



Notice of Environmental & Sustainability Committee Meeting

Notice is hereby given that a Environmental & Sustainability Committee Meeting will be held in the **Ballina Shire Council Chambers**, Cnr Cherry & Tamar Streets, Ballina on **Tuesday 17 May 2011 commencing at 4.00 pm (to be resumed on Thursday 19 May 2011 commencing at 4.00 pm)**

Business

1. Apologies
2. Declarations of Interest
3. Deputations
4. Committee Reports

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal line extending from the end of the signature.

Paul Hickey
General Manager

Table of Contents

1.	Apologies	1
2.	Declarations of Interest.....	1
3.	Deputations.....	1
4.	Committee Reports.....	2
4.1	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Principal Report	2
4.2	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report A - Duck Creek/ Gum Creek Catchment Area	78
4.3	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report B - Summerhill Crescent, Cumbalum	81
4.4	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report C - Fawcett Street, Ballina	85
4.5	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report D - North Creek Road North Ballina	88
4.6	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report E - Alstonville Village Centre	91
4.7	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report F - Brighton Street and Easton Place, East Ballina	94
4.8	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report G - Oakland Avenue West Ballina	97
4.9	Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report H - Camoola Avenue, Ballina	100

1. **Apologies**
 2. **Declarations of Interest**
 3. **Deputations**
-

1. **Apologies**

An apology has been received from Cr Jeff Johnson.

2. **Declarations of Interest**

3. **Deputations**

All Deputations are to be received on Tuesday 17 May.

4. Committee Reports

4.1 **Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Principal Report**

File Reference	Ballina LEP Renewal - Principal Report
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To provide the Committee with an overview of the public exhibition of the Draft Ballina LEP 2010 and seek direction with respect to the finalisation of the LEP.

1.0 Background

1.1 *Rationale for LEP Renewal and Commencement*

The Ballina Local Environmental Plan 1987 (Ballina LEP 1987) is the principal local planning instrument that applies to the shire. Together with other environmental planning instruments, the LEP establishes the framework for the range of land use activities and environmental protection measures that occur within the shire. The 1987 LEP is one of the key tools that have shaped Ballina Shire since the 1980s as it addresses matters such as building height, the location and type of commercial, industrial and residential uses, protection of the environment, provision of services and rural and agricultural activity.

As part of a range of planning reforms occurring in NSW, Council was advised in April 2005 by the then Department of Planning that it is a local government area for which a new LEP is a priority. Council formally commenced preparation of its new LEP in September 2006 and has been engaged in the renewal of its LEP and associated planning framework in a structured way since that time.

Significantly, all new LEPs in New South Wales are being prepared in accordance with the Standard LEP Instrument (Standard Instrument) issued by the Department of Planning and Infrastructure (DP&I). Council is required to utilise and implement the Standard Instrument in forming its new LEP. The Standard Instrument provides a common format for the preparation of LEPs by councils in NSW by providing a framework including standard zones, definitions and provisions. Council has also been guided in its LEP preparation by existing statutory plans, the Far North Coast Regional Strategy (FNCRS), existing policy established previously by the Council and DP&I drafting instructions and policies.

The preparation of new planning instruments is also required from time to time as community values, needs and visions change. The Ballina LEP 1987 is more than 24 years old and it is suggested that since the 1980s the planning context has changed for the range of issues, opportunities and challenges that face our shire community. Given this, the preparation of a new plan presents an opportunity to establish a contemporary LEP that provides direction for the shire for the next planning period of around 20 years, recognising of course, that the new instrument would be under regular monitoring and review.

Council is fortunate in this regard as the preparation of "People, Place, Prosperity: A framework for a more sustainable Ballina Shire 2025" (Sustainability Framework) identifies the values, visions and desires of the community for the future of the shire, over a time period similar to that of the anticipated life of the new LEP. The Sustainability Framework is now embedded in Council's Community Strategy Plan which overarches the preparation of the new LEP.

1.2 Plan Making Process

The LEP renewal program involves the preparation of a new principal LEP for the shire and has been based on the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Importantly, and as has been reported to the Council, amendments to the procedure for the making of LEPs commenced operating on 1 July 2009 with the introduction of what is commonly known as the gateway LEP process. However, as part of the introduction of these provisions, savings and transitional arrangements were put in place with respect to draft pending principal LEPs.

