purchased by the owner of Lot 3 the proposed residential zoned section of Lot 1 (108m<sup>2</sup>) and its location adjoining the Coogee Street stairs is considered unsuitable as a separate dwelling site and would need to be retained in Council's ownership. No action is considered to be required at this stage in respect to this issue.</p>
3. Provision of a 4 metre APZ to the north-western building elevation and its location wholly within the proposed residential land use zone.	<p>Provision of a 4m wide APZ, within the context of the extent of the proposed R2 zoned area within Lot 3 as proposed by the exhibited planning proposal, would require a significant reduction in the depth of the potential future building envelope. Preliminary concept plans for a dwelling sited on Lot 3 indicate a building envelope having a depth of 8.1 metres at the western end and 6.7 metres at the eastern end. The width of the building envelope is indicated to be 20.49 metres. The achievable building envelope depth measurements are estimated to reduce by approximately 2.5 metres, to 5.6m and 4.2m, to accommodate the required APZ. A building envelope depth below 5 metres is not considered desirable in terms of the amenity afforded to future building occupants having regard to room sizes and configuration. To provide context Ballina Shire DCP 2012 generally seeks to ensure that a minimum building envelope of 10m x 15m is available for smaller lots or those lots constrained due to slope or tree location. It is considered that there may be merit in extending the currently proposed northern boundary of the R2 zone on Lot 3 by an additional 1 metre past the top of the existing retaining wall. This together with a 1 metre reduction in the indicative building envelope shown on the preliminary dwelling concept plan would provide more balance between the needs of future dwelling occupants and the environmental consequences of clearing more of the rainforest vegetation located on Lot 3. Council should also note that the building envelope depths indicated above can only be achieved if the building line setback to Compton Drive were to be reduced from 6 metres to 0 metres. Such a reduction is supported in the context of the demolition of building encroachments within the Compton Drive road reserve and a suggested single residential storey height restriction.</p>
4. Future building envelope to be limited to the area shown on the revised survey plan (survey plan extract shown in Figure 3).	<p>The area shown on the revised survey plan by the grey colour is the extent of the area within Lots 1 and 3 proposed to be zoned R2 by the proponents in March 2020. It is not the available building envelope which will be required to be reduced to accommodate the comments made in respect to point 3 above. It is also noted that the indicative building envelope does not extend into part of Lot 1.</p>

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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### *Site Suitability Assessment – Ecological issues*

Part of Lot 1 and 3 contains littoral rainforest vegetation classified as Threatened Ecological Communities (TEC) or Endangered Ecological Communities (EEC) under relevant Federal and State legislation. The TEC/EEC vegetation which is considered to have high conservation value consists of the following communities:

- Littoral rainforests and coastal vine thickets of eastern Australia TEC, and
- Littoral rainforest in the Tuckeroo – Riberry – Yellow Tulipwood littoral rainforest of the NSW North Coast Bioregion (EEC).

The rainforest has been assessed by consultants GeoLINK as being in a moderate condition with weeds and edge effect apparent.

In accordance with the requirements of the Gateway determination a revised survey plan and an ecological assessment were submitted.

The ecological assessment was prepared by GeoLINK and submitted to council in October 2019. It was subsequently referred to the Biodiversity and Conservation Branch of the NSW Department of Planning, Industry and Environment (BC Branch). Following comments received from the BC Branch, an amended Ecological Assessment was submitted in April 2020.

The original 2019 Ecological Assessment is contained in Attachment 1.

The revised 2020 Ecological Assessment is contained in Attachment 6.

The originally submitted survey plan was prepared to show Lots 1 and 3 and the location of improvements (building, concrete slab etc) located on these lots and the adjoining road reserves.

The original ecological assessment was referred to the BC Branch who provided Council with advice which is contained in their letter dated 18 February 2020, contained in Attachment 7.

The BC Branch were of the view that the planning proposal did not provide any protection for the littoral rainforest endangered ecological community (EEC) in the planning area. They were concerned that it will enable future development that will impact on an EEC and not trigger the Biodiversity Offset Scheme (BOS).

The BC Branch provided Council with a number of recommendations for implementation prior to the planning proposal being finalised. The recommendations included that biodiversity credits be calculated to offset future development and that a planning agreement be entered into.

The planning agreement was proposed to secure the rezoning of a portion of the 7(d) zoned land to E2 Environmental Conservation, bind the land owner to provide the required number of biodiversity credits, and contain a commitment for the land owner to prepare and implement a vegetation management plan for the planning area.



## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

The matters raised by the BC Branch in their February 2020 response were referred to the proponent for comment and a revised ecological assessment was subsequently submitted (Attachment 6). The subsequent response from the BC Branch dated 8 July 2020 is contained within Attachment 8.

The letter from the BC Branch dated 8 July 2020 indicates that their previous recommendations had not yet been addressed. They reiterate their previous recommendations that Council is requested to address prior to finalising the planning proposal. These matters are summarized in Table 2 below together with comments.

**Table 2 – Biodiversity and Conservation Branch recommendations**

BC Branch recommendations	Comments
<p>Biodiversity Credits to be determined to offset future development impacts on Plant Community Type 1275 (Tuckeroo – Riberry – Yellow Tulipwood littoral rainforest of the NSW North Coast Bioregion).</p> <p>Through the mechanism of a VPA credits to be provided prior to commencing any works that impact the littoral rainforest.</p>	<p>It is primarily the establishment of an APZ, as required by the NSWRFSS, that will determine the degree of impact on rainforest vegetation. If part of the APZ is located within that part of Lot 3 already developed as is suggested by this report (2 metres within developed site and 2 metres to north of existing retaining wall) it will significantly reduce the impacted vegetated area. GeoLINK have estimated that approximately 130m<sup>2</sup> of rainforest vegetation will be impacted by an APZ having a depth of 4 to 6 metres. This assumes that the APZ is located wholly outside of the existing developed area on Lot 3. It is more difficult at the rezoning stage to determine credits when the location of the APZ and the design of the development has not yet been finally determined. It is also noted that the small area of potential impact on EEC vegetation is below that specified by the Biodiversity Offset Scheme (BOS). GeoLINK indicate that up to 0.25ha of vegetation may be cleared before the BOS is triggered. In such cases an alternative to the BOS is considered more appropriate.</p> <p>Requiring the preparation of a vegetation management plan (VMP) and associated works to be determined at the DA stage is considered the appropriate mechanism to address vegetation clearing that does not trigger the BOS. The VMP also has the advantage of Council being able to specify the location, extent and nature of works required to offset the vegetation impact. Typically for EEC vegetation an offset ratio of 10 to 1 has been applied with works being required to be undertaken in close proximity to the vegetation being removed. This was the approach used by council in 2017 to offset damage to the Compton Drive Public Reserve associated with accessing building sites at 15 and 17 Hill Street, East Ballina. If the BOS were to be applied then the value of credits calculated for the vegetation proposed to be removed would be paid into Biodiversity Conservation Fund administered by the Biodiversity Conservation Trust. Through this process it is highly unlikely that land to offset the</p>

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

	cleared vegetation would be sourced in close proximity to the clearing site.
Enter into a planning agreement to secure certain outcomes.	<p>It is for the proponent to nominate when they consider a planning agreement desirable to secure certain outcomes. At this stage the proponents have not offered to enter into a planning agreement as they consider that there are alternative means to secure various outcomes such as defining the building envelope, location, extent of APZ, building height and extent of land on Lot 3 subject to a VMP requirement.</p> <p>In respect to all of these matters a restriction on title under the provisions of s88B of the Conveyancing Act is suggested as an appropriate mechanism to provide for the preferred outcomes.</p>
Planning agreement to commit owner to future E2 Environmental Conservation zone for portion of land subject to a 7(d) zone.	<p>Committing the land owner to an E2 zone in the context of Council having resolved in 2017 to retain existing environmental zones, and with no land use table which details permitted and prohibited uses is not considered a reasonable request. The issue of the appropriateness of an E2 zone for part of Lot 3 will be required to be considered by Council where it gives further consideration to E zone transitioning issues at East Ballina and elsewhere in the shire.</p>
Planning agreement to include a commitment for the landowner to prepare and implement a vegetation management plan (VMP) for the planning area.	<p>Issues relating to the preparation of a VMP and the extent of the land to which it will be required to apply will be considered in detail at the development application stage. At that time the degree of impact on the rainforest vegetation will be required to be quantified and then appropriate mitigation strategies such as determining the extent of the area subject to the VMP will be determined. Prior to the rezoning being finalised, it is proposed that a s88B restriction be placed on the title of Lot 3 which will require a VMP to be prepared for that part of the lot to the north of the APZ designated area. Depending on the amount of rainforest vegetation impacted the VMP requirements may extend beyond the site into other areas nominated by Council. This issue will be considered at the DA stage.</p> <p>It is noted that at the rezoning stage attempts have also been made to limit potential rainforest impacts through suggested s88B restrictions which define the building envelope, require part of the APZ to be located on that part of Lot 3 already developed, and the suggested limitation on building height to a single residential storey.</p>

The assessment of the site's suitability for a part residential zoning as a consequence of potential ecological impacts has concluded that a residential zoning for part of Lots 1 and 3 is able to be supported.

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

GeoLINK in their 2020 Ecological Assessment Report (Attachment 6) have made a number of recommendations relating to the rezoning and future requirements.

These recommendations are supported and detailed in Table 3 as follows.

**Table 3 – GeoLINK rezoning and future requirements recommendations**

<b>GeoLINK Recommendations</b>	<b>Comments</b>
Design of future development should aim to minimise impacts to the littoral rainforest	Agreed – The location of the APZ, the setting of a building envelope on lot 3 and an associated single storey height limit, as detailed in this report are designed to reduce rainforest impacts.
Council consider waiving DCP building setbacks to Compton Drive.	Agreed – The applicable 6 metre building line setback to Compton Drive (Ballina Shire DCP 2012 – Chapter 4 – Element E) if applied would effectively preclude any residential development occurring within the nominated building envelope area. If Council determines that the planning proposal has sufficient merit to progress to finalisation, then subject to the other controls outlined in this report (s88B restrictions), it is suggested that amendments to Ballina Shire DCP 2012 be prepared. The DCP amendments would incorporate references to the s88B restrictions and the proposed 0 metre building line. In the context of the removal of significant building encroachments from the Compton Drive footpath, and the suggested single residential storey building restriction, a 0 metre building line is able to be supported. The issue of setting a reduced setback to Compton Drive was previously canvassed in the January 2018 report to Council which resulted in the commencement of the LEP amendment process. At that time it was indicated that consideration of a reduced setback would be contingent on additional information related to land constraints being submitted post Gateway determination. This information has now been submitted and assessed. Such information supports amendments being made to Ballina DCP 2012 as indicated above.
Mechanisms to protect retained vegetation outside of building envelope and APZ should form a part of any future DA.	Agreed – This can be addressed through the suggested VMP requirement, s88B restrictions, and DCP amendments.
Determine offset provisions in accordance with Chapter 2 of Ballina Shire DCP 2012 noting that there is limited room on site for replanting.	Agreed – It is likely, depending on the degree of rainforest impact, that the VMP will also need to encompass offsite areas as determined by Council through the DA process. The offset ratio specified in Chapter 2 (3:1) would increase to 10:1 given it is EEC vegetation that is being offset.
Complete Tests of Significance under s7.3 of the Biodiversity Conservation Act for threatened species and TECs.	This is a standard requirement at the DA stage for sites that are known to contain threatened species or TECs (EECs).

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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### *Site Suitability Assessment – Material public benefit considerations*

The assessment of the merit of rezoning part of Lots 1 and 3 from 7(d) to R2 has concluded that site constraints relating to land slip and slope, bushfire hazard and ecological factors are able to be reasonably mitigated.

The mitigation of these constraints would require a variety of mechanisms to be applied which include s88B restrictions on title, amendments to Ballina Shire DCP 2012, and the preparation of a comprehensive VMP at the development application stage for any future dwelling proposed to be erected on Lot 3.

These mechanisms have been proposed in the context that significant public benefits will arise through the removal of building encroachments located within the Compton Drive footpath and the demolition of the remainder of the now dilapidated restaurant building. The vertical red line in Photo 1 below shows the approximate line of the building encroachment.

Were it not for the fact that a building currently exists on Lot 3 and the adjoining footpath, then the site would be considered unsuitable for residential development.

The assessment of site suitability has in the main focused on Lot 3. Whilst part of Lot 1 (Council owned) has also been included in the planning proposal and the technical assessment reports, this land is not required to support a residential development on Lot 3.

It is a matter for Council to determine whether it will proceed with the sale of part Lot 1 to the owners of Lot 3 as a separate matter.

If retained in public ownership then the VMP required as part of the DA process should incorporate the restoration and replanting of the parts of Lot 1 that have been disturbed by building and site works.



**Photo 1 – View along western elevation of building on Lot 3 and footpath (red line indicates approximate location of front boundary).**

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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### *Progressing the planning proposal next steps*

To enable progression of the planning proposal to finalisation in accordance with the comments and suggestions made in this report would require the following to occur:

#### *Step 1 – Amendments to planning proposal*

An amended planning proposal is required to be prepared and submitted to the Minister for Planning Industry and Environment under the provisions of s3.35 of the Environmental Planning and Assessment Act (EP&A Act).

Council would also request the Minister not to require further community consultation due to the minor nature of the proposed amendments. The amendments proposed to the exhibited planning proposal as detailed in this report consist of the following:

- Reduce the proposed R2 zoned area on Lot 1 (exclude part of steps and sewer line) and increase the R2 area on Lot 3 (additional 1 metre northerly extension approximately 20m<sup>2</sup>) to accommodate part of the required 4 metre wide APZ. If Council were of the view that Lot 1 should no longer form a part of the planning proposal its removal could also occur as part of this process.
- Remove the proposed 600m<sup>2</sup> minimum lot size provision from Lot 1. This would enable the subdivision of Lot 1 to excise the R2 zoned area pending its sale and consolidation with Lot 3.
- Reduce the proposed 8.5 metre building height to 6 metres and indicate this reduced height on the Height of Buildings Map. A 6 metre building height will provide ample height for a single storey building incorporating high ceilings and architecturally designed roof above an excavated car parking level. It will also assist in ensuring that the visual amenity impact of the proposed building is reduced given the proposed 0 metre building setback from Compton Drive.

#### *Step 2 – Request proponents to prepare s88B restrictions for registration on the title of Lot 3.*

This step would commence once advice has been received from DPIE that the Minister has determined that the amendments to the planning proposal indicated in Step 1 do not require further community consultation.

The proposed s88B restrictions relate to the following matters:

- Define location of the building envelope and the applicable single residential storey above car parking restriction.
- Define the location of the 4 metre wide APZ required by NSWRFSS.
- Define the location of that part of the site subject to a requirement for the preparation of a VMP.

Until such time as the s88B restrictions are registered on the title of the land the DPIE would be requested not to finalise the LEP amendment.

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

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### *Step 3 – Prepare and exhibit amendments to Ballina Shire DCP 2012.*

This step would also commence once the Minister has determined Council's request in relation to Step 1. Step 3 would then be undertaken concurrently with Step 2. The proposed DCP amendments would incorporate reference to the following matters:

- Demolition of building improvements and reinstatement of the impacted Compton Drive footpath area.
- 0 metre building line provision to Compton Drive for Lot 3.
- Delineation of location of s88B restrictions.
- Advice regarding the need to obtain detailed geotechnical engineering advice relating to building construction works including associated retaining walls.
- Advice regarding need for determination of biodiversity offsets in accordance with s3.3 of Chapter 2 – General and Environmental Considerations of Ballina Shire DCP 2012. Subject to the required offset ratio for any impacted EEC vegetation not being less than 10:1.
- Provisions relating to the submission of a VMP and the potential for the plan to apply to areas on and off the development site.

Public exhibition of the DCP amendments would only occur once the s88B restrictions have been drafted and agreed. This would then enable incorporation with the DCP of a site plan, which clearly indicates the location of title restrictions.

### **Sustainability Considerations**

- **Environment**

Lots 1 and 3 contain littoral rainforest vegetation communities which have been classified as Threatened and Endangered Ecological Communities (TEC/ EECs).

The degree of impact on these communities has been addressed through the APZ being located partly on the developed part of Lot 3. This will reduce the area to below the 130m<sup>2</sup> estimated by GeoLINK in their 2020 Ecological Assessment Report.

The final degree of impact, and mitigation requirements, are proposed to be determined at the development application stage when full details of the proposed building works are available.

An inspection of the site by Council's Natural Resource Officer has concluded that a 2 metre extension of the R2 area on Lot 3 beyond the existing building area will likely require:

Removal of three lower canopy Tuckeroo trees, a number of small rainforest saplings and seedlings and various littoral rainforest vines including smilax and the water vine.

It will also require pruning of four upper canopy Tuckeroo trees along south eastern edge of the escarpment and various littoral rainforest vines.



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Weed species identified within the impacted area include winter senna, lantana, crofton weed, ground asparagus and morning glory.

Photos 2 and 3 show the building on Lot 3 as well as providing an indication of the extent of vegetation located immediately behind the building.



**Photo 2 – view to the east from Lot 1 to Lot 3.**

As indicated in the GeoLINK report, and the correspondence from the Biodiversity and Conservation Branch, the degree of impact on rainforest EEC vegetation is below that required to trigger application of the Biodiversity Offset Scheme.

As such an alternative option of securing impact mitigation strategies through a Vegetation Management Plan (VMP) approach is open to Council and has been suggested in this report.

On balance, having regard to the history applicable to Lots 1 and 3, and the location and extent of building works, the outcomes suggested in this report are considered to strike an appropriate balance between the need to protect the environment whilst ensuring that the legitimate aspirations of existing land owners are preserved.



**Photo 3 – northerly view from Compton Drive towards Lot 3**

- **Social**

There are limited social impacts arising from adopting the steps detailed in the Information section of this report.

One potential social impact arising, should part of Lot 1 be sold, relates to the loss of a popular exercise warm up area at the base of the Coogee Street steps.

- **Economic**

There are limited positive economic impacts arising from the finalisation of the proposed LEP amendment. These relate to the construction phase of the proposed dwelling development and the employment opportunities that this will create.

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

Council is the planning proposal authority for this proposed LEP amendment but at Council's request, being the owner of Lot 1, it has not been delegated the functions of the local plan making authority. Such functions have been retained by the Department of Planning, Industry and Environment (DPIE). This means following Council's consideration of this report, and the submissions received during the public exhibition period, it may request the DPIE to take steps to finalise the proposed LEP amendment.

To enable the LEP amendment to be finalised Council must decide whether the proposed LEP amendment should proceed as exhibited or be amended as indicated in Step 1 (Information section of this report). If Council agrees to the planning proposal being amended, then the matter will be forwarded to the Minister for Planning and a request made that further community consultation not be required.

Council may request the Minister to determine that the planning proposal not proceed. If the Minister makes such a determination then the proponent has a right of appeal. The appeal authority in such a case is the Northern Rivers Planning Panel.

The further processing of the planning proposal will be undertaken utilising existing allocated resources.

### **Consultation**

The Gateway determination required consultation with the NSW Rural Fire Service, the NSW Office of Environment and Heritage and the JALI Local Aboriginal Land Council.

Responses from the NSWRFSS and the BC Branch are contained within Attachments 4, 5, 7 and 8 and have been considered in the Information section of this report.

The JALI Local Aboriginal Land Council did not make a submission.

The planning proposal was publically exhibited from 9 January 2020 until 14 February 2020. In response four submissions, as contained in Attachment 9, have been received.



## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

Two submission raised objections and two submissions conditionally supported the planning proposal.

Table 4 provides a summary of issues raised in the submissions together with comments.