Where a Council had resolved to prepare its principal LEP under the Standard Instrument via the previous Section 54 of the EP&A Act, and the Director General of the DP&I had been notified of this before July 1 2009, the making of the principal plan remains subject to the previous provisions for the making of an LEP. The preparation of Council's principal LEP meets these criteria and as such, its preparation is subject to relevant provisions of the EP&A Act for plan making in force before 1 July 2009. This means that Council's plan making process follows the steps set out under the previous Part 3, Division 4, Sections 53-70 of the EP&A Act. This report has been prepared having regard for the application of these provisions.

Based on the requirements of the EP&A Act, the following key steps and milestones have been completed:

- Ballina Shire Council resolved on 28 September 2006 to formally commence preparation of a new LEP under Section 54 of the EP&A Act.
- Council notified the DP&I of its decision in accordance with Section 54 of the EP&A Act on 6 October 2006.
- The DP&I advised Council that a formal Environmental Study under Section 57 of the EP&A Act was not required. Council, however, voluntarily prepared and presented a series of Discussion Papers which canvassed key issues to support the preparation of the new plan for the shire. The papers were exhibited for public comment between July and September 2007.

- Council resolved on 23 October 2008 to forward its working Draft Ballina Local Environmental Plan 2010 to the DP&I with a request that the Director-General issue a certificate certifying that the draft plan may be publicly exhibited. The working draft plan was formally forwarded to the Department on 19 November 2008 in accordance with Section 64 of the EP&A Act.
- Council received notice from the DP&I that it may exhibit its draft plan through the issue of a Section 65 Certificate on 10 December 2009. Council was subsequently issued a second Section 65 Certificate on 2 March 2010 following some minor amendments to its draft plan.
- Council undertook the public exhibition of the Draft Ballina Local Environmental Plan 2010 (draft LEP) between Monday 15 March 2010 and Friday 4 June 2010. The exhibition was carried out in accordance with the requirements of Sections 66 and 67 of the EP&A Act.
- Council invited comment from relevant government agencies and neighbouring councils during the plan preparation as required by Section 62 of the EP&A Act.

The remaining steps in the process in order to complete the preparation and implementation of the new LEP for the shire are as follows:

- Section 68 of the EP&A Act requires Council's consideration of the submissions received and presentation of a report to the Director General of the DP&I in relation to the submissions and recommended amendments, if any, to the exhibited draft LEP. In considering the submissions, Council may elect to hold a public hearing to consider part, or all, of the draft plan in further detail and/or re-exhibit all or part of the plan.
- Section 69 involves reporting within the DP&I where its Director General reports on the draft LEP to the Minister for Planning. A key element of this step is confirmation that the draft LEP has been prepared in accordance with the Standard Instrument.
- Section 70 of the EP&A Act establishes the framework for the Minister's decision on the making of the final LEP. The Minister may adopt the plan as prepared by Council or make changes as the Minister thinks fit. A decision by the Minister to make the LEP means that it will be finalised and become law upon publication by the NSW government.

It is important to note that following the forwarding of Council's report on the submissions and the form of the final draft LEP to the DP&I, Council has limited influence on the final stages of the plan preparation.

1.3 Supporting Plan Preparation

A number of discretionary initiatives have been implemented to support the preparation of the draft LEP. These have related to both the development and establishment of policy to direct the LEP as well as the provision and sharing of key information throughout the LEP's development. Key activities and resources prepared include the following:

- Internal engagement, including with Council's Regulatory Services Group and executive management.

4.1 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Principal Report

- Councillor engagement, including 11 workshops and briefings between 2005 and 2011, as well as formal reporting to Council relating to key issues and milestones.
- Regional engagement with neighbouring councils and government agencies.
- Ongoing liaison with the DP&I both at regional and head office levels.
- LEP Discussion Paper Series which provided background material and established planning objectives in relation to Community Facilities and Services, Industry and Commerce, Infrastructure and Utilities, Natural Environment, Rural Land Use, Society and Culture and Urban Land. These documents were publicly exhibited in 2007.
- LEP Policy Forum whereby representatives of the community discussed key policy issues to assist plan preparation. The forum was held in 2008.
- LEP project specific website.
- Councillor resource folders which are regularly updated with key LEP materials including reports, workshop materials and policy rationale information.
- Compilation of an LEP Rationale and Methodology Report which houses information about the principles and process utilised in preparing the LEP to assist in its interpretation, post implementation. This document also keeps a record of the processes undertaken.