**Table 4 – Summary of public submissions to planning proposal exhibition.**

Submission Summary	Comments
<p>Bert Carter raised the following grounds of objection:</p> <ol style="list-style-type: none"> <li>1. The Shaws Bay precinct is one of the most important scenic areas of Ballina. Compton Drive is a busy Road.</li> <li>2. The car park located opposite the site is congested and difficult to negotiate making the roadway quiet dangerous.</li> <li>3. The wooded areas of the escarpment on the north side of Compton Drive adjacent to the proposal are unkempt and in need of maintenance. However, the green visual impact is still very favourable and these areas should be preserved for possible future landscaping.</li> <li>4. How is it possible that existing development was approved in the 7(d) zoned area?</li> <li>5. Building height limitations should be set to be complied with – concerned about increase from 6.4 metres to 8.5 metres.</li> <li>6. The subject properties are unsuitable for residential construction. Steep sandy conditions render the ground unstable.</li> <li>7. The submitted drawings clearly show the proposed south western site boundary encroaching on the public stairway. This stairway has become of enormous benefit to the public for exercising and through traffic. It is of paramount importance that this facility is retained.</li> <li>8. Council should negotiate purchase of Lot 3 and administer site in accordance with the zoning.</li> <li>9. Astonished at the audacity of the proposal to rezone and purchase public land owned by Council.</li> <li>10. Concerned about precedent for zoning of properties to the east.</li> <li>11. Rear section of lot 3 would be difficult to access for fire management if rezoning approved.</li> </ol>	<p>In respect to the points of objection the following comments are provided:</p> <ol style="list-style-type: none"> <li>1. Noted and agreed.</li> <li>2. Not agreed. There are no known road safety issues associated with the public car parking located opposite the proposed rezoning site.</li> <li>3. Agreed. There is significant weed infestation within the rainforest vegetation located both on the rezoning site and nearby areas subject to the 7(d) zone. The preservation of the rainforest and its enhancement through the mechanism of a VMP has been addressed within this report.</li> <li>4. The restaurant / café use is permitted with Council consent within the 7(d) zone. This report has provided some details of when building works located on Lot 3 were approved. Residential development located on 27-29 Compton Drive (flats) and 31 Compton Drive (dwelling) appear to predate current planning controls. There is no evidence to indicate that these buildings are unauthorized. In respect to the rear section of 35 Pine Avenue, located immediately to the east of Lot 3, clearing and some other works have taken place without council consent. A development application (DA 2019/499) which seeks consent for erosion and soil stabilisation measures, implementation of a bush regeneration program and associated monitoring program, as well as the use of timber stairs, landings, shed and associated works has not yet been determined.</li> <li>5. The manner in which building height has been measured before and after Ballina LEP 2012 coming into force has changed. The previous provisions provided for a 6.4 metre building height measured from ground level to the top of the ceiling</li> </ol>

## 8.4 Planning Proposal - 23 Compton Drive, East Ballina

Submission Summary	Comments
	<p>on the topmost floor. The current provisions measure height above natural ground level to the top most point on the roof. It is considered that there are no significant differences between the two approaches. As indicated in this report a height limit of 6 metres has been proposed for Lot 3.</p> <p>6. A geotechnical report forming part of the planning proposal has concluded that the land can be safely developed as a residential site.</p> <p>7. There has never been any intention to dispose of the steps. This report indicates that the planning proposal should be amended to ensure that the small section of the steps and an existing sewer main located on Lot 1 retain their existing 7(d) zoning.</p> <p>8. Noted.</p> <p>9. Noted.</p> <p>10. The zoning of the properties to the east of Lot 3 is a matter that council will need to consider further as part of the E zone transitioning process.</p> <p>11. There are no access concerns related to the rear section of Lot 3 should it be rezoned and developed.</p>
<p>John Durkin requests Council not to proceed with the proposal for the following reasons:</p> <ol style="list-style-type: none"> <li>1. Concerned at the disruption that the proposed development will cause to his use of the steps.</li> <li>2. Concerned about the loss of habitat caused by proposed development.</li> </ol>	<p>It is not envisaged that there will be any disruption to step users if part of Lot 3 is developed for residential purposes. Some short term disruption may occur if site improvements located on part of Lot 1 are required to be removed.</p> <p>There will be loss of some habitat as indicated in this report. This would be required to be further considered at the DA stage.</p>
<p>Deborah Jones is supportive of the proposal subject to the integrity of the hillside being maintained, existing bush land and wildlife are protected and the public access is maintained to the stairway from Hill Street.</p>	<p>The development of part Lot 3 will result in vegetation uphill from the proposed building site being impacted as indicated in this report.</p> <p>There is no proposal to restrict public access from the steps.</p>
<p>Lyn Gray is supportive of the proposal but indicates that there is a public safety issue relating to car parking facilities and degree of pedestrian usage in proximity to site. Requests Council to ensure that vehicle egress from the property is safe.</p>	<p>There is not considered to be a public safety issue associated with car parking located opposite the site.</p> <p>The design of vehicle parking for any proposed dwelling on part Lot 3 is a matter for assessment at the DA stage. There are a number of design options available to ensure that vehicle / pedestrian safety issues are adequately addressed.</p>

### Options

The following options are presented for the Council's consideration.

*Option 1 – Council could resolve that it no longer supports the planning proposal and seek the Minister's determination that it should not proceed.*

This option is open to Council. Council would require compelling reasons for not proceeding with the planning proposal. Such reasons may relate to ecological impacts and the sites inability to conform with the DCP building setback provisions.

This option is not supported as it does not provide a mechanism through which the existing building will be removed and the building footpath encroachment issues rectified. In addition, as has been detailed in this report, the site is considered capable of supporting residential development albeit subject to a variety of special controls.

*Option 2 – Council could resolve to support the planning proposal subject to the amendments indicated in Step 1, and the implementation of the matters indicated in Steps 2 and 3, as detailed in the Information section of this report.*

This is the recommended option. Steps 1 to 3 provide the mechanisms through which a more reasonable balance to address the major site constraints (ecology and bushfire) are able to be achieved. It also provides for the development of a more tailored site specific solution through the various suggested planning proposal amendments, s88B restrictions and proposed DCP variations and controls.

Whilst the planning proposal amendments suggested in Step 1 still provide for the retention of part of Lot 1, it is not required to support a residential development on Lot 3 and it is open to Council to determine that the whole of this lot should be removed from the proposal.

Should Council support Option 2 then the amended planning proposal is required to be forwarded to the Minister. The Minister would be requested to also determine that the amended planning proposal not require further community consultation. This would then enable the DPIE to finalise the LEP amendment in its role as the local plan making authority.

*Option 3 – Council could resolve to defer this matter to a Councillor briefing.*

It is open to the Council to defer consideration of this matter until after a Councillor briefing and or to obtain further information.

**RECOMMENDATIONS**

1. That Council resolves to amend the planning proposal as indicated in Step 1 as contained in the information section of this report.
2. That Council forward the amended planning proposal to the Minister and seek a determination that the amended planning proposal not require further community consultation.
3. That, if required by the Minister, Council re-exhibit the amended planning proposal together with proposed DCP amendments and draft s88B restrictions, and then reconsider the proposal after exhibition.
4. That Council, upon obtaining Ministerial advice that re-exhibition is not required, implement the actions contained in Steps 2 and 3 as contained in the Information section of this report. Such actions include the preparation of DCP amendments and associated community consultation.
5. That Council authorise the use of the Seal to execute documentation required to place the s88B restrictions outlined in Step 2 on the title of Lot 3.
6. That Council request the Department Secretary to approve the inconsistency with section 9.1 direction 4.4 Planning for Bushfire Protection.
7. That Council upon obtaining confirmation that the s88B restrictions have been registered on the title of Lot 3, request the Department of Planning Industry and Environment to finalise the LEP amendment.
8. That the persons who made submissions to the planning proposal be thanked for their interest in this matter.

**Attachment(s)**

1. Exhibited planning proposal BSCPP 17/012
2. Extract from E zone integration planning proposal April 2017
3. Concept architectural plans
4. Letter from NSWRFSS March 2020
5. Letter from NSWRFSS Sept 2020
6. Revised Ecological Assessment 2020 (GeoLINK)
7. Letter from BC Branch February 2020
8. Letter from BC Branch July 2020
9. Submissions

## 8.5 LEP Amendments and Planning Proposals - Status

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### 8.5 LEP Amendments and Planning Proposals - Status

#### Delivery Program

Strategic Planning

#### Objective

To report on 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 processing requests to amend the Ballina Local Environmental Plans 1987 and 2012 (LEPs) and associated planning proposals. This report provides an update of matters currently pending.

#### 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. 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 Council has agreed to progress the initial LEP amendment request and has prepared the required planning proposal documentation for Gateway determination by the NSW Department of Planning, Industry and Environment (DPIE).

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

Item	Name and Status	Summary and Notes	Completion Due
13/005	Southern Cross Industrial Estate Expansion, Ballina (Stage 6)	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 industrial and employment-type land uses.  Council (as proponent) is in the process of finalising flood modelling information and is seeking legal advice in relation to biodiversity considerations.	30/01/2021
17/012	Compton Drive (No. 23), East Ballina (Stage 6)	Proposal to amend the LEP to rezone part of the land and all or part of the adjacent Council owned land from 7(d) Environmental Protection (Scenic/Escarpment) to R2 Low Density Residential and to apply a minimum lot size of 600m <sup>2</sup> .  This matter is the subject of a report to Council located elsewhere in this agenda.	06/12/2020

## 8.5 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
18/003	Attached Dual Occupancy Lots, Wardell (Stage 6)	<p>Proposal to amend the LEP to permit attached dual occupancy development, with consent, within the non-flood prone areas of Wardell Village located in the R2 zone.</p> <p>Further advice is being sought from the NSW Rural Fire Service after amendments were made to the planning proposal, resulting from comments received during re-exhibition.</p> <p>It is anticipated this matter will be reported to the November Council meeting.</p>	06/12/2020
18/004	Reservoir Hill Site, 20 North Creek Road, Lennox Head (Stage 6)	<p>Proposal to amend the LEP to make minor zone boundary adjustments to reflect an amended subdivision design and to permit subdivision for drainage purposes.</p> <p>Ongoing and interconnected issues between the development application (DA 2018/51) and the planning proposal necessitated the current approach to finalise the DA prior to finalising the planning proposal.</p> <p>Following determination of DA 2018/51, which approved the residential subdivision and associated subdivision works, minor changes are required to the planning proposal to reflect the approved subdivision design.</p> <p>Staff are currently assessing the planning proposal documentation to ensure consistency with the approved DA plans.</p>	12/02/2021
18/005	Function Centres in Rural Areas (Stage 2)	<p>Proposal to amend the LEP to incorporate special provisions for function centres on land within the RU2 zone and reduce the time period allowable for a temporary use under clause 2.8 Temporary Use of Land.</p> <p>At its meeting held in October 2018, Council resolved to prepare a planning proposal and to refer the planning proposal back to Council for endorsement prior to seeking a Gateway determination.</p> <p>This matter is the subject of a report to Council located elsewhere in this agenda.</p>	#
19/002	Lennox Rise, Lennox Head (Stage 2)	<p>Proposal to amend the LEP minimum lot size standard applying to parts of the site zoned R3 Medium Density zone from 600m<sup>2</sup> (currently) to 450m<sup>2</sup> (proposed).</p> <p>On 27 June 2019 Council resolved to prepare a planning proposal subject to the proponent providing further information regarding measures to protect a heritage listed rock wall located on the site.</p> <p>Further information submitted by the proponent has been reviewed by staff. A planning proposal is presented in a separate report elsewhere in this agenda.</p>	#
19/005	Rural Industry Definition BLEP 1987 (Complete)	<p>Proposal to substitute the definition of rural industry applicable to Ballina LEP 1987 with the definition of rural industry contained within the Standard Instrument LEP.</p> <p>This amendment was completed via Amendment No. 115 to the Ballina LEP 1987 on 10 July 2020.</p>	10/07/2020

## 8.5 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
20/001	Dwelling Entitlement Reinstatement, Teven Road, Teven (Stage 2)	<p>Proposal to transfer a dwelling entitlement on Lot 3 Section 1 DP 758964 to an adjacent aggregation of lots through identification of these lots on the "Dwelling Opportunity Reinstatement Map" as having one dwelling opportunity. The dwelling entitlement transfer will enable a suitable development site for a dwelling.</p> <p>In accordance with the Council resolution of 24 September 2020, the planning proposal will be submitted to the Department of Planning, Infrastructure and Environment for a Gateway determination following confirmation of receipt of Stage 2 fees.</p>	#
20/002	6-20 Fitzroy Street, Wardell (Stage 2)	<p>Proposal to amend the LEP to rezone the land from RU1 Primary Production to R3 Medium Density Residential and to apply a minimum lot size of 800m<sup>2</sup>.</p> <p>In accordance with the Council resolution of 24 September 2020, the planning proposal will be submitted to the Department of Planning, Infrastructure and Environment for a Gateway determination following confirmation of receipt of Stage 2 fees.</p>	#
#	12 Gilmore Close, Wollongbar (Stage 1)	<p>Request to amend the LEP to rezone the land from RU1 Primary Production to R3 Medium Density Residential and to apply a 600m<sup>2</sup> minimum lot size.</p> <p>The LEP amendment request is currently being reviewed.</p>	#
<p><b>LEP Amendment Request/Planning Proposal Processing Stages</b></p> <ol style="list-style-type: none"> <li>1. Initial Concept - Proponent submits initial amendment concept for review and reporting to the Council.</li> <li>2. Planning Proposal - Preparation of a planning proposal for the Council's consideration (if the initial concept is supported by the Council).</li> <li>3. Gateway Determination - DPIE determination as to whether the planning proposal may proceed (if the Council resolves to submit the planning proposal for determination).</li> <li>4. Study Preparation - Relevant technical information to enable complete assessment compiled and considered. This step may also involve pre-exhibition public authority consultation.</li> <li>5. Community Consultation - Planning proposal and associated technical assessment material exhibited for public comment.</li> <li>5a. Public Hearing - Public Hearing held, where required.</li> <li>6. Submissions Assessment and Council Decision - Reporting of community consultation outcomes and Council decision regarding finalisation of the planning proposal.</li> <li>7. Finalisation - DPIE finalisation (or Council finalisation under delegation) of the LEP amendment based on the planning proposal. Note: the Minister for Planning and Public Spaces may finalise, alter or terminate the amendment.</li> </ol> <p># Denotes proposal number and due date subject to Gateway determination.</p> <p><i>The completion due date is a date for completion determined by the Department of Planning, Industry and Environment.</i></p>			

### **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**

Community consultation (including Government agency referrals), has been, or will be undertaken in relation to individual planning proposals.

### **Options**

The status of the LEP amendments outlined is provided for information. All matters are being processed in accordance with decisions of Council.

### **RECOMMENDATION**

That Council notes the contents of this report on current LEP amendments and planning proposals.

### **Attachment(s)**

Nil



## 8.6 Beach Access - Lighthouse Beach Ballina

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### 8.6 Beach Access - Lighthouse Beach Ballina

#### Delivery Program

Strategic Planning

#### Objective

To seek direction on the provision of an accessible pathway to improve beach access for people with disabilities at Lighthouse Beach, Ballina.

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#### Background

Ballina Lighthouse and Lismore Surf Lifesaving Club (SLSC) has proposed the provision of a permanent beach access ramp designed to facilitate beach access for persons with a disability at Lighthouse Beach Ballina. The SLSC has undertaken some preliminary site analysis and prepared concept design documentation as the basis for further discussion with Council.

A copy of the most recent correspondence from the SLSC is contained in Attachment 1.

The purpose of this report is to determine whether Council wishes to pursue provision of a permanent beach access ramp to improve beach access for persons with a disability.

If Council supports provision of a beach access ramp, consideration also needs to be given to the preferred location (e.g. whether it is to be at Lighthouse Beach and if so the preferred design approach) and the resourcing provided by Council (e.g. works funding, support for pursuit of grant funding).

In considering the provision of an access ramp, there are also various environmental and administrative matters to consider as well as the circumstances associated with the use of the Mobi Mat at Lighthouse Beach.

#### Key Issues

- Beach access for people with disabilities
- Funding arrangements
- Environmental and planning consent considerations

#### Information

##### *Mobi Mat and Existing Beach and Waterway Access*

The SLSC (volunteers) has assisted people with disabilities to gain access to Lighthouse Beach for a number of years.

This has in part been done through the use of a Mobi Mat. The Mobi Mat is a non-slip portable roll-out pathway that is laid out across the sand.

## 8.6 Beach Access - Lighthouse Beach Ballina

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People who use mobility aids such as beach wheelchairs can use the matting to gain access to the beach. The Mobi Mat can also be used by other people including parents with strollers.

In 2016 a member of the community, Ms Tracey Everingham, led a fundraising campaign to purchase a Mobi Mat and subsequently gifted the Mobi Mat to the Northcott Society. An agreement was reached between the Northcott Society and the SLSC, and as a result the Mobi Mat is stored in the club house where the mat can be rolled out by SLSC members during patrols.

The Mobi Mat was officially launched for use at Lighthouse Beach in April 2017 and has been rolled out in front of the SLSC Clubhouse. The Mobi Mat has been utilised by individuals and a number of disability organisations that brought clients to the beach.

Over time, the location where the Mobi Mat was rolled out has experienced erosion and is presently not an optimal location for the mat. The SLSC has advised that the mat is currently in storage due to complexity surrounding deployment of the mat in a suitable location.

There is an existing ramp that leads to the beach. This ramp was built to facilitate the movement of surf lifesaving equipment and emergency vehicles onto the beach. The existing ramp does not meet the Australian standard for disability access.

The current ramp is used at times by people with disabilities however only with the assistance from a support person/s. Council has erected a sign at the top of the existing ramp stating that it can be used as an assisted wheelchair access point.

The optimal situation for a person using a mobility aid would be to be able to travel on a ramp unassisted. There are no ocean beach access tracks in Ballina Shire that meet the (unassisted) wheelchair access standards although access to beaches can be achieved with assistance.

There are compliant accessible access ramps into the waterways at Shaws Bay and Lake Ainsworth. These ramps were installed as part of the recent embellishments of those sites.

### *Permanent Ramp Options*

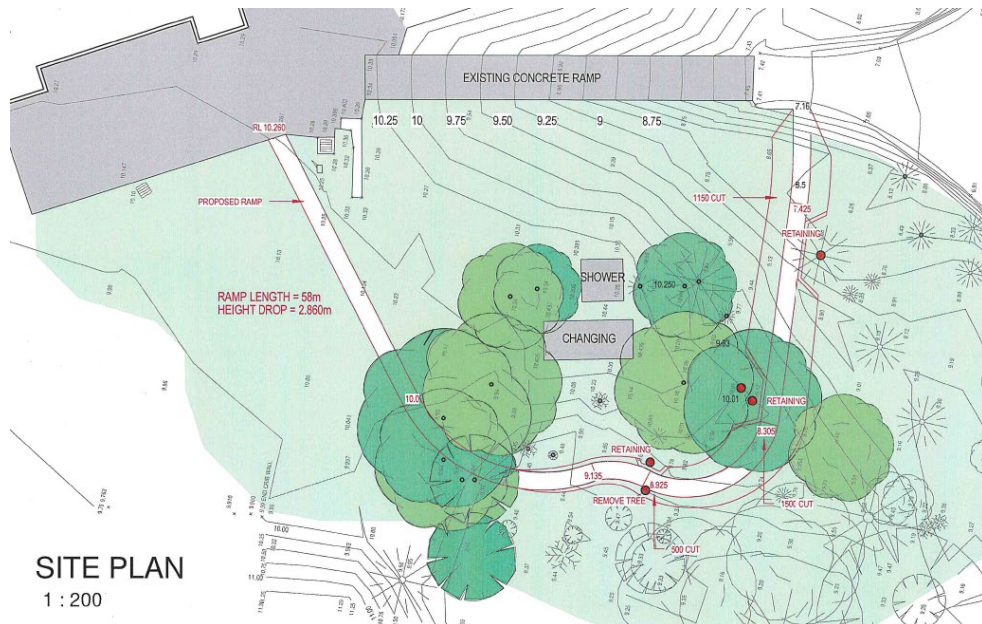
The SLSC has expressed a keen interest in supporting people with disabilities to gain access to the beach. The SLSC has sought to facilitate this by proposing construction of a permanent ramp that meets the relevant standards for unassisted access for a person with a disability.

There is presently no funding allocated for the provision of such infrastructure. However, the SLSC has offered to assist by supporting the pursuit of grant funding. Before pursuing funding arrangements though, it is necessary to determine whether Council wishes to provide for a permanent beach access ramp at Lighthouse Beach.

As part of the SLSC's investigations into the feasibility of improving access, it has sought advice on possible options for the construction of a new ramp. The club has worked with a town planner and surveyor and has developed two options for the construction of a ramp, along with preliminary costings.

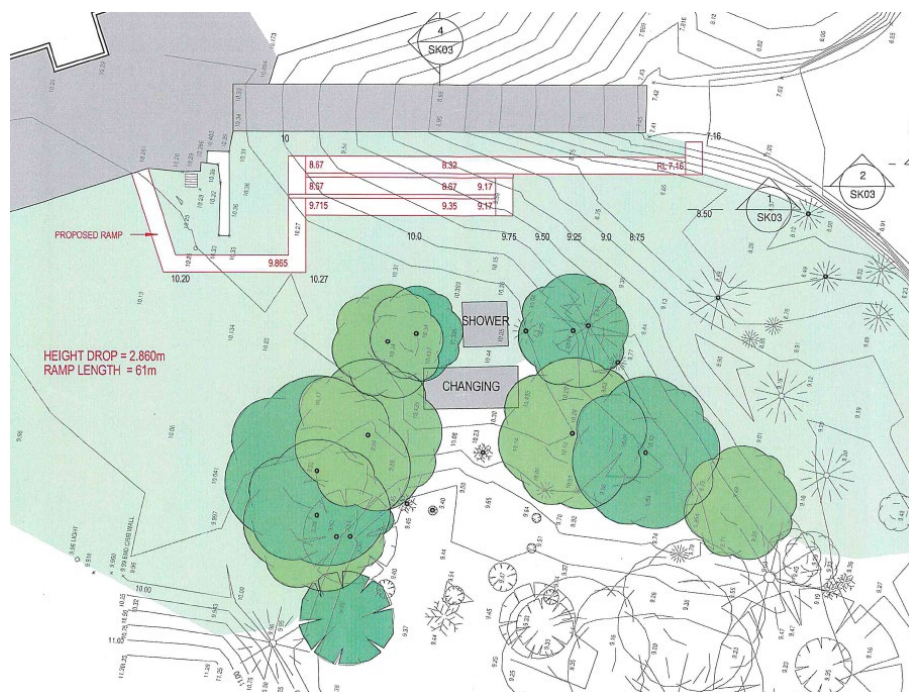
## 8.6 Beach Access - Lighthouse Beach Ballina

SLSC Option 1 (Figure 1) involves the construction of a pathway through an area of littoral rainforest and dune vegetation. The initial cost estimate from the SLSC for this option is \$75,500.



**Figure 1: Option1 Concept Plan – Dunal Pathway**

SLSC Option 2 (Figure 2) involves the construction of a ramp incorporating several switchbacks adjacent to the existing ramp. The initial cost estimate from the SLSC for this design is \$174,500.



**Figure 2: Option 2 Concept Plan – Southern Side of Concrete Ramp**

Option 1 is higher risk in terms of adverse environmental impacts. Possible damage includes the considerable expansion of the swash zone which could increase the segmenting of the foredune (through erosion).



## 8.6 Beach Access - Lighthouse Beach Ballina

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It is recommended that if Council wishes to pursue improved beach access for persons with a disability, that the initial focus be on Lighthouse Beach given the interest and goodwill expressed by the SLSC, the design work undertaken to date and the proximity of such an access to the services provided at the surf club and the current location of the Mobi Mat.

The provision of improved beach access for persons with a disability is a desirable outcome, aligning with Council's Disability Inclusion Action Plan and Ageing Strategy. It is a positive action Council can take to support members of the community and visitors who have a disability to access one of the shire's key natural assets.

The balance though is the consideration of potential environmental impacts and the potential for increased adverse erosion impacts at the point where a permanent access ramp meets the beach. Ultimately, if improved beach access is favoured, it is likely this will come with an ongoing cost associated with erosion management and potentially infrastructure damage. This cost both in terms of individual erosion events and long term cost is difficult to quantify.

The recommendation is to undertake further and more detailed feasibility analysis, including examination of potential erosion and swash zone impacts, in order to pursue an improved beach access for persons with a disability at Lighthouse Beach.

This work would be incorporated into the work program of Council's Open Spaces Section, with the aim of completing the additional feasibility analysis by June 2021.

It is anticipated the further feasibility analysis can be undertaken within existing budgets, although this depends on the extent to which external coastal engineering advice is necessary to determine the likely extent of impacts.

### **Sustainability Considerations**

- **Environment**

There is a strong likelihood that the construction of an access ramp under options 1 and 2 will cause damage to the foredune and vegetation. Increased adverse erosion impacts resulting from the proposed infrastructure is also anticipated. If the access ramp were to proceed it is likely environmental offsetting and ongoing management of erosion related impacts will need to occur.

- **Social**

The provision of dignified access to the beach for people with disabilities is a positive outcome. The provision of a ramp as proposed will improve access for those using a mobility aid, who do not necessarily have access to a support person, to access the beach.

- **Economic**

Accessible tourism has the potential to generate significant economic opportunities for the local economy. The funding for any future access ramp will need to be sourced from grants/donations or an allocation will need to be made in Council's long term financial plan.

**Legal / Resource / Financial Implications**

The land forms part of the Ballina Coastal Crown Reserve R1010068 gazetted on 13 August 2004 for the purpose of Public Recreation and Coastal Environmental Protection.

Advice from Council's native title manager indicates that the proposed act (of constructing an accessible beach ramp) complies with the applicable provisions of the Native Title Act 1993 (Cth) and as such will not require approval of the traditional owners of the land.

The SLSC has not requested financial assistance for the proposal. Rather the SLSC has sought Council's support in seeking grant funding to construct an accessible ramp. There is no current allocation in Council's budget to fund this proposal so if grant funding is not available, and Council wishes to proceed with works, funding will need to be allocated in the long term financial plan. This can be considered once a preferred access option has been determined.

The key issue for this report is a decision on whether to continue to pursue the provision of a permanent access ramp for persons with a disability (and in turn commit resources to this), or alternatively, continue to rely on the SLSC to deploy the Mobi Mat (noting the SLSC has identified this as being problematic and the SLSC undertakes this task on a voluntary basis).

Further feasibility investigations, as recommended, can be progressed under existing resources although is likely to require reprioritisation of existing projects to accommodate this.

**Consultation**

Council's Disability Access Reference Group has been advised of the proposal and have indicated that it is supportive of measures that improve access for people with disabilities. The SLSC has consulted with a number of local service providers who work with people with disabilities and the organisations have indicated their support for the construction of an accessible ramp.

**Options**

*Option 1 - Council may indicate its support for the construction of a compliant disability access ramp at Ballina Lighthouse Beach.*

Council could pursue further feasibility studies based on the three options presented in this report, in consultation with the SLSC. This would provide for an enhanced understanding of the potential advantages, disadvantages and costs of each option.

If provision of an improved access ramp is ultimately determined to be feasible having regard for the potential impacts, staff would then seek grant opportunities to fund the preferred option and obtain the necessary approvals for construction.

This option supports the provision of beach access to people using a mobility aid who do not necessarily have access to a support person. It also provides a more dignified option for mobility aid users to access the beach.



## 8.6 Beach Access - Lighthouse Beach Ballina

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This option does not provide for an immediate solution to beach access for persons with a disability but it does place the issue within Council's work program and provides clear direction on further pursuit of the access arrangements.

This is the recommended approach.

*Option 2 – Council could identify alternative sites along the Ballina Shire coastline to locate an accessible beach ramp.*

Whilst this option may identify alternative sites for the construction of a compliant access ramp the reality is that for the ramp to be fully functional it needs to be coupled with the use of Mobi Matting. The SLSC has taken the role of storing, rolling out and packing up the Mobi Mat. If an alternative site was preferred by Council, additional matting will need to be sourced (or transfer of the existing matting organised) as well as identifying stakeholders to store, roll out and pack up the matting.

This option is not recommended. The recommendation is to continue to work proactively with the Ballina Lighthouse & Lismore SLSC with a focus on Lighthouse Beach.

*Option 3 – Council could decide not to support investigations into the construction of a compliant disability beach access ramp.*

Under this option, staff would not apply any further resources on investigations into construction of a disability beach access ramp and communications to the SLSC would be prepared to this effect. This option is not recommended for the reasons identified in Option 1.

### RECOMMENDATIONS

1. That Council supports, in principle, the construction of a compliant accessible beach access ramp adjacent to the Ballina Lighthouse and Lismore Surf Lifesaving Club.
2. That the preferred location of the ramp is to be determined based on further and more detailed feasibility analysis drawing on the three concept plan options presented in this report, and in consultation with the Ballina Lighthouse and Lismore Surf Lifesaving Club .
3. That Council acknowledges the work that the Ballina Lighthouse and Lismore Surf Lifesaving Club has undertaken to promote and provide for beach access for persons with a disability.
4. That Council works in partnership with the Ballina Lighthouse and Lismore Surf Lifesaving Club to seek grant funding to construct a compliant accessible beach access ramp based on the outcomes of the feasibility analysis undertaken in relation to point 2.

### Attachment(s)

1. Letter from Ballina Lighthouse & Lismore SLSC Inc - Beach Access

## **8.7 Crown Land - Meldrum Park Classification and Categorisation**

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### **8.7 Crown Land - Meldrum Park Classification and Categorisation**

#### **Delivery Program**

Open Spaces

#### **Objective**

To seek direction on Council's appointment as Crown Land Manager for Meldrum Park Ballina and the classification and categorisation of the land to meet the requirements of the Crown Land Management Act (2016)

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#### **Background**

Council considered the classification and categorisation of Crown Land under its management at its June 2019 Ordinary meeting. At that meeting, Council and resolved to endorse the preparation of compliant plans of management, as required by the Crown Land Management Act 2016 (CLM Act) by June 2021.

Council, as appointed Crown Land Manager of dedicated or reserved Crown land is responsible for the care, control and management of the land to which it is appointed and is to exercise any other functions conferred or imposed on the manager by the CLM Act or any other Act.

Crown Reserve 49211, known as Meldrum Park, is devolved to Council under section 48 of the Local Government Act 1993 (LG Act).

Council can only maintain a devolved reserve. This does not support Council in actively managing or improving a reserve and Council is not able to issue tenure over such land.

In the case of Meldrum Park, this is a well utilised recreational area that would benefit from greater flexibility in land management arising from Council being the Crown Land Manager. The park would also benefit from infrastructure improvements that would be easier to achieve where Council is Crown Land Manager.

To facilitate more flexible and practical management of the land by Council, it is recommended that Council requests that the Minister appoint Council as Crown Land Manager of the Meldrum Park reserve.

This will enable more active management of the land by Council and incorporation of the site into Council's Plan of Management for Community Land (which will include Crown Land for which Council is Crown Land manager).

#### **Key Issues**

- Appointment of Council as Crown Land Manager over a Crown Reserve that currently devolves to Council
- Assignment of a community land category to a Crown Reserve that aligns with the gazetted purpose of the reserve

#### **Information**



## 8.7 Crown Land - Meldrum Park Classification and Categorisation

Meldrum Park consists of an area of 3,200.87m<sup>2</sup>, and incorporates a playground, shelter, toilets, barbecues, path and associated landscaping as set out in Figure 1.

Council currently undertakes regular mowing, playground safety inspections and repairs, toilet and barbecue cleaning and landscaping.



**Figure 1: Crown Reserve 49211, Meldrum Park, Folio ID 1/50/758047**

Council may be required to enter into a lease agreement with the Department, if Council is not appointed Crown Land Manager and Council wishes to regulate land use, maintain or further embellish the park.

Charges for the lease would likely apply at market rates.

If appointed as Crown Land Manager, the CLM Act enables Council to manage Crown Reserves generally under the public land provisions of the LG Act.

This provides for a greater level of flexibility and in this case better aligns with managing the park in line with its current level of infrastructure and use.

## 8.7 Crown Land - Meldrum Park Classification and Categorisation

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### Categorisation of Reserve 49211

If Council is appointed as Crown Land Manager for Meldrum Park, the land will need to be classified and categorised. The intention is for the land to be classified as community land to match the recreational use of the land.

Under the CLM Act, all Crown reserves that are classified as community land require a categorisation to be assigned.

The primary consideration for categorisation of Crown Land is that the category assigned relates to the gazetted reserve purpose.

Table 1 below lists the recommended initial categorisation as required to be provided to the Minister to ensure that Council complies with section 3.23 of the CLM Act.

**Table 1 – Recommended Request to Minister – Initial Land Categorisation**

Reserve	Gazetted purpose	Proposed Categorisation
R49211	Public Recreation	Park

If Council is appointed Crown Land Manager, it is recommended that Council proceed to seek a community land classification with a categorisation of Park as the basis for incorporating Meldrum Park into Council's Plan of Management for Community Land.

### **Sustainability Considerations**

- **Environment**

Environmental, social and economic values have been considered in relation to Council's ongoing management of the land and land classification and categorisation.

Council management of the land as Crown Land Manager better enables Council to realise the recreational values of the land for the benefit of the community.

- **Social**

As above.

- **Economic**

As above.

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

Council's Delivery Program and Operational Plan includes HE3.11 – Implement Crown Land Management reforms.

As part of this process, Council's interaction with Crown Land has been reviewed and Meldrum Park has been identified as an area that could be better managed with Council as Crown Land Manager.

Council already maintains the park but is presently limited in its ability to manage the land.

## **8.7 Crown Land - Meldrum Park Classification and Categorisation**

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If Council decides to seek appointment as Crown Land Manager (and this is agreed by the Minister) there will likely be costs associated with infrastructure provision and replacement on the land over time.

However, infrastructure provision and replacement (noting the shelter infrastructure in the park may need replacement in the near future), and long term planning for the land is more difficult if the land remains devolved and in effect under the control of Crown Lands.

On balance, Council's management of the land as Crown Land Manager under a plan of management will likely better service the community by enabling more proactive and planned management of the reserve consistent with its current level of community use.

### **Consultation**

The review of the management of reserve 49211 and classification and categorisation has occurred in consultation with the Strategic Planning Section (being the section managing the plan of management review process under the Crown Lands Management Act).

Community consultation will be undertaken as part of the plan of management preparation process (and will include Meldrum Park if Council is appointed as Crown Land Manager).

### **Options**

Council may proceed with the request for appointment as Crown Land Manager of reserve 49211, and then in turn undertake the classification and categorisation process.

Alternatively, Council can decline to proceed with a request to be appointed as Crown Land Manager or defer the matter to seek further information.

The recommended approach is to proceed with the request for Council to be appointed as Crown Land Manager for Meldrum Park.

Should Council resolve to not request to be appointed as Crown Land Manager of reserve 49211, this land will not be included in the revised plan of management for community land and Council will continue to undertake maintenance of the land in accordance with the land being devolved to Council.

This may prevent some infrastructure improvements from being carried out.

Notification to the Minister of Council's initial classification and preferred land category is a non-delegable function and requires a Council resolution.

The recommendation is for Council to seek a community land classification with a park categorisation if Council is appointed as Crown Land Manager for Meldrum Park.

**RECOMMENDATIONS**

1. That Council requests appointment as Crown Land Manager over Crown Reserve 49211 (Meldrum Park).
2. That Council endorses the classification of Meldrum Park as community land with a categorisation of Park to be applied in the event Council is appointed as Crown Land Manager.
3. The General Manager is authorised to seek the classification and categorisation of the land as set out in point 2.

**Attachment(s)**

Nil

## **8.8 Commercial Activities on Public Land - Surf Schools and Related Uses**

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### **8.8 Commercial Activities on Public Land - Surf Schools and Related Uses**

#### **Delivery Program**

Open Spaces

#### **Objective**

To seek Council direction on the public tender process for Commercial Activities on Public Land Licences for Surf Schools, Elite Surf Coaching and Stand Up Paddle Board Coaching

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#### **Background**

Council's Commercial Activities on Public Land Policy outlines the commercial activities that may be carried out on public land and how those activities are regulated and managed, ensuring an appropriate balance between public recreation and economic activity.

A key component of this policy is issuing commercial licences. These licences assist Council to protect the amenity of our public land for all users, regulate the demand and supply where that is appropriate, manage safety and also recognise the commercial gain derived by individual businesses from the use of public land.

Under the policy, there are currently three types of licences that are subject to a public tender process – surf schools, elite surf coaching and stand up paddle board coaching.

For these licence types, the policy includes a cap on the total number of licences that can be issued by Council. The policy currently allows:

- five surf school licences (maximum 20 clients per class)
- six elite surf coaching licences and
- three stand up paddle board coaching licences.

If there are spare licences after the public tender process, under the policy, Council can accept applications for the spare licences and the General Manager may decide who will be issued those licences. Any applications for spare licences must meet the licence specifications (including that the applicant must hold certain minimum qualifications).

From the last public tender process in 2018:

- all five surf school licences were taken up
- two of the three stand up paddle board coaching licences were taken up. One stand up paddle board coaching licence is currently vacant; and
- four of the six elite surf coaching licences were taken up. One of the four successful tenderers gave up the licence during the three year term. Council later received an application from a new operator and a licence was issued. Two elite surf coaching licences remain vacant.

All current licences expire on 30 April 2021.

## **8.8 Commercial Activities on Public Land - Surf Schools and Related Uses**

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The purpose of this report is to determine:

- if Council wishes to proceed with a public tender for the next three year period
- if the public tender is proceeding, the fee levels for each licence category for the period from 1 May 2021 – 30 April 2024; and
- if the public tender is proceeding, the tender criteria and weightings.

### **Key Issues**

- Head licence conditions
- Fees and charges
- Tender approach and criteria

### **Information**

#### Head Licence

Council holds a head licence from the State Government over many parcels of Crown Land along the coastal reserve. The current head licence commenced on 11 April 2018.

The head licence is granted for Business Purposes – Low Impact Commercial Recreational Activities. The head licence allows Council to issue sub-licences for Low Impact Commercial Recreational Activities.

The rent payable by Council to the State Government under the head licence is 10% of the income derived from the sub-licences, or if that amount is less than the statutory minimum rent, then the statutory minimum rent applies.

The licences granted by Council for surf schools, elite surf coaching and stand up paddle board coaching are sub-licences granted pursuant to this head licence.

#### Tender Process - Request from Existing Licensee

Council has received communication from an existing surf school licensee, noting that:

- the surf school business he operates has suffered financial hardship during 2020 due to the impacts of Covid-19
- surf schools rely on interstate and overseas travelers for business, and that business has been severely impacted by travel restrictions
- overseas travel is not likely to be back at usual levels for an extended period
- as interstate travel restrictions ease, existing licensees need the benefit of an economic recovery period (essentially to make up part of what they have lost during the Covid-19 downturn in business); and
- Council should consider not proceeding with the public tender for the next three year period and instead extend the licences of the existing licensees for three years, to allow them an economic recovery period.

## 8.8 Commercial Activities on Public Land - Surf Schools and Related Uses

Council's Commercial Activities on Public Land Policy envisages that a public tender will be conducted for these categories of licences, as typically there has been strong interest in the licences, particularly the surf school licences, and a tender process allows other operators an opportunity to enter the market.