The preparation of the draft LEP has required a substantial resource commitment from Council in both cash and staff time in particular. The following provides an overview of the resources utilised and an estimate of the cost directly attributable to the project to date.

▪ DP&I Grant (Sustainability Framework)	\$210,000
▪ DP&I Grant (Industrial and Commercial Land Use Review)	\$35,000
▪ Council Allocated Project Funds	\$350,000
▪ Staff Time LEP (estimate - 5 staff over 5.5 years)	\$715,000
▪ Staff Time DCP (estimate - 5 staff over 5.5 years)	\$65,000
TOTAL:	\$1,375,000

In addition to the above, the following provides an estimate of costs to completion of the LEP including address of deferred items and implementation programs for 1 year post gazettal.

▪ Staff Time LEP (estimate inclusive of monitoring, training and amendments)	\$200,000
▪ Staff Time DCP Revision (estimate)	\$80,000
▪ Special Project (Biodiversity Strategy)	\$180,000
▪ Special Project (Bulky Goods Analysis)	\$50,000
TOTAL:	\$510,000

1.4 Interests and Disclosures

Councillors and staff are subject to the terms of the *Local Government Act 1993* (LG Act) with respect to the disclosure of interests where there is a potential or perceived conflict associated with a decision. Whilst Council maintains the required registers for the disclosure of both Councillor and relevant staff interests, additional mechanisms for disclosures in relation to the LEP renewal have been employed.

Council officers involved in the preparation of the draft LEP, including planning and GIS mapping staff, were specifically requested to consider and make appropriate disclosures in relation to the project. Councillors were provided with an opportunity to identify potential pecuniary interests prior to completion of this reporting on the final draft LEP in order to both assist Councillors in the consideration of their interests and identify items where Councillors may feel that they are unable to participate in discussions during deliberations in relation to the LEP.

Where a Councillor has declared a pecuniary interest and the interest relates to a specific (rather than general) matter in the final draft LEP that may be perceived as being of substantial advantage (or disadvantage) to a Councillor, that item has been separated from the consideration of the draft plan overall and is subject to separate reports in this agenda. The purpose of this approach is to provide Councillors with an opportunity to participate in the general decision making on the predominant and more substantial elements of the draft LEP but withdraw from discussion and voting associated with specific items where appropriate.

1.5 NSW Department of Planning and Infrastructure Involvement and Outstanding Issues

The DP&I is the State Government agency responsible for the implementation of the Standard Instrument. As such, the DP&I has provided substantial direction and guidance with respect to the preparation of Council's draft LEP. In particular, Council has had extensive liaison with the Grafton Regional Office of the DP&I and has received a high level of support and assistance in the preparation of its plan.

However, by way of comment, Council's LEP Project Team is of the view that the approach adopted by the DP&I to manage the LEP renewal process has been far from satisfactory in a number of ways, including:

- Introducing a "city-centric" Standard Instrument that did not adequately address the range of issues facing regional councils;
- Undertaking significant changes to the Standard Instrument half way through the drafting process (with many of these changes doing little to rectify issues facing regional councils);
- Circulation of "model clauses" at different times with uncertainty as to their status;
- The DP&I, as a whole, providing little specific guidance or clear direction in relation to key issues during the plan development phase and as part of the s65 review process;

- Lack of clear rationale in many instances for directions and decisions made by the DP&I in relation to Council's draft LEP;
- Inconsistency in advice received from various arms of the DP&I, including confusion with respect to the distinction between legal/ technical and policy based positions; and
- Long time frames for the acknowledgement and subsequent address of issues raised, or alternatively, failing to respond in any meaningful way to key issues raised by staff.

The above issues have resulted in substantial resources being committed to rework and time delays. Council has also been unable to incorporate some desired elements into its draft LEP.