Council has, at times, been reluctant to call tenders, as the difficulty with calling tenders is that there is a risk that an existing operator could lose their livelihood.

The history on this is as follows:

- Licences were originally issued through a tender process in 2010 – Council actually increased the number of surf schools allowed in the policy as the number of tenders received was in excess of the numbers permitted
- September 2013 – resolution extending licences without tender
- August 2016 – resolution extending licences without tender
- April 2017 – resolution extending licences without tender
- April 2018 – Tenders called and appointed by Council

Despite the difficulties that can be encountered in a tender process, this is the preferred approach, as it provides greater transparency and equity by allowing people / operators without a current licence an opportunity to apply.

### Licence Fee Level Review

There is a recognised commercial gain derived by individual businesses from the use of public land, therefore the community (i.e. Council) should receive a return to assist in managing the public land.

Rather than letting tenderers set the price, as part of the last tender in 2018, Council included fixed licence fees that would apply to all tenderers.

Table 1 contains the licence fees applicable to the current three year tender period (1 May 2018 – 30 April 2021):

**Table 1 - Licence Fee (\$) (ex GST) - 1 May 2018 – 30 April 2021**

Licence Type	2018/19	2019/20	2020/21
Surf School	6,500	6,500	6,500
Elite Surf Coaching	1,500	1,833	2,166
Stand Up Paddle Board Coaching	1,500	1,833	2,166

Council, at the Ordinary meeting held 26 March 2020, as part of the COVID-19 pandemic Business Relief Package, resolved to grant some fee relief to surf schools, elite surf coaching and stand up paddle board coaching licensees.

The fee relief was to waive half the annual licence fee and this was applied for the period 1 May 2020 – 31 October 2020.

This fee relief was not extended to holders of licences for other activities under the Commercial Activities on Public Land Policy.

Based on the impacts of the COVID-19 pandemic on these types of businesses and the ongoing interstate and overseas travel restrictions, it is suggested that no licence fee increase occur for the first two years of the new tender period.

## 8.8 Commercial Activities on Public Land - Surf Schools and Related Uses

It is also proposed that a modest 3% increase be applied for the third year of the tender period.

Table 2 contains the recommended licence fees payable for the three year tender period from 1 May 2021 – 30 April 2024:

**Table 2 - Recommended Licence Fee (\$) (ex GST) - 1 May 2021 – 30 April 2024**

Licence Type	Year One	Year Two	Year Three
Surf School	6,500	6,500	6,695
Elite Surf Coaching	2,166	2,166	2,230
Stand Up Paddle Board Coaching	2,166	2,166	2,230

As a guide, the current licence fee for commercial surf schools at Byron Shire Council for 2020/21 is \$4,800 (excluding GST) per annum.

However, the class size in Byron Shire is limited to 10 people per class compared to Ballina Shire's class size of 20 people per class.

Given the impacts of COVID-19 on travel, although Ballina Shire's maximum class size is double that of Byron Shire, the actual attendance levels may be significantly below the 20 people per class.

As travel restrictions ease, the attendance levels may increase.

The proposed licence fee for elite surf coaching and stand up paddle board coaching are roughly based on a percentage of the surf school licence fee, to broadly align with the reduced class size.

### Proposed Licence Numbers

The level of compliance by the surf schools, elite surf coaching and stand up paddle board coaching by existing licensees has been generally good.

There have been a relatively small number of complaints from members of the public about the activities of the licensees on the beach.

There have been complaints related to vehicle parking by some licensees. Such complaints are addressed by Council staff with the relevant licensees at the time.

On the whole, the current licensees have been working relatively cooperatively to minimise impacts on the public.

Based on the general efficiency with which the current framework has been operating, there are no changes proposed to the number of licences or the categories of licences that are currently listed within the Commercial Activities on Public Land policy.

Table 3 indicates the number of licences proposed as per the current policy.



## 8.8 Commercial Activities on Public Land - Surf Schools and Related Uses

**Table 3 – Licences Proposed - Council Policy Extract**

Activity	Licences	Student/Teacher Ratio	Maximum Numbers	Classes Per Day
Surf Schools	5	1 Instructor per 8 Clients	20	Per school 2 Sessions Daily
Elite Surf Coaching	6	1 Instructor per 7 Clients	7	Per school 2 Sessions Daily
Stand Up Paddle Board Coaching	3	1 Instructor per 8 Clients	14 - Richmond River 7 - Seven Mile north of Lake Ainsworth 3 - Lake Ainsworth, Shaws Bay, Prospect Lake	Per school 2 Sessions Daily

### Proposed Tender Criteria

Under the existing policy, the preferred public tender period is for three years. The tender period would be for the period 1 May 2021 to 30 April 2024. As the proposed licence fees for the licences will be set, a qualitative assessment is proposed, which is consistent with the last tender process in 2018. The assessment of the tenders submitted will be undertaken by a panel of Council staff in accordance with our procurement procedures and the tender evaluation plan prepared for the tender.

The preferred method for incorporating the direction of the elected Council into this process is for Council to determine the assessment criteria and the weighting applied to each criteria. A recommended criteria and weighting structure is as follows.

**Table 4- Proposed Tender Criteria and Weighting**

CRITERIA	WEIGHT
<b>Capacity</b> Demonstrated capability to provide the services as specified Details of relevant qualifications Staffing and other resources Demonstrated capability to promote information that ensures clients are receiving instruction in minimal impact techniques, environmental protection and ethics of appropriate behaviour	<b>25%</b>
<b>Relevant Experience</b> General performance history Relevant experience with contracts of a similar nature and References	<b>25%</b>
<b>Social and Community Benefit</b> Knowledge and experience with local conditions and location of the business Social impact on local economy – including whether local jobs are created, maintained or lost Economic and tourism development benefits to the Ballina Shire through associated activities such as marketing, use of Shire facilities and suppliers (including whether products and materials are sourced locally)	<b>25%</b>
<b>Safety and WH&amp;S Systems</b> Level and detail of WH&S systems Demonstrated ability to provide appropriate safety requirements and meet duty of care responsibilities	<b>25%</b>

## **8.8 Commercial Activities on Public Land - Surf Schools and Related Uses**

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The social and community benefit criteria is supported by Council's Local Procurement Policy.

It is open to the Council to add or delete criteria, and amend the apportionment of the weighting. The criteria and weighting is consistent with the 2018 tender. Once the criteria and weighting are determined, the tender evaluation plan will be developed with a scoring matrix with benchmark levels to guide the scoring of each submission against each criteria. The outcomes of this assessment will be reported to Council in the usual manner for tenders.

### **Sustainability Considerations**

- **Environment**

By managing the licences Council is taking steps to minimise any negative impacts on the environment and ensure an appropriate balance between public recreation and commercial business.

- **Social**

Surf school licences, elite surf coaching licences and stand up paddle board coaching licences provide a social activity for participants. However it is important to ensure an appropriate balance between economic and public benefit, and to preserve the amenity of the coastal areas.

- **Economic**

Council generates an income from the licences which offsets a small portion of the expenses associated with maintaining the Coastal Reserve.

Existing licence operators have claimed there may be some tourism benefits from having the licences available however there is no independent information to provide detailed analysis of this aspect of the licences. This has often been one of the criticisms of these licences in that students are often driven in from Byron Bay and then returned to Byron Bay, which may result in little broader economic benefit to the Ballina Shire.

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

The administration of the existing licences is able to be accommodated within existing the work program of the Open Spaces Section.

### **Consultation**

Relevant staff have been consulted on the proposed tender process. All existing licensees will be notified of the public tender.

### **Options**

1. Council elects not to proceed with the public tender process and extends the existing licences by three years (or a lesser period determined by Council)

## **8.8 Commercial Activities on Public Land - Surf Schools and Related Uses**

2. Council proceeds with the public tender process for surf school licences, elite surf coaching licences and stand up paddle board coaching licences for a three year period.

If Option 2 is selected, there are further options to consider such as:

3. Council adopts the licence fee structure proposed in Table 2
4. Council amends the proposed licence fee structure proposed in Table 2
5. Council adopts the public tender assessment criteria and weightings as per Table 4
6. Council amends the public tender assessment criteria and weightings proposed in Table 4.

If Council elects not to proceed with the public tender (Option One) and extends the existing licences for three years or a lesser period, it is suggested the following matters are also considered:

- the Commercial Activities on Public Land Policy envisages that a tender will be conducted for these categories of licences. The Policy and the Commercial Activities on Public Land Specifications document may need amendment if the tender does not proceed
- some licensees may not want to have their licences extended for a three year period
- extending the licences of existing licensees without going to public tender would preclude any new operators from tendering and potentially entering the market.

As the number of licences available is capped, it is important to again reinforce that a public tender process means that there is the potential for an existing licence holder to lose their business and livelihood, if a new licence holder is selected through the tender process.

Therefore, by resolving to call public tenders, Council needs to be aware that the final decision, which will be based on recommendations from a staff panel, may well culminate in difficult decisions based on a qualitative assessment, as all licence holders will be paying the same fee.

### **RECOMMENDATIONS**

1. That Council proceeds with the public tender process for surf school licences, elite surf coaching licences and stand up paddle board coaching licences for a three year period
2. That Council adopts the licence fees as per Table 2 of this report.
3. That Council adopts the public tender assessment criteria and weightings as per Table 4 of this report.

### **Attachment(s)**

Nil

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

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

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In accordance with Department of Planning, Industry and Environment reporting requirements, the following information is provided on development applications where variation to a development standard of 10% or less (via the BLEP 1987 or BLEP 2012) has been approved by staff under delegated authority.

<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 that there have been no applications approved under delegation for variations to development standards of 10% or less for July to September 2020.

### **Attachment(s)**

Nil

## 8.10 Development Applications - Works in Progress - October 2020

### 8.10 Development Applications - Works in Progress - October 2020

The following schedule sets out current development applications that have not yet been determined for the reasons cited.

Further information relating to each application listed is available via Council's DAs online portal (accessible via [www.ballina.nsw.gov.au](http://www.ballina.nsw.gov.au)).

Dwelling house and dual occupancy applications are not included in this report.

DA No.	Date Rec'd	Applicant	Proposal	Status
2018/74	13/2/2018	Ardill Payne & Partners	Amended Proposal: Demolition of Existing Residential Flat Building and Erection and Strata Title Subdivision of a six storey Residential Flat Building containing 12 (originally 14) dwellings, associated car parking and works. The proposed building has a height of 18.6m (originally 18.3) with the lift over run at a height of 19.3m which is above the building height allowance of 18m under the Ballina Local Environmental Plan 2012 – 8 Grant Street, Ballina	Being assessed
2018/554	13/9/2018	Ardill Payne & Partners	Change of Use to Establish a Depot – Removalist Business and Associated Signage – 6 Waverley Place, West Ballina	Being assessed
2018/747	6/12/2018	Ardill Payne & Partners	Staged Torrens Title Subdivision and Boundary Adjustment to create 18 x residential lots, 1 x residual lot, 1 x drainage reserve, associated infrastructure works, earthworks and revegetation/rehabilitation works (Avalon Estate Stages 6a and 6b) - Rifle Range Road & 22 Scarlett Court, Wollongbar	Awaiting additional information
2019/145	8/3/2019	Ardill Payne & Partners	Construction of an Industrial Development to be Used for a Depot and For General and Light Industrial Purposes, Filling of Land and Associated Works – 29-31 Smith Drive, West Ballina	Awaiting additional information
2019/283	7/5/2019	Newton Denny Chapelle	Change of use from a high technology industry to general industry involving the assembly, manufacture and fitting of prosthetic limbs and alterations to the building - 2/188-202 Southern Cross Drive, Ballina	Awaiting additional information

## 8.10 Development Applications - Works in Progress - October 2020

2019/376	11/6/2019	Newton Denny Chapelle	Amended Proposal: Erection of two , six shade house structures, two sheds, eight rainwater tanks, earthworks, access driveways, vegetation removal and landscaping – 348 Rous Road, Rous Mill	Awaiting additional information
2019/499	2/8/2019	Planners North	Implementation of erosion and slope stabilisation measures, bushland regeneration works, ongoing geotechnical monitoring and use of existing structures for residential purposes – 35 Pine Avenue, East Ballina	Being assessed
2019/535	21/8/2019	Ardill Payne & Partners	To undertake a development in four stages comprising: Stage 1 - Three Lot Torrens Title Subdivision (Proposed Lots 1 and 2 – area of 801m <sup>2</sup> and Proposed Lot 3 – area of 1,090m <sup>2</sup> ). Stage 2 - Erection of a Two Storey Dwelling on Proposed Lots 1, 2 and 3. Stage 3 - Strata Subdivision of Proposed Lots 1, 2 and 3. Stage 4 – Erection of a New Dwelling on each Vacant Strata Lot to create a Detached Dual Occupancy. 26-30 Fitzroy Street, Wardell	Awaiting additional information
2019/666	16/10/2019	GHD Pty Ltd on behalf of Ballina Shire Council	Upgrades to the Marom Creek Water Treatment Plant – 65 Weis Lane, Rous	Awaiting additional information
2019/669	17/10/2019	Victor Holmes Town Planning	Two lot Torrens Title Subdivision to create one x 600m <sup>2</sup> allotment and one x 539m <sup>2</sup> allotment (below the 600m <sup>2</sup> minimum lot size development standard of the Ballina LEP 2012), demolition of gazebo, carport and swimming pool, site filling and drainage, infrastructure servicing, vegetation management works and associated works – 23 Skinner Street, Ballina	To be determined at November Council Meeting
2019/736	19/11/2019	D & S Greeney	Proposed Two Lot Torrens Title subdivision, erection of dwelling house and associated swimming pool, earthworks, vegetation removal, access driveway and change of use of existing dwelling to a secondary dwelling – 16 Tara Downs, Lennox Head	Being assessed

## 8.10 Development Applications - Works in Progress - October 2020

2019/743	22/1/2019	Ardill Payne & Partners	Refurbishment and expansion of the existing caravan park to provide a total of 87 long-term sites and one site for the manager residence/office. The proposal comprises demolition works, earthworks, removal of short-term and camping sites, removal of access from River Street and construction of new driveway access from Emigrant Lane, construction of new amenities and facilities, internal roadworks and car parking - 586 River Street & 21 Emigrant Creek Road, West Ballina	Awaiting additional information
2019/765	2/12/2019	Viru Investment Holdings Pty Ltd	Intensification of existing intensive horticulture facility and establishment of associated agricultural processing facility to be carried out as a staged development including construction of additional greenhouse, alteration to existing greenhouse, construction of agricultural processing industry building, construction of farm dam, construction of car park, erection of security fencing and associated landscaping works – 167 Rous Road, Rous	Determination pending
2019/794	12/12/2019	Ardill Payne & Partners	Two lot subdivision by way of boundary adjustment to create one x 42.46ha and one x 1.47ha allotments – Palm Lake Resort, 120 North Creek Road, Ballina	Being assessed
2020/56	7/2/2020	Ballina Shire Council	Construction of a new sewer rising main extending 1465m from the intersection of North Creek Road and Skennars Head Road to an existing sewer pump station east of Castle Drive, Lennox Head. The proposed new pipeline will replace an existing dilapidated main – North Creek Road, Skennars Head Road & Castle Drive, Lennox Head	Referred to Government Departments
2020/76	14/2/2020	Newton Denny Chapelle	Proposed filling of land to establish a building pad for future development purposes and associated works – 210 Southern Cross Drive & Corks Lane, Ballina	Awaiting additional information

## 8.10 Development Applications - Works in Progress - October 2020

2020/83	18/2/2020	Newton Denny Chapelle	Demolition of existing structures and the erection and Strata Title subdivision of a multi-dwelling housing development comprising nine single storey dwellings, earthworks, retaining, servicing and vegetation management works – 167 & 169 Tamar Street, Ballina	Being assessed
2020/153	13/3/2020	Planners North	Erection of a mixed use development comprising recreation facility (indoor) and information and education facility and associated works – 68 De-Havilland Crescent, Ballina	Awaiting additional information
2020/194	30/3/2020	Ardill Payne & Partners	To undertake the construction of a car park and associated access driveway to service an existing seniors housing development – 148 & 120 North Creek Road, Ballina	Being assessed
2020/199	1/4/2020	Newton Denny Chapelle	Alterations and Additions to an Existing Industrial Building and Associated Works – 6 Piper Drive, Ballina	Awaiting additional information
2020/207	6/4/2020	Sarah Addicoat	Strata Title Subdivision of an Existing Dual Occupancy – 13 Trelawney Avenue, Wollongbar	Being assessed
2020/233	17/4/2020	Magus PM C/- Creative Planning Solutions	Erection of a Permanent Group Home for People with a Disability – 9 Leach Crescent, West Ballina	Being assessed
2020/242	23/4/2020	Planners North	Multi Dwelling Housing Development comprising the erection and Strata Title subdivision of 44 two storey dwellings and associated works - Lot 6 DP 1225206 The Coast Road, Skennars Head	Awaiting additional information
2020/244	23/4/2020	Northern Rivers Land Solutions	Three Lot Torrens Title Subdivision to create one x 800m <sup>2</sup> , one x 860m <sup>2</sup> and one x 1,084m <sup>2</sup> allotments, filling and retaining works, vegetation removal, riverbank stabilisation works, infrastructure servicing and associated works – 23 Richmond Street, Wardell	Awaiting additional information
2020/264	30/4/2020	Ardill Payne & Partners	To undertake demolition, alterations and additions to the existing Northern Rivers Seafood Building – 480 River Street, West Ballina	Being assessed



## 8.10 Development Applications - Works in Progress - October 2020

2020/270	4/5/2020	R & J Harris Consulting Pty Ltd	Alterations and Additions to an existing waste management facility comprising the erection of a waste transfer shed used for the storage of excavation drilling mud and the transfer of recycled containers (Container Deposit Scheme Materials) and parking of vehicles – 540 Pimlico Road, Pimlico	Being assessed
2020/284	12/5/2020	Ballina Island Developments Pty Ltd	Subdivision of Proposed Super Lot 102 in DA 2018/51 comprising the creation of 17 Torrens Title residential lots and one super lot, road construction, installation of infrastructure and services, earthworks and vegetation clearing – 20 North Creek Road, Lennox Head	Being assessed
2020/292	15/5/2020	Newton Denny Chapelle	Subdivision of land involving the creation of 12 Torrens Title lots, road and infrastructure servicing, bulk earthworks, retaining walls and vegetation removal. 11 of the residential lots range in size from 825sqm to 1200sqm and one lot having an area of approximately 3800sqm. – 180 & 190 North Creek Road, Lennox Head	Being assessed
2020/325	29/5/2020	Ardill Payne & Partners	Multi-Dwelling Housing Comprising the Erection and Strata Title Subdivision of Four Dwellings and associated works – 2 Unara Parkway, Cumbalum	Being assessed
2020/346	4/6/2020	Byron Bay Planning	Erection of Dwelling House and Associated Works and Demolition of Existing Shed. The Application Includes a Variation to the 40 Hectare Minimum Lot Size Development Standard for the Erection of a Dwelling House – 2 Fredericks Lane, Tintenbar	Awaiting additional information
2020/358	11/6/2020	Newton Denny Chapelle	Extension to the Existing Junior School Discovery Centre to include Two Additional Classrooms and an Outdoor Covered Learning Area and Associated Earthworks and Infrastructure Servicing – 62 Horizon Drive, West Ballina	Being assessed
2020/364	12/6/2020	Ardill Payne & Partners	Boundary adjustment subdivision of two lots to create two modified lots comprising one proposed 1.3ha and one 17.3 ha allotments - 13 Kamala Place, Tintenbar	Awaiting additional information