In addition to the above broad considerations, several technical issues remain of significant concern to project staff including:

- Interpretation of the draft plan's land use tables and use of "parent-child" definition structure (although the interpretation of the land use definitions has improved following the February 2011 Standard Instrument amendment, staff remain concerned about the interpretation of relationships between terms).
- Limitations on the opportunities for the LEP to link directly with strategic planning documents such as Council's Local Growth Management Strategy (LGMS), particularly as our existing LEP's urban investigation zone concept is to be removed.
- The role of local government in vegetation management in rural and environmental protection areas.
- Boundary adjustment subdivision provisions.
- Subdivision associated with residual lots arising from new urban releases and split zone lots.

The discussion and recommendations associated with the adoption of the LEP below have regard for these issues.

1.5 Purpose of Report and Structure

The purpose of this report is to provide the Committee with a report on the submissions received in response to the public exhibition of the draft LEP and seek direction with respect to the finalisation of Council's draft LEP for submission to the DP&I. To assist in this consideration, this report provides analysis of the submissions received, summaries of key issues identified, an outline of recommended additional actions post LEP completion and proposes a variety of amendments prior to finalisation of the LEP.

In considering this report, and as has been mentioned above, it should be noted that several elements of the plan are the subject of separate reports in this agenda to allow Councillors to remove themselves from debate and decision making where a pecuniary interest is involved. Therefore, this principal report should be read in association with the sub reports contained in this agenda.

In considering this report, Councillors may benefit from utilising their Councillor LEP Resource Folders which contain significant information relating to the draft plan.

2.0 Key Issues

- Matters arising in response to the public exhibition of the Draft Ballina Local Environmental Plan 2010.
- Finalisation of the Draft Ballina Local Environmental Plan for submission to the NSW Department of Planning and Infrastructure.

3.0 Information

3.1 Exhibition Overview

The draft LEP was publicly exhibited between 15 March 2010 and 4 June 2010. The submission period was informally extended until 18 June 2010 and Council continued to receive and evaluate submissions as responses to the exhibition for a further three months up until 17 September 2010. Table 1 provides a summary of key information associated with the exhibition period.

Table 1: Draft LEP Exhibition Summary

Exhibition Element	Notes
<i>Exhibition Length:</i>	82 days
<i>Exhibition Locations:</i>	6 locations + dedicated website
<i>Website Use:</i>	1583 site hits, 17056 page views
<i>LEP Project Staff:</i>	5 x professional staff, 2 x administrative support staff
<i>Media Attention:</i>	45 print media articles, 5 x radio and 1 x television interviews
<i>Enquiries:</i>	232 over telephone and counter
<i>Community Briefings:</i>	15 + 4 street stalls
<i>Government Briefings:</i>	1 x State Government agencies and 1 x neighbouring councils

3.2 Exhibition Elements

3.2.1 Exhibition Launch Event

The public exhibition of the draft LEP was formally launched at the Ballina Community Services Centre on the evening of 16 March 2010. Members of the Community Policy Forum and the elected Council were invited to attend the evening where a brief outline of the exhibition was provided and those in attendance were provided with draft LEP exhibition information packs. This launch was principally designed to promote public awareness of the forthcoming exhibition.

3.2.2 LEP Exhibition Material Display

Hard copy public exhibition materials were displayed at each of Council's Community Access Points, being the Council's Customer Service Centre, the Ballina Community Services Centre, the Wardell Community Centre and the shire libraries in Ballina, Alstonville and Lennox Head.

Importantly, the formal public exhibition of the draft LEP occurred at Council's Customer Service Centre where the full range of accompanying documents was available in accordance with the requirements of the EP&A Act. Notwithstanding this, each access point had the following information available:

- draft LEP Exhibition Material Folder;
- draft LEP Map Sheet Set; and
- Local Environmental Study for Proposed Rezoning, Amber Drive, Lennox Head

The exhibition material folder included the information identified in Table 2 with the exception of the LEP map sheet set which was available separately.

Table 2: Draft LEP Exhibition Material Set

Element	Overview
<i>Exhibition Notice and Section 65 Certificate</i>	Formal notification of the exhibition in accordance with the requirements of the EP&A Act, and the formal advice from the DP&I that the draft LEP could be publicly exhibited.
<i>Frequently Asked Questions</i>	Question and answer style information about various matters including the LEP project, the format of the new LEP and implications for development applications and rezoning requests.
<i>Exhibition Guide Booklet</i>	Information to guide users through the exhibition process including key background material, plain English outlines of the content of the draft LEP and information on how and when a submission could be made.
<i>LEP Policy Summary Sheets</i>	Details regarding Council's policy approaches to specific topics. Provided a guide with respect to why Council has approached topics in certain ways and the way in which Council's policies are reflected in the draft LEP.
<i>LEP Written Instrument and Associated Mapping</i>	The legal instrument, being a written document and an accompanying set of maps.
<i>Land Use Table Interpretation Material</i>	Details regarding the use and interpretation of the land use tables contained in the draft LEP.
<i>Key Site Summaries</i>	Overview of the status of existing rezoning requests and key urban release areas in relation to the draft LEP.
<i>Amber Drive Rezoning</i>	Information about the rezoning of land off Amber Drive at Lennox Head to a part residential zone and part environmental protection zone.
<i>Classification of Land Information Sheets</i>	Rationale for the reclassification of several land parcels from community land to operational land.
<i>Rationale and Methodology Report</i>	Comprehensive account of the LEP Renewal process including background, community engagement, rationale for the construction of the draft LEP and relationships to other planning documents.

The above information was also available via Council's website and on CD upon request.

3.2.3 Exhibition Panel Display

Council's Customer Service Centre hosted an information panel display in association with the exhibition of the draft LEP. The panel display utilised each of the sections contained in the Exhibition Guide booklet and was available for viewing by those seeking information about the draft LEP as well as customers making general enquiries of Council.

3.2.4 Exhibition Guide

Council supported the exhibition of the draft LEP with a variety of materials as outlined above. A key element of the supporting material was the draft LEP Exhibition Guide. The guide included information in relation to the following:

- Exhibition and Submissions
- Local Environmental Plan Overview
- Process for Making a New LEP
- Key Planning Factors Influencing the LEP
- Community Involvement in Plan Drafting
- Draft Ballina LEP 2010 Content
- Plain English Explanation of Clauses
- Mapping
- Land Use Zones
- Development Standards
- What Does the LEP Allow on Your Land?

The intent of the guide was to assist people in navigating through the exhibition materials.

3.2.5 Counter Enquiry System

A dedicated LEP project enquiry counter was established in the upstairs foyer of Council's Customer Service Centre. The counter was staffed on a roster basis by the five members of Council's LEP Project Team. The counter was collocated with the formal public exhibition material, exhibition display panels and other supporting information. Access to Council's GIS computer mapping system was also available to assist customers with enquiries.

Staff received approximately 188 counter and telephone enquires during the public exhibition period, with the key issues discussed being related to the environment, urban subdivision, Amber Drive, subdivision of rural land and rural land uses and dwelling entitlements. Of note is that a large proportion of these enquiries did not translate into written submissions.

3.2.6 LEP Project Website

Council established a stand-alone dedicated LEP project website attached to Council's principal web site (newlep.ballina.nsw.gov.au). The project website housed copies of the public exhibition materials as well as providing information updates and details with respect to Council contacts and the making of submissions. The website contains a variety of supporting documentation and materials produced over the duration of the LEP renewal program.

3.2.7 Phone Line and Business Card

The public exhibition period was supported by a project dedicated telephone number and business card to facilitate direct access between members of the public and the LEP Project Team.

3.2.8 Branding

The LEP exhibition materials were branded using the project logos and associated colours. Materials were provided to members of the community in LEP branded folders to assist in the association of information with the project.

3.2.9 Media Engagement

Council engaged directly with local media prior to the commencement of the public exhibition period and during the exhibition period. Staff compiled a media kit, invited local media to briefing sessions, placed various advertisements and undertook radio and television interviews to promote awareness of the public exhibition period and process.

Engagements with the media included the following:

- 12 March 2010 Northern Star newspaper briefing
Interview 2LM radio
Interview ABC North Coast radio
- 15 March 2010 Interview ABC radio
Interview NBN television
Interview Northern Star newspaper
- 16 March 2010 Interview 2LM radio
- 18 March 2010 Interview Paradise FM radio

During the 12 week public exhibition period, Council staff engaged with a variety of local print media including the Northern Star, Ballina Shire Advocate, the Lennox Wave, the Blackwall Bugle and Council's Community Connect hard copy and digital newsletters. There was a reference to the LEP exhibition in local print media during each week of the exhibition period. These references included Council, media organisation and community generated material.