## 8.10 Development Applications - Works in Progress - October 2020

2020/399	26/6/2020	RLA Building Design	Multi Dwelling Housing Development comprising the demolition of existing dwelling house and the erection of three x three bedroom single storey dwellings, vegetation removal and associated works – 110 Ballina Road, Alstonville	Being assessed
2020/431	8/7/2020	Ardill Payne & Partners	Change of Use of part of the existing operation of a general industry – brewery to an artisan food and drink industry - 2/188-202 Southern Cross Drive, Ballina	Being assessed
2020/439	14/7/2020	Newton Denny Chapelle	Erection of Industrial Building and associated infrastructure and earthworks and the use of Unit 1 for the purpose of a warehouse or distribution centre and Units 2 to 5 for the purpose of general industry - 46 Kays Lane, Alstonville	Being assessed
2020/450	20/7/2020	Ray Cavill	Establishment of an Information and Education Facility (art gallery and studio) comprising conversion of existing church building to gallery space, erection of pottery studio, kiln shed, ancillary amenities including caretaker's accommodation and associated infrastructure works – 36 Rous Mill Road, Rous Mill	Awaiting additional information  To be determined by Council Resolution No: 270820/10
2020/485	5/8/2020	Templar Designs	Conversion of part of an existing industrial building to self-storage sheds, erection of business identification sign and associated works – 12 Northcott Crescent, Alstonville	Being assessed
2020/518	14/8/2020	T Fitzroy	Extensions to existing industrial building and associated works and change in use of existing premises from a vehicle repair station to light industry – 11 Owens Crescent, Alstonville	Being assessed
2020/529	21/8/2020	Ardill Payne & Partners	To establish a detached dual occupancy and associated works involving the change of use of a shed to a dwelling (retrospective). The application is supported by a variation to a development standard request to enable the proposed dual occupancy to be detached rather than attached to the existing dwelling house as required by Clause 14 of the Ballina Local Environmental Plan 1987 – 76 Phillips Road, Newrybar	Referred to Government Departments

## 8.10 Development Applications - Works in Progress - October 2020

2020/540	26/8/2020	Ardill Payne & Partners	Subdivision involving the staged creation of three Torrens Title Lots, demolition of dwelling house and associated infrastructure works – 71 Teven Road, Alstonville	Being assessed
2020/542	26/8/2020	Newton Denny Chapelle	Expansion of an existing Rural Industry involving the processing of natural extracts and including the erection of a new shed and the carrying out of associated earthworks, services and driveway access- 226 Hinterland Way, Knockrow	Being assessed
2020/548	27/8/2020	Tim Fitzroy & Associates	Erection of an Industrial Building and associated works- 66 De-Havilland Crescent, Ballina	Being assessed
2020/562	3/9/2020	Newton Denny Chapelle	Temporary earthworks stockpile and rock crushing - Super Lot 5 DP 1239938 Montwood Drive at EPIQ, Lennox Head	Awaiting additional information
2020/566	3/9/2020	Ardill Payne & Partners	Subdivision to create 10 Torrens Title residential lots and associated infrastructure services – Approved Lot 605 (as per DA 2015/468) DP 1265586 Ballina Heights Drive, Cumbalum	Being assessed
2020/568	4/9/2020	Planners North	Construction of a dwelling and associated earthworks and vehicular access - Lot 3 DP 611002 Midgen Flat Road, Newrybar	Awaiting additional information
2020/575	8/9/2020	KDC Pty Ltd	Signage and façade changes to an existing commercial premises -	Being assessed
2020/577	8/9/2020	D Tyler	Construction of Roof over Existing Deck – 98 Killarney Crescent, Skennars Head	Determination pending
2020/582	8/9/2020	L Cramp	To undertake vegetation removal – 400 Old Byron Bay Road, Newrybar	Being assessed
2020/591	14/9/2020	Newton Denny Chapelle	Subdivision comprising the creation of 25 industrial lots ranging in size from 1181sqm to 4493sqm, one residue lot of 4.13hectares and associated infrastructure servicing and bulk earthworks – 25-39 Boeing Avenue & Corks Lane, Ballina	Being assessed
2020/596	15/9/2020	Ardill Payne & Partners	Industrial development comprising the demolition of one existing industrial building and the construction of two new industrial buildings to be used for a combination of general industrial purposes and warehousing and the carrying out of associated works – 14-16 Southern Cross Drive, Ballina	Being assessed

## 8.10 Development Applications - Works in Progress - October 2020

2020/618	23/9/2020	Newton Denny Chapelle	Multi-Dwelling Housing Development comprising the erection of 25 two storey dwellings, Strata Title subdivision and associated works. A variation is sought to the 8.5m Height of Building development standard contained in Clause 4.3 of the Ballina Local Environmental Plan 2012 for a number of the proposed dwellings – 2, 6 & 12 Anchorage Avenue, Lennox Head	On exhibition
2020/625	23/9/2020	H Nguyen	Change of use to establish a beauty/nail salon and associated fit out works – 127-129 River Street, Ballina	Being assessed
2020/627	24/9/2020	K Wiltshire	Vegetation management works comprising the removal of one tree – 36 Alston Avenue, Alstonville	Being assessed
2020/632	25/9/2020	Newton Denny Chapelle	Warehouse or distribution centre involving the construction of a 40m x 40m shed and associated civil, car parking and landscaping works. A variation to the 8.5m Height of Building development standard is being sought for the proposed shed – Lot 228 DP 1121079 Teven Road, West Ballina	On exhibition
2020/647	1/10/2020	K Whiting	Vegetation management works comprising the removal of one tree – 125 Links Avenue, East Ballina	Being assessed

## 8.10 Development Applications - Works in Progress - October 2020

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

DA No.	Date Rec'd	Applicant	Proposal	Status
2016/524	16/9/2016	Planners North	Seniors living development pursuant to SEPP (Housing for Seniors and People with a Disability) comprising amended layout, 147 (previously 211) self-care housing, clubhouse, recreation facilities, roads and infrastructure, environmental management and protection works – 67 Skennars Head Road	Being assessed
2020/192	27/3/2020	Planners North	Establishment of a proposed 300 site Manufactured Home Estate with associated manager's residence, club house, recreation facilities, roads, utility services, earthworks and other associated works. The application seeks a variation to Clause 4.3 Height of Buildings development standard under the Ballina Local Environmental Plan 2012. A Section 82 Objection under the Local Government Act 1993 has been submitted to enable the onsite construction of manufactured homes in variance to Clause 41 of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 requiring construction offsite – 550-578 River Street, West Ballina	Class 1 Appeal – Deemed Refusal

## 8.10 Development Applications - Works in Progress - October 2020

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### 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 October 2020.

### Attachment(s)

Nil

## 9.1 Use of Council Seal

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## 9. Corporate and Community Division Reports

### 9.1 Use of Council Seal

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#### RECOMMENDATION

That Council affix the Common Seal to the following documents.

US/23	<p>Ballina Shire Council Sublease to S Fleming for Part Lot 321 DP 755745 and Lot 7003, DP 92641 being Area 1 Old Tintenbar Council Chambers for a term of three years at current market rent + GST.</p> <p>Explanation: Council has a head lease with the Crown over the property known as Lot 321 DP 755745 and Lot 7003 DP 92641 being the old Tintenbar Council Chambers and Alstonville Hall. The tenant has exercised the option on the sublease for a further term of three years.</p>
US/24	<p>Ballina Shire Council Lease to Family Centre Australia Limited for Part Lot 246 DP 755684 being the Kentwell Community Centre, known as Office 1 for a term of three years at current market rent + GST.</p> <p>Explanation: the Family Centre has exercised the option on their current lease for a further term of three years.</p>

#### Attachment(s)

Nil

## 9.2 Investment Summary - September 2020

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### 9.2 Investment Summary - September 2020

#### **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 investments report setting out Council's cash and investments.

The report is to be presented at the Ordinary Council meeting, immediately following the end of the respective month.

This report has been prepared for the month of September 2020.

#### **Key Issues**

- Compliance with Investment Policy and the return on investments

#### **Information**

As at 30 September 2020, Council's investments are in accordance with Council's Investment Policy and the Local Government Act and Regulations.

The total balance of investments as at 30 September 2020 was \$89,538,300 and is unchanged from the balance as at 31 August 2020.

Council's investments, as at 30 September, were invested at an average (weighted) interest rate of 1.094%, which was 1.006% above the September average 90 Day Bank Bill Index of 0.088%.

The balance of the Commonwealth Bank business account as at 30 September 2020 was \$4,622,181. This is a net decrease of \$4,944,083 from the balance as at 31 August 2020.

The reduced cash balance was the result of loan repayments totalling \$1.75m, significant payments to principal contractors and the three payroll periods.

In addition, cash inflows in September 2020 were \$2.75m less than September 2019, primarily due to the lower receipts of rates and annual charges payments and payments from investment property tenants.

This reflects the COVID-19 concessions that continued to apply in September 2020.

TCorp prepare a weekly Economic Commentary report. The report for the week ending 28 September 2020 can be reviewed online using the following link:

<https://www.tcorp.nsw.gov.au/resource/280920.pdf>



## 9.2 Investment Summary - September 2020

The majority of Council's investment portfolio is restricted by legislation (external) and Council (internal) uses for the following purposes, as shown in the following table:

Reserve Name	Restriction	% Portfolio*
Wastewater (incl developer contributions)	External	12.5%
Water (incl developer contributions)	External	21.7%
Section 7.11 Developer Contributions	External	13.4%
Bonds and Deposits	External	4.6%
Other External Restrictions	External	1.9%
Carry Forward Works	Internal	4.3%
Bypass Maintenance	Internal	4.3%
Bushfire Recovery	Internal	1.4%
Airport	Internal	2.8%
Landfill and Resource Management	Internal	1.0%
Employee Leave Entitlements	Internal	4.2%
Quarries	Internal	0.9%
Property	Internal	4.3%
Plant and Vehicle Replacement	Internal	0.6%
Road Works	Internal	3.5%
Community Facilities	Internal	1.4%
Miscellaneous Internal Reserves	Internal	5.1%
Financial Assistance Grant in Advance	Internal	2.6%
Unrestricted		7.5%
<b>Total</b>		<b>100.00%</b>

\* Reflects reserves updated as at 30 June 2020.

### A. Summary of Investments by Institution

Funds Invested With	Fossil Fuel Aligned	Rating S&P	Rating Moody	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
<b>Grandfathered Investments</b>								
National Australia Bank	Yes	BBB	-	1,788	1,788	0	2.0%	<b>2%</b>
<b>Rated Institutions</b>								
AMP Bank	Yes	BBB	A2	6,500	6,500	10%	7.3%	
Australian Unity bank	n/a	BBB+	-	3,000	3,000	10%	3.4%	
Auswide Bank	No	BBB	Baa2	2,000	2,000	10%	2.2%	
Bank of China	Yes	A	A1	5,000	5,000	20%	5.6%	
Bank of Communications	Yes	A-	A2	1,000	1,000	20%	1.1%	
Bank of Queensland	Yes	BBB+	A3	6,000	6,000	10%	6.7%	
Bendigo & Adelaide Bank	No	BBB+	A3	2,000	4,000	10%	4.5%	
Commonwealth Bank Aus	Yes	AA-	Aa3	11,000	11,000	20%	12.3%	
Credit Union Australia	No	BBB	Baa1	600	600	10%	0.7%	
Defence Bank Ltd	No	BBB	-	5,500	5,500	10%	6.1%	
ING Bank (Australia) Ltd	Yes	A	A3	1,000	1,000	20%	1.1%	
ME Bank	No	BBB	Baa1	4,750	1,750	10%	2.0%	
Macquarie Bank Limited	Yes	A+	A2	1,000	1,000	20%	1.1%	
My State Bank Ltd	No	BBB+	Baa1	3,000	3,000	10%	3.4%	
National Australia Bank	Yes	AA-	Aa3	15,000	15,000	20%	16.8%	
Newcastle Perm Bld Soc	No	BBB	A3	4,700	4,700	10%	5.2%	
Suncorp Limited	No	A+	A1	2,000	3,000	20%	3.4%	
Teachers Mutual Bank Ltd	No	BBB	Baa1	700	700	10%	0.8%	
Westpac Banking Corp	Yes	AA-	Aa3	13,000	13,000	20%	14.5%	<b>98%</b>
<b>Total</b>				<b>89,538</b>	<b>89,538</b>		<b>100%</b>	

## 9.2 Investment Summary - September 2020

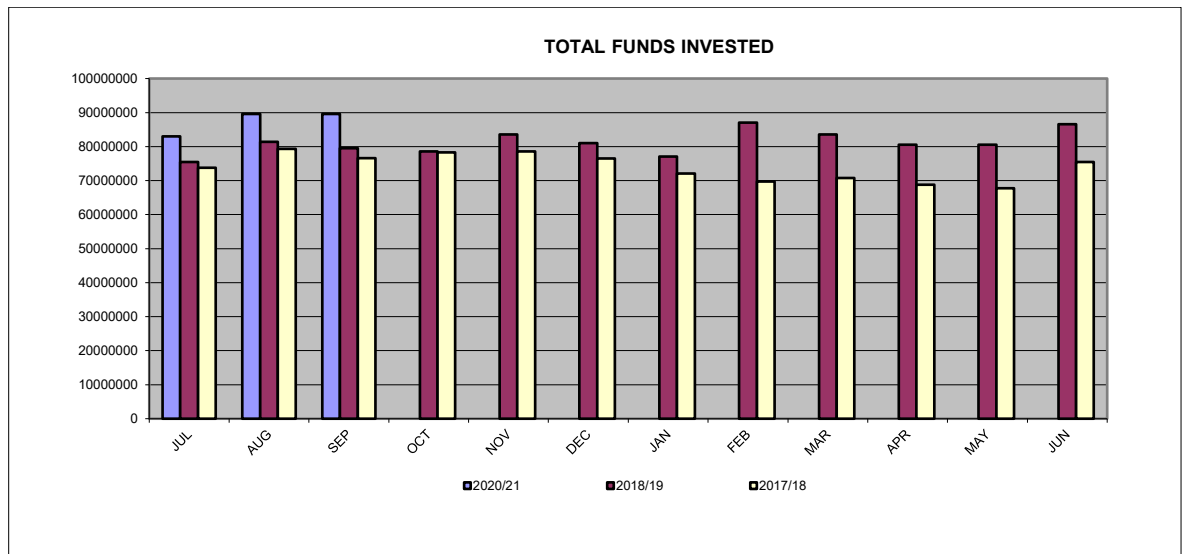
Funds Invested With	Fossil Fuel Aligned	Rating S&P	Rating Moody	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
<b>Credit Rating Summary as per the Investment Policy</b>		<b>Maximum Allowed</b>		<b>Value</b>	<b>Value</b>	<b>%</b>	<b>%</b>	<b>Total</b>
		<b>%</b>		<b>Previous</b>	<b>Current</b>	<b>Previous</b>	<b>Current</b>	
A- or Higher		100%		89,538	49,000	50,000	55%	56%
BBB		60%		53,723	40,538	39,538	45%	44%
<b>Total</b>				<b>89,538</b>	<b>89,538</b>	<b>89,538</b>	<b>100%</b>	<b>100%</b>

### B. Summary of Investments Fossil Fuel Aligned

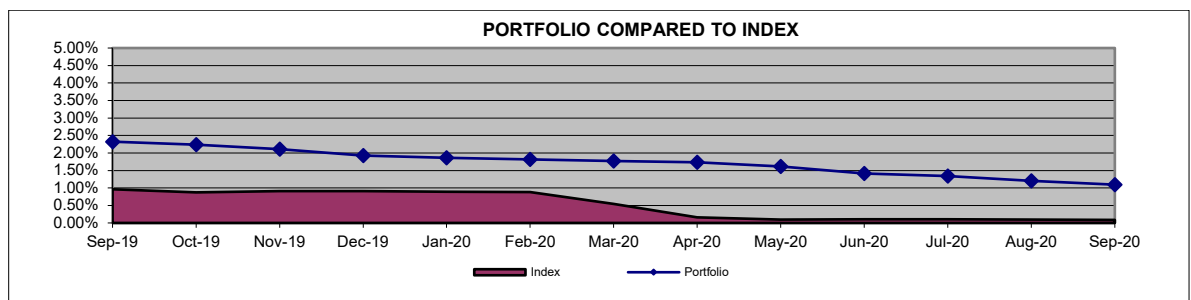
	Previous Month (\$'000)	Current Month (\$'000)
<b>Fossil Fuel Aligned</b>	61,288 <b>68%</b>	61,288 <b>68%</b>
<b>Non-Fossil Fuel Aligned</b>	25,250 <b>28%</b>	25,250 <b>28%</b>
<b>Not Classified</b>	3,000 <b>4%</b>	3,000 <b>4%</b>
<b>Total</b>	<b>89,538</b> <b>100%</b>	<b>89,538</b> <b>100%</b>

Classification based on advice from 'Market Forces'.

### C. Monthly Comparison of Total Funds Invested

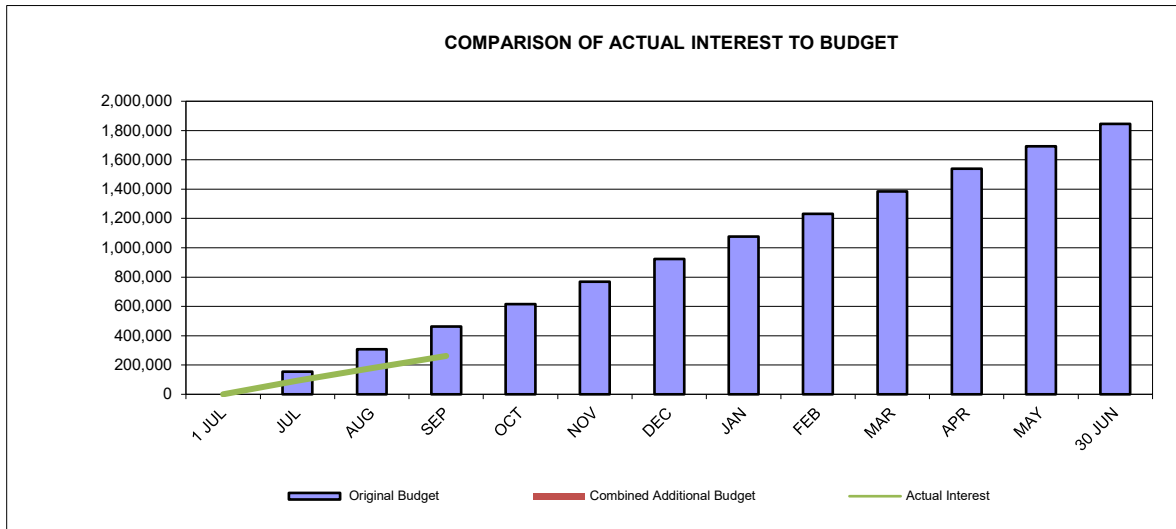


### D. Comparison of Portfolio Investment Rate to 90 Day BBSW



## 9.2 Investment Summary - September 2020

### E. Progressive Total of Interest Earned to Budget



A review of forecast interest will be considered as part of the September 2020 quarterly budget review.

### F. Investments held as at 30 September 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
20/09/04	National Australia Bank (ASX Listed)	FRN	1.3200%	Perpetual	1,788	1,663
17/06/16	Commonwealth Bank of Australia	FRN	1.1400%	17/06/21	1,000	1,000
30/06/16	Commonwealth Bank of Australia	FRN	1.1300%	30/06/21	1,000	1,000
03/08/17	Westpac Banking Corporation	FRN	1.1500%	03/08/22	2,000	2,000
18/08/17	Westpac Banking Corporation	FRN	1.1513%	18/08/22	1,000	1,000
09/11/17	ME Bank	FRN	1.3550%	09/11/20	750	750
06/02/18	Newcastle Permanent Bld Society	FRN	1.5000%	06/02/23	700	700
02/07/18	Teachers Mutual Bank Limited	FRN	1.4700%	02/07/21	700	700
30/07/18	Westpac Banking Corporation	FRN	1.0300%	31/07/23	1,000	1,000
31/07/18	Westpac Banking Corporation	FRN	1.0300%	02/08/23	1,000	1,000
06/09/18	Newcastle Permanent Bld Society	FRN	1.5000%	06/02/23	1,000	1,000
06/09/18	Credit Union Australia	FRN	1.3400%	06/09/21	600	600
10/09/18	AMP Bank	FRN	1.1700%	10/09/21	1,500	1,500
11/01/19	Commonwealth Bank of Australia	FRN	1.2350%	11/01/24	1,000	1,000
08/02/19	Westpac Banking Corporation	FRN	1.1521%	06/02/24	2,000	2,000
21/02/19	Newcastle Permanent Bld Society	FRN	1.1485%	22/02/21	2,000	2,000
22/02/19	Newcastle Permanent Bld Society	FRN	1.1596%	22/02/21	1,000	1,000
26/07/19	Commonwealth Bank of Australia	FRN	1.1521%	26/07/21	1,000	1,000
01/08/19	AMP Bank	FRN	1.1700%	10/09/21	2,000	2,000
26/08/19	AMP Bank	FRN	1.1700%	10/09/21	1,000	1,000
28/10/19	Bank of Communications	FRN	0.9900%	28/10/22	1,000	1,000
28/11/19	Australian Unity Bank	TD	1.7000%	25/11/20	2,000	2,000
28/01/20	ING Bank (Australia) Ltd	TD	1.6500%	21/01/21	1,000	1,000
11/02/20	Auswide Bank	TD	1.6500%	04/02/21	2,000	2,000
26/02/20	Defence Bank Ltd	TD	1.6500%	23/02/21	1,000	1,000
27/02/20	MyState Bank Ltd	TD	1.6500%	20/11/20	1,000	1,000
03/03/20	Defence Bank Ltd	TD	1.6500%	02/03/21	1,000	1,000

## 9.2 Investment Summary - September 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
05/03/20	MyState Bank Ltd	TD	1.6500%	03/03/21	1,000	1,000
07/03/20	Defence Bank Ltd	TD	1.6000%	08/12/20	1,500	1,500
17/03/20	Macquarie Bank Limited	TD	1.6000%	22/12/20	1,000	1,000
17/03/20	MyState Bank Ltd	TD	1.7500%	16/12/20	1,000	1,000
24/03/20	Defence Bank Ltd	TD	1.8500%	23/03/21	1,000	1,000
28/05/20	National Australia Bank	TD	0.9500%	06/10/20	2,000	2,000
28/05/20	National Australia Bank	TD	0.9500%	13/10/20	2,000	2,000
28/05/20	National Australia Bank	TD	0.9500%	20/10/20	2,000	2,000
04/06/20	Bank of China	TD	0.9500%	01/06/21	2,000	2,000
04/06/20	National Australia Bank	TD	0.9900%	18/05/21	3,000	3,000
10/06/20	Bank of China	TD	0.9200%	08/06/21	1,000	1,000
10/06/20	AMP Bank	TD	1.5500%	10/12/20	1,000	1,000
10/06/20	Australian Unity Bank	TD	1.0500%	08/04/21	1,000	1,000
24/06/20	Bank of China	TD	0.9500%	23/06/21	2,000	2,000
29/06/20	Bank of Queensland	TD	1.0500%	28/06/21	2,000	2,000
29/06/20	Bank of Queensland	TD	1.0500%	22/06/21	1,000	1,000
29/06/20	Commonwealth Bank of Australia	TD	0.7400%	05/01/21	4,000	4,000
30/07/20	Commonwealth Bank of Australia	TD	0.7200%	04/02/21	3,000	3,000
04/08/20	National Australia Bank	TD	0.8500%	03/08/21	4,000	4,000
04/08/20	National Australia Bank	TD	0.8500%	28/07/21	2,000	2,000
11/08/20	Bank of Queensland	TD	0.8500%	10/08/21	3,000	3,000
11/08/20	Bendigo & Adelaide Bank	TD	0.7500%	05/08/21	2,000	2,000
17/08/20	AMP Bank	TD	0.8000%	17/08/21	1,000	1,000
20/08/20	Westpac Banking Corporation	TD	0.7500%	21/07/21	4,000	4,000
27/08/20	Defence Bank Ltd	TD	0.9000%	26/08/21	1,000	1,000
31/08/20	Suncorp Limited	TD	0.7000%	09/03/21	2,000	2,000
31/08/20	Westpac Banking Corporation	TD	0.7600%	03/09/21	2,000	2,000
02/09/20	Suncorp Limited	TD	0.7000%	02/03/21	1,000	1,000
02/09/20	Bendigo & Adelaide Bank	TD	0.7000%	01/09/21	2,000	2,000
16/09/20	ME Bank	TD	0.6500%	16/03/21	1,000	1,000
<b>Totals</b>					<b>89,538</b>	<b>89,413</b>
TD = Term Deposit		FRN = Floating Rate Note				

### RECOMMENDATION

That Council notes the record of banking and investments for September 2020.

### Attachment(s)

Nil

### **9.3 Northern Regional Planning Panel - Representation**

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#### **9.3 Northern Regional Planning Panel - Representation**

##### **Delivery Program**

Governance

##### **Objective**

To review the Council representation on the Joint Regional Planning Panel (JRPP).

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##### **Background**

Joint Regional Planning Panels were established by the NSW State Government on 1 July 2009 and were renamed as Planning Panels at a later stage.

Ballina Shire Council is a member of the Northern Regional Planning Panel (which includes councils from Tweed to Port Macquarie and as far west as Moree Plains and Liverpool Plains). Council's representatives on the Panel are:

- Mayor (delegate)
- Deputy Mayor (delegate - currently Cr Eoin Johnston)
- Cr Keith Williams (alternate)
- Cr Sharon Cadwallader (alternate)

The purpose of this report is to confirm Council's representation on the Panel, given that Cr Sharon Cadwallader is now the Deputy Mayor.

##### **Key Issues**

- Council representation
- Conflicts of interest
- Training

##### **Information**

The local council is the body that determines the two council representatives on the Planning Panel.

Council's preferred option has been to have Councillors as the representatives, albeit that Council can nominate members of the community.

The Planning Panels have detailed operating procedures, along with a Code of Conduct.

Declarations of interest are an important consideration in that Code and as per Council's Code of Conduct there is an onus on Panel Members to declare any interests and manage that interest appropriately.

Representatives from the Department of Planning manage attendance at Panel meetings, dependent upon any conflicts of interest declared and availability of members.

### **9.3 Northern Regional Planning Panel - Representation**

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With Cr Cadwallader now elected as Deputy Mayor, the preferred option is to transfer Cr Cadwallader to be the delegate, with Cr Johnston as the alternate; i.e.

- Mayor (delegate)
- Deputy Mayor (delegate – Cr Sharon Cadwallader)
- Cr Keith Williams (alternate)
- Cr Eoin Johnston (alternate)

This minimizes the inconvenience in changing the representatives as the delegates need to be aware of the Panel's Code of Conduct and operating procedures.

#### **Sustainability Considerations**

- **Environment**  
Applications before the Planning Panel must consider environmental, social and economic factors.
- **Social**  
As above
- **Economic**  
As above

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

Ballina Shire Councillors on the Planning Panel are paid \$600 per meeting which is the figure included in Council's Councillor Expenses and Facilities Policy. Council determines this figure.

#### **Consultation**

No public consultation has taken place given that this is an operational issue.

#### **Options**

The purpose of this report is to clarify Council's representation on the Panel as Council has typically elected the Mayor and Deputy Mayor as the delegates. The Planning Panel is still able to proceed and determine matters without any Council representation, if for some reason all of Council's representation could not attend a meeting (due to conflicts of interest or being away).

#### **RECOMMENDATION**

That Council confirms its representation on the Northern Regional Planning Panel is the Mayor and Deputy Mayor as delegates, and two Councillors as alternate delegates, with those two alternate Councillor delegates being Crs Keith Williams and Eoin Johnston.

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

Nil

## 9.4 Disclosure of Interest Returns

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### 9.4 Disclosure of Interest Returns

#### **Delivery Program**

Governance

#### **Objective**

To comply with the provisions of the Code of Conduct relating to the tabling of disclosure of interest returns.

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#### **Background**

Clause 4.21 of the Code of Conduct requires Councillors and designated persons to lodge with the General Manager a return in the form set out in schedule 2 of the code, disclosing the councillor's or designated person's interests as specified in schedule 1 of the code within three months after:

- (a) becoming a councillor or designated person, and
- (b) 30 June of each year, and
- (c) the councillor or designated person becoming aware of an interest they are required to disclose under schedule 1 that has not been previously disclosed in a return lodged under paragraphs (a) or (b).

Clause 4.25 then requires the General Manager to table those returns at the first meeting of the council after the last day the return is required to be lodged.

This report complies with the Clause 4.21 (b) for the period 1 July 2019 to 30 June 2020.

#### **Key Issues**

- Ensuring compliance with the Code of Conduct

#### **Information**

Disclosure of interest returns are to be tabled by Councillors and designated persons. Clause 4.8 of the Code of Conduct defines designated persons as:

- (a) the general manager
- (b) other senior staff of the council for the purposes of section 332 of the Local Government Act
- (c) a person (other than a member of the senior staff of the council) who is a member of staff of the council or a delegate of the council and who holds a position identified by the council as the position of a designated person because it involves the exercise of functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest

## 9.4 Disclosure of Interest Returns

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- (d) a person (other than a member of the senior staff of the council) who is a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of the council's functions (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest.

To manage the determination of designated positions an internal procedure has been adopted by staff to ensure that the following positions complete the returns.

- Senior management (General Manager, Directors and Senior Leadership Team)
- Staff with the delegation to determine development applications, approve construction certificates and approve re-zoning (planning proposal) applications.

No committee members, other than Councillors, are required to complete the returns, as all Council's committees, other than those consisting entirely of Councillors, have no delegated authority.

The completed returns for 2019/20 and the register are tabled at the meeting for the information of the public.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The disclosure of interest returns improve transparency in the decision making process.
- **Economic**  
Not Applicable

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

Council must comply with the Local Government Act 1993.

### **Consultation**

This report is provided for the information of the public.

### **Options**

This report is for noting.



**RECOMMENDATION**

That Council notes the contents of the report on the disclosure of interest returns for the period 1 July 2019 to 30 June 2020.

**Attachment(s)**

Nil

## 9.5 Code of Conduct - Reporting

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### 9.5 Code of Conduct - Reporting

#### Delivery Program

Governance

#### Objective

To comply with the reporting requirements of the Code of Conduct.

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#### Background

The Office of Local Government's (OLG) Model Code of Conduct requires a report to be submitted annually on code of conduct complaints, within three months of the end of August. This report satisfies these requirements.

#### Key Issues

- Number and nature of complaints

#### Information

This report is for the period 1 September 2019 to 31 August 2020 and is set out in a format recommended by the OLG.

<b>Number of Code of Conduct Complaints</b>	
Number of complaints <i>received</i> about councillors and GM	2
Number of complaints <i>finalised</i> in the period about councillors and GM	1
<b>Overview of Code of Complaints</b>	
Number of complaints <i>finalised</i> at the outset by alternative means by GM or Mayor	0
Number of complaints <i>referred</i> to a conduct reviewer	2
Number complaints <i>finalised at preliminary assessment</i> by a conduct reviewer	0
Number of complaints <i>investigated</i> by a conduct reviewer	2
Number of complaints <i>investigated</i> by a conduct review committee	0
Number of complaints referred to the ICAC, NSW Ombudsman, OLG or police	0
<b>Complaint Assessment Statistics</b>	
Number <i>determined</i> by the conduct reviewer at the preliminary assessment stage by:	
Taking no action (or to not proceed to an investigation)	0
Resolving the complaint by alternative and appropriate strategies	0
Referring matter back to GM or Mayor for resolution by alternative and appropriate strategies	0
Referring the matter to the ICAC, NSW Ombudsman, OLG or police	0
Proceeding to investigate the matter	2

## 9.5 Code of Conduct - Reporting

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Recommending that the complaints coordinator convene a conduct review committee to investigate the matter	0
<b>Cost of Dealing with Code of Conduct Complaints</b>	
Total cost of managing complaints about councillors and GM for the period	\$930
Invoiced from conduct reviewers	\$412
Approximate staff costs	\$518

### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
The Code of Conduct exists to ensure oversight and appropriate standards of behavior.
- **Economic**  
No Applicable

### Legal / Resource / Financial Implications

The Council's Code of Conduct is as per the Office of Local Government's Model Code of Conduct, and requires a report to be submitted annually on Code of Conduct complaints. This report satisfies that legal requirement.

### Consultation

This report is provided for information.

### Options

This report is for information purposes only.

### RECOMMENDATION

That Council notes the contents of the Code of Conduct statistics report for the 2019/20 reporting period.

### Attachment(s)

Nil

## 9.6 Financial Support Package - COVID-19 Pandemic - Update

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### 9.6 Financial Support Package - COVID-19 Pandemic - Update

#### Delivery Program

Commercial Services

#### Objective

To provide an update on the financial support package assisting the community and seek Council approval for further relief where appropriate.

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#### Background

As a result of a Mayoral Minute tabled at the 26 March 2020 Ordinary meeting, Council provided a financial support package to residents and the business community to assist with the adverse impacts created by the COVID-19 pandemic and consequent restrictions imposed by Federal and State Governments.

The relief approved by Council was as follows:

Fees and Charges	Waiver Details
1. Interest on Overdue Rates and Charges	0% to 30 June 2021
2. Community Facility Hire Fees	Full refunds
3. Flat Rock Tent Park	Full refunds
4. Northern Rivers Community Gallery	Three month waiver of fees
5. Commercial Use of Footpaths	Full waiver from 1 April 2020 to 30 June 2021
6. Club Lennox	Full waiver from 1 April 2020 to 30 June 2021
7. Commercial Surf Schools	100% waiver for six months
8. Parking Fines	Education focus to 30 June 2020
9. Health / Public Pool Regs and Inspections	100% waiver from 1 April 2020 to 30 June 2021
10. Market Fees	100% waiver from 1 April 2020 to 30 June 2021
11. Ferry Casual Fees	Casual fee exemption to 30 June 2020.
12. Commercial Tenants	Rent relief on a case by case basis
13. Ballina – Byron Gateway Airport Tenants	Rent relief on a case by case basis

Based on the Retail and Other Commercial Leases (COVID-19) Regulation 2020, Council applied a rental relief package to its commercial tenants until 23 October 2020. This Regulation has now been extended until 31 December 2020.

This report provides information on the assistance provided to date, with a confidential report included later in this agenda detailing requests for assistance where commercial in confidence information has been included.

#### Key Issues

- Ongoing impacts to Council tenants from the COVID-19 pandemic
- Financial cost to the Council and community in providing financial support

- Equity of assistance provided

### Information

When the Mayoral minute was tabled at the March 2020 Ordinary meeting, the extent to which COVID-19 would impact businesses and the community was very uncertain.

From a Ballina Shire local government area perspective there were substantial impacts during April and May with many facilities and businesses having to close, or limit their operations, due to restrictions placed on the community by the NSW Public Health (COVID-19) Order.

Since about late June / July many businesses on the NSW Far North Coast have shown signs of recovery and the information provided to Council by tenants can help determine what level of financial support, if any, should still be provided to Council tenants.

Whilst the financial impact of the COVID-19 pandemic and restrictions placed on some businesses by the State Government are still being felt within the NSW Far North Coast, many businesses are recovering.

Service NSW provided a report to Council in October 2020 identifying that they have approved 238 Small Business COVID-19 \$10,000 Support Grants within our Shire totaling \$2,326,338. A high number of these applications related to accommodation, food services and retail trade.

In addition, Service NSW has also provided a total of 214 Small Business COVID-19 Recovery Grants in the amount of \$3,000 to 214 businesses within our Shire.

This support equated to \$636,284 with a high percentage of these applications being for accommodation, food services and retail trade.

The State Government restrictions placed on most businesses have been eased with perhaps the hospitality industry being the most affected due to social distancing rules resulting in a substantial reduction in seating capacity for cafes and restaurants.

This situation could improve as time goes by or change dramatically at any given time if the region were to experience an outbreak of the pandemic.

Border closures have, to some extent, had a positive effect on tourism on the NSW Far North Coast as evidenced by the strong return in passenger services at the Ballina Byron Gateway Airport, albeit numbers are still below pre-pandemic figures.

On the other hand, the Queensland border closure was having a large negative impact on the local construction industry, with many supplies restricted, along with a shortage of skilled tradespeople being available for construction work.

There were also many negative social impacts, due to the inability to access health services, family and friends.

## 9.6 Financial Support Package - COVID-19 Pandemic - Update

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The next four months, October to early January, are traditionally the strongest trading months for most businesses on the NSW Far North Coast, and this should provide an opportunity for businesses to continue to improve their trading.

A report published in July 2020 identified that the Ballina Shire local government area had 40% of businesses reliant on Jobkeeper.

A link to that article is as follows, with Byron Shire identified as the local government area with the highest proportion (60%) of its business registered to receive the payment in Australia.

<https://taylorfry.com.au/articles/where-are-the-businesses-most-reliant-on-jobkeeper/>

In respect to the financial assistance provided by Council to 30 September 2020, the opportunity cost of that relief is approximately \$1m based on the following estimates:

- Nil interest on overdue rates – Not long after Council made the decision to not change interest for 2020/21, the Office of Local Government advised that all councils in NSW were not to change interest for the period 1 July 2020 to 31 December 2020. It is projected that the loss of interest charge for the entire period until 30 June 2021 is anticipated to be \$75,000. (\$30,000 for period to 30 September 2020).
- Community Facility Hire Fees - Full refunds until 30 September 2020 totaling \$1,200.
- Flat Rock Tent Park - Full refunds until 30 September 2020 totaled \$30,400.
- Northern Rivers Community Gallery - Six month waiver of fees from 1 March 2020 to 31 August 2020 totaling \$5,200.
- Commercial Use of Footpaths - Full waiver from 1 April 2020 to 30 June 2021 is \$22,500 (\$18,000 for period to 30 September 2020).
- Club Lennox - Full waiver from 1 April 2020 to 30 June 2021 - \$44,400. (\$17,800 for period to 30 September 2020).
- Commercial Surf Schools - 100% waiver for six months ending 31 October 2020 - \$22,700 (\$18,900 for period to 30 September 2020).
- Parking Fines - Education focus to 30 June 2020. For the period April 2019 to June 2019, Council received approximately \$59,800 revenue in parking fines. Normal parking enforcement functions recommenced from 1 July 2020.
- Health / Public Pool Regulations and Inspections - 100% waiver from 1 April 2020 to 30 June 2021. Estimate based on the actual income for 2018/19, being \$136,700.
- Market Fees - 100% waiver from 1 April 2020 to 30 September 2021. This equated to a total of \$5,900 loss in income.

## 9.6 Financial Support Package - COVID-19 Pandemic - Update

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- Ferry Casual Fees - Casual fee exemption to 30 June 2020 – For the period April 2019 to June 2019, Council received approximately \$120,000 in ferry income. For 2020 this figure reduced to approximately \$20,000, a loss in income of approximately \$100,000. Total ferry income was below budget by \$90,000.
- Commercial Tenants - Rent relief on a case by case basis. This rent relief was provided until 23 October 2020 in accordance with *Retail and Other Commercial Leases (COVID-19) Regulation 2020*. The cost of the rent relief provided was \$307,100. Tenants are now able to apply for further assistance due to the extension of the Regulation until 31 December 2020.
- Ballina – Byron Gateway Airport Tenants - Rent relief on a case by case basis. This rent relief was provided until 30 September 2020. The cost of the rent relief provided was \$285,400. Requests for further rent relief from commercial tenants are outlined in the confidential report later in this agenda due to the commercial in confidence information provided to Council.

### Legal / Resource / Financial Implications

In March 2020 the Federal Government National Cabinet introduced a Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19.

The NSW Government included the principles from the Code of Conduct into the Retail and Other Commercial Leases (COVID-19) Regulation 2020 under the Retail Leases Act 1994 which came into effect on 24 April, 2020. This Regulation was due to cease on 24 October 2020 but has now been extended until 31 December 2020.

As a consequence of extending the Regulation to 31 December, 2020, tenants are required to re-establish their eligibility under the extension to the Regulation if they wish to request further rent relief.

### Consultation

Council staff have held a number of meetings with tenants who have requested further rent relief.

### Options

This report provides an update on the financial support package, with the confidential report later in this agenda seeking Council approval for further rent relief, to specific tenants.

### RECOMMENDATION

That Council notes the contents of this update on the COVID-19 financial support package, with the confidential report later in this agenda outlining further requests for financial assistance.

**Attachment(s) - Nil**

## 9.7 Tender - Airport Boulevard

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### 9.7 Tender - Airport Boulevard

#### **Delivery Program**

Engineering Works

#### **Objective**

To report the outcomes of the tender evaluation for the construction of Airport Boulevard and associated components.

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#### **Background**

The construction of the Airport Boulevard roadway and associated components is the second part of the works to extend Boeing Avenue to the Ballina Byron Gateway Airport and the connection to North Creek Road. The first part of these works included the bulk earthworks and major drainage works, which were completed in April 2020.

Tenders were invited from seven contractors in August 2020 and this report outlines the results of the tender process.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005
- Obtain value of money and budget

#### **Information**

At the close of the tender period, five tenders were received;

- Alder Constructions
- CD Excavations
- Civil Contractors (Aust) Pty. Ltd. Trading as CCA Winslow (*incomplete*)
- Civlec Pty. Ltd. Trading as GRC Civil
- Hazel Bros (QLD) Pty Ltd

The evaluation criteria and weightings were determined in accordance with Council's "Tenders and Quotations – Evaluation Criteria Policy" and applied in accordance with an approved Tender Evaluation Plan.

Details of the assessment and pricing have been provided to Councillors by confidential memorandum. The attachment provides details in regards to the tender evaluation criteria both mandatory and weighted.

Hazel Bros (QLD) Pty Ltd has been assessed as the preferred tenderer to undertake the works.

#### **Sustainability Considerations**

- **Environment**  
The successful contractor will be required to submit an environmental management plan to ensure construction works are undertaken in a manner that minimises environmental impacts.



## 9.7 Tender - Airport Boulevard

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- **Social**  
Not Applicable
- **Economic**  
The development of the road network in the industrial estate will provide additional access to the Ballina Byron Gateway Airport. This will provide for better infrastructure to service future growth of the airport.

### Legal / Resource / Financial Implications

Council has undertaken a public tender process in accordance with the Local Government (General) Regulations 2005.

The 2020/21 budget allocation is currently \$6,256,000 with \$57,000 expended to date, leaving a remaining budget of approximately \$6.2m for 2020/21.

The total funding for Airport Boulevard has been, or is, sourced as follows:

Year	Expense	Amount (\$)	Funding Source
2017/18	Actual	53,000	Property Development Reserve
2018/19	Actual	382,000	Property Development Reserve
2019/20	Actual	3,309,000	Property Development Reserve
2020/21	Budget	6,256,000	Federal Grant (\$3m), Loan (\$3m), Property Development Reserve (\$256,000)
<b>Total</b>		<b>10,000,000</b>	

Based on the recommended tender the total budget will need to increase to \$10,740,000. To achieve this it will be necessary to increase the loan funding allocated to the project to \$3,740,000 as there are no funds available in the Property Development Reserve.

If Council supports this approach the total funding of \$10.74m is then made up of:

- Property Development Reserve - \$4,000,000
- Federal Government Grant - \$3,000,000
- Council Loan Funds – \$3,740,000

The additional loan repayments for the \$740,000, based on a term of 20 years at 3% interest, equate to approximately \$50,000 per annum. This is in addition to the \$202,000 in loan repayments for the \$3m loan based on the same term and interest rate.

The Council's Long Term Financial Plan has the loan repayments funded from the Property Development Reserve, with the income for that reserve generated from leases at the Southern Cross Industrial Estate for Norfolk Homes and ARC.

The payment of a \$4m cash contribution for Airport Boulevard from the Property Development reserve, has effectively drained the reserve, which now means Council is loan funding the majority of its property development activities; i.e.

- Boeing Avenue, Southern Cross Industrial Estate - \$3.6m loan taken out in 2019/20 for the provision of fill on lots two and three.

## 9.7 Tender - Airport Boulevard

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- Wollongbar Urban Expansion Area – Stage 3 - \$4.4m loan estimated for 2020/21 for construction of 31 residential allotments, with the tender to be reported to the November 2020 Commercial Services meeting
- Airport Boulevard - \$3m adopted loan for 2020/21 as outlined in this report
- Airport Boulevard - \$740,000 additional loan as recommended in this report.

Council may still need to borrow another \$4m to \$5m for the construction of the estimated 26 industrial lots to be created at Boeing Avenue, with Council resolving in April 2020 to place that project on hold, due to the COVID-19 pandemic.

There is still the Innovation Precinct - Southern Cross Industrial Estate lots to be created, with the construction costs for that project estimated at \$9m, with Council having a \$3.95m State Government grant allocated to the project. This means it will be necessary to borrow around \$5m to finalise the project.

In summary Council could require the following borrowings for its property development activities:

<b>Project</b>	<b>Debt (\$)</b>
Boeing Avenue, Southern Cross Industrial Estate	7.60m
Wollongbar Urban Expansion Area (WUEA) – Stage 3	4.40m
Airport Boulevard	3.74m
Innovation Precinct	5.00m
<b>Total Loan Debt</b>	<b>20.74m</b>

This level of debt carries a high level of risk and Council will need to be very confident of generating a return on the investment before borrowing loans of this magnitude.

On the positive side the estimated sale proceeds for the WUEA – Stage 3 project range from approximately \$8m to \$9m, dependent on whether Council sells the lot identified as a childcare centre site.

Council has also had interest in selling some of the Boeing Avenue land, as is, and this might allow Council to significantly reduce the forecast borrowings for that project, and still generate income through sales.

The difficulty all along with Airport Boulevard is that typically Council would stage the construction of any roads as part of the Southern Cross Industrial Estate, based on the industrial land being opened up.

Unfortunately, Airport Boulevard is an entry statement road, with the majority of the land being opened up, currently, not zoned for industrial purposes.

This has resulted in a large outlay of funds, including \$4m from the Property Development Reserve, without any offsetting land sale income. Nevertheless the project is a major part of the Council planning for this precinct and as such it is important to finalise the project in full.

## 9.7 Tender - Airport Boulevard

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By proceeding with this project it will be critical that Council continue to effectively manage its overall loan debt for property development activities and there will be on-going reports in respect to the timing and status of the Boeing Avenue, WUEA – Stage 3, and Innovation Precinct projects.

If Council does not support the proposed funding allocation, the road construction tender was developed with separable portions. Council can elect to undertake a staged approach to the delivery of the project, albeit this approach will need the approval of the Federal Government, as the grant has been allocated with the expectation of the complete scope of works being delivered.

### Consultation

A public tender process was undertaken.

### Options

The options for Council are set out in Part 7 Section 178 (1) of the Local Government (General) Regulation 2005, which requires that:

*(1) After considering the tenders submitted for a proposed contract, the council must either:*

- (a) accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
- (b) decline to accept any of the tenders.*

Based on the tender evaluation, Hazel Bros (QLD) Pty Ltd has been assessed as the preferred tenderer.

Sections 178 (3) and (4) of the regulations below, provides further direction in the circumstances where a Council declines to accept any tenders in accordance with section 178 (1)(b).

*(3) A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

- (a) postpone or cancel the proposal for the contract,*
- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*

## 9.7 Tender - Airport Boulevard

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- (f) *carry out the requirements of the proposed contract itself.*
- (4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*
  - (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
  - (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*

It is recommended that Council declines to accept any tenders and negotiate with Hazel Bros (QLD) Pty Ltd to finalise the total cost of the works.

This recommendation will enable staff, prior to the issue of a letter of award, to resolve any outstanding points in the contract and review the final scope of works with the contractor, including some parts of the scope, such as the in-ground services at North Creek Road, which will benefit from some further design assessment with the contractor.

### **RECOMMENDATIONS**

1. That Council in accordance with the Local Government (General) Regulation 2005 Section 178 (1)(b), declines to accept any tenders for the Construction of Roadway and Associated Components for the Airport Boulevard to enable the finalisation of the extent of works.
2. That Council, in accordance with Local Government (General) Regulation 2005 Section 178 (3)(e) authorises the General Manager to enter into negotiations with Hazel Bros (QLD) Pty Ltd (ABN 46 145 228 986) with a view to enter into a contract to Construction of Roadway and Associated Components for the Airport Boulevard.
3. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(a) the reason Council has declined to invite fresh tenders is that the tender process has established a competitive market and it is more efficient to negotiate with the highest ranked tender than call for new submissions.
4. That in accordance with the Local Government (General) Regulation 2005 Section 178(4)(b), Council has determined to enter negotiations with Hazel Bros (QLD) Pty Ltd as they are the preferred tenderer following assessment against the mandatory and weighted evaluation criteria established for the tender.
5. That Council approves a maximum of \$740,000 in additional loan funds for this project, with the loan repayments to be financed from revenues generated for the Property Development Reserve.
6. That upon the conclusion of negotiations in point two, Council authorises the General Manager to affix the Council seal to the relevant contract and loan documents.

### **Attachment(s)**

1. Confidential Memorandum - Tender - Airport Boulevard (Under separate cover)

9.8 Annual Financial Statements - 2019/20

**Delivery Program**

Financial Services

**Objective**

To obtain Council approval to exhibit the 2019/20 Financial Reports for public comment and to sign the certified statements for both the General Purpose and Special Purpose Statements.

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**Background**

Council must prepare financial statements for each financial year that are in accordance with:

- The Local Government Act 1993 (as amended) and Regulations
- The Australian Accounting Standards and professional pronouncements
- The Local Government Code of Accounting Practice and Financial Reporting
- NSW Government Policy Statement - Application of National Competition Policy to Local Government
- Office of Local Government guidelines - Pricing & Costing for Council Businesses: A Guide to Competitive Neutrality

Once completed and audited Council must resolve to exhibit the statements for public comment. Council must then consider the statements again (typically at the November Ordinary meeting of Council), together with submissions, and formally resolve to adopt the statements.

This report seeks Council approval to exhibit the annual financial statements.

**Key Issues**

- Financial results
- Statements present a true and fair picture of the financial position

**Information**

The Annual Financial Statements for the year ended 30 June 2020 have been completed and audited. A copy of the statements, together with the Auditor's Reports, are enclosed with this business paper. A copy of the statements is available for the public at the Customer Service Centre and Council's website.

The purpose of this report is to obtain Council's approval for the exhibition of the financial statements and to provide Council an opportunity to discuss the information contained within the documents.

Council must also provide approval for the Mayor, one other Councillor, the General Manager and the Responsible Accounting Officer to sign the statements confirming that, in the opinion of Council, the financial statements are fair and accurate. Copies of the statements to be signed are included as Attachment 1 to this report.

Once the financial statements are approved the statements must be advertised for public comment. The statements must then be adopted at a meeting of Council not more than five weeks after the meeting where approval was provided to advertise.

Subject to Council approval to advertise at this meeting, the statements will be advertised and then presented, with any public comments received, to the meeting scheduled for Thursday 26 November 2020.

Mr Geoff Dwyer of Thomas Noble and Russell, contract auditor for the Audit Office of New South Wales, will be present at this meeting at 11am and will be providing a presentation on the audit.

The documents enclosed with the business paper can be broken down into:

**Attachment 1 – Statement by Councillors and Management**

These statements are to be signed by the Mayor, a Councillor, General Manager and Responsible Accounting Officer. They are an extract from the draft General Purpose and Special Purpose Financial Statements.

**Attachment 2 – Council’s End of Year Financial Analysis** (under separate cover)

This report, prepared by Council’s Manager Financial Services, provides an analysis of Council’s results for the 2019/20 financial year and the financial position as at 30 June 2020.

**Attachment 3 – Draft Annual Financial Statements 2019/20** (under separate cover)

**Part A – Auditor’s Report on the Conduct of the Audit**

This is the draft (long form) audit report on the general purpose financial statements, noting an intention to issue an unmodified audit opinion.

**Part B – General Purpose Financial Statements**

These statements provide the consolidated operating result for 2019/20 and the consolidated financial position of Council as at 30 June 2020. The notes included with the statements provide details on income and expenditure, assets and liabilities. The notes also highlight the cash position of Council and identify which funds are externally restricted.

**Part C – Special Purpose Financial Statements**

These statements are prepared as a result of National Competition Policy and relate to those aspects of Council’s operations that are considered to be business activities.

**Part D – Special Schedules**

These schedules are prepared primarily for the Australian Bureau of Statistics and are used to gather information for comparative purposes.

The Auditor has issued an 'unqualified report', which means that they are of the opinion that the financial reports represent a fair and accurate assessment of Council's financial position.

### **Sustainability Considerations**

- **Environment**  
This report encompasses Council's finances in total and as such has implications for environmental, social and economic outcomes.
- **Social**  
As above
- **Economic**  
As above

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

Council is legally obliged to adopt the financial statements.

### **Consultation**

No specific community consultation has been taken in respect to this report however the intent is to advertise the Draft Statements for public comment.

### **Options**

Council may approve to exhibit or not exhibit the documents. As Council's auditor has approved the statements it is recommended that Council authorise signing and exhibition.

### **RECOMMENDATIONS**

1. That Council approves the signing of the statements that confirm the Annual Financial Statements are fair and accurate, by the Mayor, the Deputy Mayor, the General Manager and the Responsible Accounting Officer.
2. That Council authorises the exhibition of the Annual Financial Statements and Auditor's Reports for the year ended 30 June 2020, as attached to this report, for public comment.

### **Attachment(s)**

1. 2019/20 - Statements by Councillors and Management
2. 2019/20 - End of Year Financial Analysis (Under separate cover)
3. 2019/20 - Draft Annual Financial Statements (Under separate cover)

## **9.9 Delivery Program and Operational Plan - 30 September 2020 Review**

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### **9.9 Delivery Program and Operational Plan - 30 September 2020 Review**

#### **Delivery Program**

Governance

#### **Objective**

To review the implementation of the 2020/21 to 2023/24 Delivery Program and Operational Plan.

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#### **Background**

Section 404 (5) of the Local Government Act states as follows:

#### ***Delivery Program***

*"The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months".*

Even though a minimum of six monthly progress reports are required the preferred practice is to receive more timely quarterly reports.

This report represents the first review of the 2020/21 to 2023/24 Delivery Program and the 2020/21 Operational Plan, with the information based on work undertaken up to 30 September 2020, representing the first quarter of the 2020/21 financial year.

The review is included as a separate attachment. The attachment provides an overview of all the actions and indicators included in the Delivery Program and Operational Plan, with comments provided by the Director and / or Section Manager.

Copies of the current Delivery Program and Operational Plan are available on Council's website and are also accessible by Councillors on their iPads.

#### **Key Issues**

- Compare results to date against the adopted goals and priorities

#### **Information**

The Delivery Program and Operational Plan are the two key corporate documents that establish Council's goals and priorities for the term of the Council and for the current financial year.

The attachment provides an overview of all the adopted actions and indicators, with the information also linked to Council's Community Strategic Plan (CSP) objectives. The attachment has two main sections being:

- Program Actions – Outlines the status of all the adopted actions in the Operational Plan



## 9.9 Delivery Program and Operational Plan - 30 September 2020 Review

- Service Indicators – Measures actual results as compared to the adopted indicators in the Operational Plan.

All items are marked with a green (on track for this financial year) amber (behind schedule or trending below target) or red (off track) traffic light.

There are 121 major actions listed in the Operational Plan and the following two tables provide an overview of the status of those actions on a number and percentage basis.

### Program Actions Summary - By Division and Number

Group / Status	C&C	Civil	PEH	Total
Green	30	28	53	111
Amber	2	1	7	10
Red	0	0	0	0
<b>Total</b>	<b>32</b>	<b>29</b>	<b>60</b>	<b>121</b>

### Program Actions Summary - By Percentage

Group / Status	C&C	Civil	PEH	Total
Green	94	97	88	92
Amber	6	3	12	8
Red	0	0	0	0
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

The majority of items are on track and some items of interest in the attachment include:

- Deliver Ballina SES Headquarters and Construct Lennox Head Rural Fire Service (RFS) Shed at Byron Bay Road (page 2) – A planning evaluation is being prepared for the land Council identified as a possible site for the new SES building, being the vacant open space to the south of the existing building.

The RFS shed is progressing through the planning process.

- Promote the Northern Rivers Community Gallery and Ignite Studio (page 3) – The Gallery is one facility where numbers are significantly down as a result of the COVID-19 pandemic, with year to date figures 61% below the same period last year, and Ignite Studios' programs down by 75%. The arts and culture sector is still significantly impacted by the pandemic, particularly as a lot of activities take place indoors.
- Progress Lennox Head Town Centre Village Renewal (page 8) – This project is tracking well with the concept plans endorsed by Council and the detailed designs now being progressed.
- Promote Ballina Marina (Trawler Harbour) Master Plan (page 8) – Council is not achieving any real traction with respect to lobbying for this proposal.
- Progress availability of land at the Southern Cross Industrial Estate (page 9) – Council resolved to place this project on hold. There appears to be strong demand for industrial land and the issue for Council is financing, as loan funds are needed. This will be reported to a Commercial Services Committee meeting, in the near future.

## 9.9 Delivery Program and Operational Plan - 30 September 2020 Review

- Prepare management plan for Kingsford Smith Reserve (page 17) - Council has now received formal approval of the \$3.6m in funding for Kingsford Smith Reserve that was announced as a State Government commitment at the last State Government election. The improvements to the reserve to be funded by this include:
  - Lighting
  - Change room / amenities
  - Grandstand
  - Netball facilities
  - Surface improvements
  - Car parking

The details of these core objectives will be refined during the master planning process with the aim being to have Kingsford Smith Reserve enhanced as a key regional facility for the Ballina Shire. A large part of the expenditure will be focused on the rugby league facilities.

- Prepare management plan for Hampton Park (page 17) – The Cherry Street Sports Club is in discussions with the State Government in respect to leasing the entire site, due to the significant presence of the Sports Club through the clubhouse, bowling greens, croquet greens and tennis club. If the negotiations are successful there will not be a need for a plan of management.
- Pursue compliance with the Fit for the Future Program (page 20) – The Annual Financial Statements report in this agenda confirms that Council incurred an operating loss of \$696,000 on a consolidated basis, with the General Fund operating at a loss of \$3,536,000 for 2019/20. This was after a consolidated surplus of \$3,438,000 and a General Fund surplus of \$2,454,000 for 2018/19. The longer term financial impacts of the COVID-19 pandemic remain uncertain and it will be important, in the short to medium term, for Council to minimise operating expenses, particularly with a number of Council services, such as the community facilities, generating less income than normal.
- Continuous improvement of Council's cyber security (page 21) – Grant Thornton Pty. Ltd. recently completed an internal audit in respect to Council's cyber security, with the overall rating of acceptable. This is a good result for an ever changing area of any organisation's operations, with cyber security identified as one of the high risk areas for councils by the NSW Audit Office.

In respect to Service Delivery there are a total of 100 indicators identified in the Operational Plan and the following two tables provide an overview of how the indicators are tracking against the benchmark, again on a number and percentage basis.

### Service Indicators Summary - By Division and Number

Group / Status	C&C	Civil	PEH	Total
Green	31	20	17	68
Amber	15	1	13	29
Red	2	0	1	3
<b>Total</b>	<b>48</b>	<b>21</b>	<b>31</b>	<b>100</b>

**Service Delivery Indicators Summary - By Percentage**

<b>Group / Status</b>	<b>C&amp;C</b>	<b>Civil</b>	<b>PEH</b>	<b>Total</b>
Green	65	95	55	68
Amber	31	5	42	29
Red	4	0	3	3
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

A number of these indicators are beyond the control of Council and the indicator's primary purpose is to provide an idea of how a service may be tracking compared to previous years.

Items of note include:

- Facilities Management (pages 26 - 27) – Despite a slow first quarter more recent figures are showing increased demand for use of the Council facilities, particularly as some Public Health (COVID-19) Order restrictions are eased.
- Development Services (pages 34 - 35) – Processing times are continuing to be below the preferred targets. This is a reflection of the high volume of applications being received by Council, as well as assessment staff having to dedicate a significant amount of time in respect to court cases (i.e. Intrapac developer contributions for Skennars Head, 404 Old Byron Bay Road, Tuckombil Lane etc).

Additional development engineering, planning and building surveyor resources have been temporarily engaged to assist with the workload, however with development assessment income up 18% on the first quarter as compared to 2019/20, which was a very busy year, and 38% above the first quarter for 2018/19, there is still a very large workload for the Development Services Section of Council.

**Sustainability Considerations**

- **Environment**  
There is a range of environmental, social and economic outcomes identified in the Delivery Program and Operational Plan.
- **Social**  
As above.
- **Economic**  
As above.

**Legal / Resource / Financial Implications**

The Delivery Program and Operational Plan identify the allocation of Council's resources and finances.

## **9.9 Delivery Program and Operational Plan - 30 September 2020 Review**

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### **Consultation**

This report provides the community with information on how Council is performing in respect to the Delivery Program and Operational Plan.

### **Options**

The report is for noting with the information highlighting the many and varied activities undertaken by Council.

### **RECOMMENDATION**

That Council notes the contents of this report on the quarterly review of the 2020/21 to 2023/24 Delivery Program and 2020/21 Operational Plan.

### **Attachment(s)**

1. Delivery Program and Operational Plan - 30 September Review (Under separate cover)

## **9.10 Capital Expenditure Program - 30 September 2020 Review**

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### **9.10 Capital Expenditure Program - 30 September 2020 Review**

#### **Delivery Program**

Governance

#### **Objective**

To review the implementation of the 2020/21 capital expenditure program.

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#### **Background**

Council has a significant capital expenditure program included in the annual Operational Plan. Due to the magnitude of the program it is important that updates are provided on a regular basis. Current practice is to provide a quarterly status report on all the major capital projects. The status report provides details on key milestones, along with a comparison between budget and actual expenditure.

This is the first report for 2020/21 and outlines work undertaken to 30 September 2020.

#### **Key Issues**

- Status of works
- Budget variations

#### **Information**

To assist in understanding the delivery of the capital works program the attachments to this report provide information on the following items for the major capital projects:

- Total Project Value – As projects can be delivered over a number of financial years, this column identifies the total project value. This may include expenditure from previous financial years or estimated expenditure for future years.
- Original 2020/21 Estimate - Represents the original 2020/21 estimate as per the adopted Operational Plan.
- Carry Forwards - Includes budgets carried forward from the previous financial year, approved by Council at the August 2020 Ordinary meeting.
- Approved Variations – Other variations approved by Council, either through a Quarterly Budget Review, or a separate report on a project.
- New Variations – Additional variations recommended as part of this report.
- 2020/21 Estimate - Sum of the original estimate plus variations.
- Expended This Year - Expenditure to 30 September 2020 on a cash basis. This figure excludes commitments and accruals.
- % Expended - Percentage of budget expended to 30 September 2020 based on the cash expenditure figures.
- Milestone Dates - Target dates for the major milestones such as completion of design and / or planning approval, as well as construction commencement and completion dates.
- Status – Provides space for any additional comments.

The attachments are split into the areas undertaking the works: i.e. Planning and Environmental Health Division (Open Spaces, Strategic Planning, Public and Environmental Health), Corporate and Community (Commercial Services, Facilities Management) and Civil Services (Water and Wastewater, Asset Management, Emergency Services, Resource Recovery and Engineering Works).

Points of interest are as follows.

### ***Open Spaces (attachment one)***

Wollongbar Skate Park and District Park – The skate park detailed design and contract negotiations are complete with the construction certificate submitted for assessment. Earthworks to prepare the site are in progress using a local contractor. The skate park contractor is expected to be on site in early November 2020. This timing is dependent on Victorian border closure requirements and the approval of the construction certificate.

The district park detailed design is complete. Tender documents have been issued, with some elements procured directly by Council. The tenders are scheduled to be submitted to the November 2020 Ordinary meeting.

Wollongbar Sports Fields – Irrigation – The irrigation works are almost complete, with the stormwater budget recommended for transfer to the Engineering Works Section, who are responsible for the delivery of this infrastructure as part of the stormwater program.

### ***Public and Environmental Health (attachment one)***

Shaws Bay Coastal Management Program – Dredging works have commenced, new shelters installed and rectification works on the groynes near Fenwick Drive have been completed.

### ***Commercial Services (attachment two)***

Airport - Runway widening - Consultants have been engaged to assist with preparing the Part V planning processes. Council has made an application to the Department of Industry, Innovation and Science seeking an extension to the timeframe to submit all approval requirements for the allocated \$10m grant. This extension application was required due to the complexities associated with the planning approvals.

There is still a significant amount of risk with this project, in respect to obtaining planning approvals and the overall cost, and regular updates will be provided on how the project is advancing.

Airport – Car Park, Solar and Boom Gates - Concept designs have been confirmed and detailed designs are now being developed with a focus on minimising project costs by utilising as much of the existing infrastructure as possible.

The tender process is scheduled to commence in December 2020 with the assessment reported to the February 2021 Ordinary meeting.

Southern Cross – Boeing Avenue – Lots 2 and 3 have been filled. Council placed this project on hold as the construction of the industrial lots is estimated to cost approximately \$4m, inclusive of Council contributions, with this expenditure debt funded.

As part of the deliberations on the COVID-19 pandemic, the preference was to defer this expenditure, until there was greater clarity in respect to the economic outlook.

A further report on this project will be submitted to a Commercial Services Committee meeting in November.

54 North Creek Road – Small expenditure carried over from 2019/20. This will need to be financed from the Property Development Reserve.

Wollongbar Urban Expansion Area – Stage 3 – Tender for the construction of the residential lots will be submitted to the November 2020 Ordinary meeting. There is still strong demand for residential lots in the region.

Shelly Beach Café – The construction of the actual café, which is privately owned and funded, is well advanced.

### ***Facilities Management (attachment two)***

Lennox Head Cultural Centre (LHCC) – Project completed and centre operational.

Alstonville Cultural Centre (ACC) – Funding for design and planning approvals only, with Council having endorsed a concept design.

Naval Museum – Similar to the Alstonville Cultural Centre, Council has endorsed an increased scope for improvements to the building, which means the current year's funding will only be expended on essential maintenance.

Alstonville Swimming Pool – Amenities / Kiosks – Project completed and operational.

Depot – The entire scope for the projects listed is under review as the funding allocated will be insufficient for the preferred works program. The depot master plan is also being reviewed to confirm a preferred order of works, within the funding limitations.

### ***Asset Management and Emergency Services (attachment three)***

Lennox Head Rural Fire Service Shed – Existing house on the new site has been demolished and removed. The concept design has been provided to the Rural Fire Service for their approval and a consultant has been engaged to prepare the development application.

Tender documents for detailed design and construction have been commenced and it is planned to issue these to market during November 2020.

SES Building – Council indicated an interest in assessing whether the Bangalow Road land near the existing building was a viable option.

A planning assessment report from an external consultant is due, during October. If the site remains a viable option there will be further discussion with the SES prior to reporting back to Council.

### ***Resource Recovery (attachment three)***

Roof Replacement – These works require the full or partial closure of the transfer station, which means customers will be diverted to a temporary drop-off area. The works are scheduled during May and June 2020 as these are historically the months with least customers.

Load-out and Office – A minor upgrade to the waste load-out area has been completed. Remaining budget to be expended on office and amenity improvements. Based on the quotations received a budget increase of \$25,000 is needed, funded from reserves.

### ***Water and Wastewater (attachment three)***

Water Operations - Based on the timing of the planning approvals for the Marom Creek upgrade works, it is recommended that \$1.16m be deferred to 2021/22.

Wastewater Operations – There has been a limited response to the rectification works for the Ballina Treatment Plant and it is recommended that \$1.3m be deferred to 2021/22 to reflect the likely timing of the works.

### ***Engineering Works (attachment three)***

#### ***Roads and Bridges***

A number of the road projects that form part of Council's recurrent reconstruction program are being included in an external tender, which will be advertised shortly.

Traditionally these works have been undertaken by staff however the large works program for 2020/21, which has expanded due to Council being successful with a number of grants, has resulted in the need to tender these works.

Council staff do a very good job of reconstructing the Shire's road network and it will be important to ensure that the tender specification, and the appointed contractor, results in the works being built to the same standard.

Airport Boulevard – Tender for construction reported to the October 2020 Ordinary meeting.

Pearces Creek Bridge – The replacement of this timber bridge, which with the Uralba Road bridge, are the two remaining timber bridges in the Shire, has been an-going concern for Council, with load limits in place.

The bridge adjoins the Lismore and Ballina local government areas, which means the cost of replacement should be evenly shared. The latest cost of replacement is \$4.1m.

The Federal Government recently announced that Council was successful in securing \$2m for this work through round five of their Bridge Renewal Program.



## 9.10 Capital Expenditure Program - 30 September 2020 Review

Another grant application of \$2m has been submitted to the NSW State Government, through a similar program, and if that application is successful both councils (Ballina and Lismore) will be in a position to complete the bridge replacement.

If the NSW State Government grant application is unsuccessful, both councils will need to determine how the shortfall of \$2.1m is to be funded, or whether it will be necessary to not accept the Federal Government grant monies.

### *Ancillary Transport Services - Shared Paths and Footpaths*

Coastal Shared Path - Skennars Head to Pat Morton – After decades of planning and works there is now a continuous shared path link, largely along the coastline, from Lennox Head to the Burns Point Ferry.

Coastal Walk – The contractor is well advanced with the aim being to have the works completed by Christmas 2020.

### *Stormwater*

As per the roads program a number of projects are being included in an external tender to assist with completing the program for 2020/21.

### *Summary*

There continues to be a large program of capital works to be delivered for 2020/21 with \$6.6m expended on a cash basis to date.

### **Capital Works Summary – 30 September 2020 (\$'000)**

<b>Section</b>	<b>Budget (\$)</b>	<b>Cash Expenditure (\$)</b>	<b>Percentage Expended</b>
Open Spaces	5,090,500	847,300	17%
Strategic Planning	91,000	0	0%
Public and Env Heath	1,240,000	126,500	10%
Commercial Services	7,947,000	299,600	4%
Facilities Management	6,286,400	1,382,800	22%
Asset Mgmt / Emergency Services	1,038,000	77,300	7%
Resource Recovery	530,000	11,100	2%
Water Operations	2,377,000	503,900	21%
Wastewater Operations	6,621,200	137,100	2%
Engineering Works	28,175,000	3,254,200	12%
<b>Total</b>	<b>59,396,100</b>	<b>6,639,800</b>	<b>11%</b>

### **Sustainability Considerations**

- **Environment**  
Many of the works listed provide positive environmental outcomes
- **Social**  
Certain items provide significant social benefits
- **Economic**  
Improved infrastructure can benefit the local economy.

## 9.10 Capital Expenditure Program - 30 September 2020 Review

### Legal / Resource / Financial Implications

The report provides financial information on the capital expenditure program.

### Consultation

This report is presented for public information.

### Options

This report provides an update on the capital expenditure program for 2020/21 and recommends known or likely budget variations. The recommendations reflect the information as per the attachments to this report.

### RECOMMENDATIONS

1. That Council notes the contents of this report on the Capital Expenditure Program for the 2020/21 financial year.
2. That Council approves the following 2020/21 budget amendments as outlined in the attachments to this report:

Item	Current Budget	Revised Budget	Variation	Comment
<b>Commercial Services (Airport)</b>				
Runway	2,000,000	500,000	(1,500,000)	Defer to 2021/22
<b>Commercial Services (Property)</b>				
54 North Creek Road	0	12,000	12,000	Funded from Property Development Reserve
<b>Total – Commercial Services</b>	<b>2,000,000</b>	<b>512,000</b>	<b>(1,488,000)</b>	
<b>Facilities Management (Community Facilities)</b>				
Kentwell Centre – Air Cond	72,000	0	(72,000)	Transferred to other projects
Visitor Centre – Air Cond	0	30,000	30,000	Transfer from Kentwell Centre
Richmond Room	0	12,000	12,000	Transfer from Kentwell Centre
<b>Facilities Management (Swimming Pools)</b>				
Alstonville Kiosk / Amenities	292,000	302,000	10,000	Transfer from Kentwell Centre
<b>Facilities Management (Depot and Admin Centre)</b>				
Depot – Workshop	439,000	499,000	60,000	Trans from Kentwell / Admin
Admin Centre - Solar	90,000	50,000	(40,000)	Savings transfer to Depot
<b>Total – Facilities Management</b>	<b>893,000</b>	<b>893,000</b>	<b>0</b>	
<b>Resource Recovery</b>				
Office and Load-out	50,000	75,000	25,000	Transfer from Waste Reserve
<b>Asset Management</b>				
Surveying Equipment	0	50,000	50,000	Trans from Equipment Reserve
<b>Water Operations</b>				
Main Renewal - Recurrent	170,000	140,000	(30,000)	Trans to below projects
Main Renewal - Burnet Street	112,000	0	(112,000)	Project completed in 2019/20
Main Renewal - Alstonville	300,000	370,000	70,000	Offset by saving
Main Renewal - Grant Street	0	40,000	40,000	Offset by saving
Main Renewal - Biala Place	0	62,000	62,000	Saving plus trans from Res
Main Renewal – Al'ville (St 2)	0	260,000	260,000	Transfer from Refurb Reserve

## 9.10 Capital Expenditure Program - 30 September 2020 Review

Item	Current Budget	Revised Budget	Variation	Comment
Telemetry – Ethernet	92,000	7,000	(85,000)	Savings
Network Master Plan	41,000	111,000	70,000	Offset by saving
Marom Creek - Upgrade	1,680,000	520,000	(1,160,000)	Defer part to 2021/22
<b>Total – Water Operations</b>	<b>2,225,000</b>	<b>1,340,000</b>	<b>(885,000)</b>	
<b>Wastewater Operations</b>				
Pump Stns – Richmond Street	182,000	0	(182,000)	Defer to 2021/22
Pump Stns – Lindsay Avenue	106,000	0	(106,000)	Defer to 2021/22
Pump Stns – Skennars Head	0	12,000	12,000	Transfer from Refurb Reserve
Pump Stns – Wet Well Lining	200,000	400,000	200,000	Transfer from Refurb Reserve
Network Master Plan	36,000	106,000	70,000	Transfer from Refurb Reserve
Treatment – Ballina Rectification	3,710,000	2,410,000	(1,300,000)	Defer to 2021/22
Treatment Master Plan	30,000	0	(30,000)	Trans to Refurb Reserve
Treatment – Lennox High Lift	180,000	300,000	120,000	Transfer from Refurb Reserve
Treatment – Alstonville – Inlet	10,000	100,000	90,000	Transfer from Refurb Reserve
Treatment – A'ville – Biosolids	50,000	0	(50,000)	Trans to Refurb Reserve
Recycled – West Ballina Main	500,000	0	(500,000)	Trans to Refurb Reserve
Recycled – West Ballina Supply	25,000	325,000	300,000	Transfer from Refurb Reserve
<b>Total – Wastewater Operations</b>	<b>5,029,000</b>	<b>3,653,000</b>	<b>(1,376,000)</b>	
<b>Engineering Works</b>				
Roads – Marom Creek seg 130	0	85,000	85,000	Transfer from Marom Ck
Roads – Pimlico segs 110 and 20	140,000	100,000	(40,000)	Savings
Roads – Winton Lane seg 40	131,000	146,000	15,000	Transfer from savings
Roads – The Coast Road	75,000	152,000	77,000	Trans from TfNSW Op Exps
Roads – Howards Road seg 20	34,000	64,000	30,000	Transfer from savings
Roads - Uralba Road seg 40	440,000	605,000	165,000	Transfer from savings
Roads – Marom Creek seg 130	70,000	0	(70,000)	Transfer to Marom Ck above
Roads – Uralba Road seg 70	170,000	5,000	(165,000)	Transfer to other projects
Roads – Crane Street seg 30	110,000	90,000	(20,000)	Transfer to other projects
Roads – Southern Cross seg 50	342,900	92,900	(250,000)	Defer part to 2021/22
TfNSW – Regional Roads	77,000	140,000	63,000	Trans from TfNSW Op Exps
Paths – Suvla, Shelly Beach	174,000	164,000	(10,000)	Transfer to other projects
Paths – Owen Street	78,000	108,000	30,000	Transfer from savings
Paths – Bagot Street	45,000	65,000	20,000	Transfer from savings
Paths – Kerr Street	87,000	47,000	(40,000)	Transfer to other projects
<b>Total – Engineering Works</b>	<b>1,973,900</b>	<b>1,863,900</b>	<b>(110,000)</b>	

### Attachment(s)

1. Planning and Environmental Health Division
2. Corporate and Community Division
3. Civil Services Division

10. Civil Services Division Reports

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**10. Civil Services Division Reports**

Nil Items

11. Notices of Motion

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**11. Notices of Motion**

Nil Items

12. Advisory Committee Minutes

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**12. Advisory Committee Minutes**

Nil Items

## 13.1 Mayoral Meetings

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### 13. Reports from Councillors on Attendance on Council's behalf

#### 13.1 Mayoral Meetings

**Councillor** David Wright

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Activities I have attended, or propose to attend, as at the time of writing this report, since the September 2020 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
22/9/20	Meeting – Casa Capac - Housing
23/9/20	Meeting – Cross Border Issues
24/9/20	Meeting – Lennox Head Cultural Centre
29/9/20	Meeting – New Superintendent Scott Turner
29/9/20	Meeting – Youth in Film
30/9/20	Meeting – Cross Border Issues
2/10/20	Meeting – Denise Clark – Memorial Seat
4/10/20	Launch of Lennox Head Nipper Season
4/10/20	Commemoration Park Markets
6/10/20	Meeting – JJ Harris and Charlie Moss – Airport
8/10/20	Queensland Border Update
8/10/20	Meeting - Dwayne Roberts – DA Time-frames
11/10/20	Commemoration Park Markets
13/10/20	Audit Committee - Financial Statements
13/10/20	Audit Risk and Improvement Committee
14/10/20	Local Traffic Committee
15/10/20	Meeting – Coralyn Marks – Alstonville Tibouchina Club
15/10/20	Queensland Border Update
16/10/20	Lennox Lake Vandalism – Deputy Mayor/Residents
18/10/20	Commemoration Park Markets
18/10/20	Ballina Markets
22/10/20	Queensland Border Update
22/10/30	Council Meeting
25/10/20	Commemoration Park Markets
29/10/20	Queensland Border Update
30/10/20	Paranormal Prom – Ignite Studios

#### **RECOMMENDATION**

That Council notes the contents of the report on Mayoral meetings.

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

Nil

**14. 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:

**14.1 Financial Support Package - COVID-19 Pandemic - Relief Requests**

Refer to Item 9.6 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.

**14.1 Financial Support Package - COVID-19 Pandemic - Relief Requests**

**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 due to ongoing commercial negotiations and the release of any information could prejudice those negotiations.