During the pre exhibition and exhibition periods, a total of 45 print media articles appeared across the various publications as follows:

- Northern Star and Advocate (Council initiated): 14 articles
- Northern Star and Advocate (community initiated): 17 articles
- Other sources (e.g. Lennox Wave, Blackwall Bugle, Community Connect): 14 articles

There were also an additional 8 items published in the Northern Star post conclusion of the public exhibition period.

Council formally advertised in the Northern Star and Ballina Shire Advocate in order to encourage widespread community knowledge of the project. Council supported this with radio and television interviews as well as the distribution of the hard copy of Community Connect which is sent to every household in the shire. Posters were also distributed to prominent locations in the shire's smaller rural communities.

3.2.10 Stakeholder Group Briefings

Council staff undertook targeted stakeholder group briefings throughout the public exhibition period. In particular, key interest groups in the shire were invited to request a briefing session where LEP project staff were available to discuss the LEP in general as well as issues relevant to the group. Exhibition period engagements included the following:

- Council A Ward Committee
- Council B Ward Committee
- Council C Ward Committee
- LEP Project Launch (Policy Forum Members)
- Ballina Environment Society Executive
- Ballina Chamber of Commerce and Industry Board
- Newrybar Community
- Lennox Head Residents Association
- Ballina Environment Society (public meeting)
- Lennox Head Chamber of Commerce
- Alstonville Probus Club
- Lennox Head Landcare
- Ballina Chamber of Commerce and Industry (open membership)
- Ballina Coastcare Inc

In addition to the above, Council staff also hosted a briefing session for neighbouring councils and State Government agencies.

3.2.11 Direct Correspondence

In addition to the advertising and public awareness activities undertaken, Council also wrote directly to a number of groups in relation to the exhibition. In this regard, direct correspondence regarding the project was issued to the following:

- Neighbouring councils
- State Government agencies
- Registered community members (Council maintained a list of interested persons)
- LEP launch participants
- Stakeholder groups
- Residents in the Amber Drive locality
- Landholders in areas subject to rezoning proposals
- Consultants involved in rezoning proposals

4.1 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Principal Report

- Landholders and consultants associated with urban-zoned but as yet undeveloped areas
- Parties who made a request to the LEP renewal process (pre exhibition)

Aside from neighbouring councils and State Government agencies, Council issued approximately 350 items of direct correspondence alerting the above groups to the exhibition of the draft LEP.

3.2.12 Street Stalls

Council supplemented the exhibition materials, stakeholder group meetings and direct correspondence with 4 street stalls in May 2010. The street stalls, attended by project staff, were located in prominent locations in the main urban shopping centres and were intended to promote the visibility of the project and encourage participation by a wider portion of the community. Whilst attracting some enquiry, the street stalls yielded a modest response (44 enquiries over 11 hours) and many enquiries received related to other areas of Council business outside the LEP renewal project.

The street stall program undertaken was as follows:

Wardell Community Centre	13 May 2010
Ballina Fair Shopping Centre	13 May 2010
Alstonville Plaza	5 May 2010
Lennox Head (main street)	22 May 2010

3.2.13 Interactive Mapping

During the public exhibition period, Council compiled interactive mapping using the Google maps platform and made these available for public viewing via the LEP website. The intent was to provide an additional means of accessing information for the public.

In addition, requests were made during the exhibition period for Council to make supportive vegetation mapping for the shire available for viewing. The material did not form part of the initial exhibition materials as Council's vegetation mapping is subject to ongoing preparation and was not complete at the commencement of the exhibition period. However, in response to the request, Council made interactive vegetation mapping available to the community for viewing to support the exhibition. The mapping tool provided allowed the use of information layers to enable comparison between vegetation information and proposed zoning arrangements.

3.3 Councillor Exhibition Briefing

A briefing on the outcomes of the public exhibition of the draft LEP and the key issues arising from the process was provided to Councillors over two sessions on 27 and 29 September 2010. The key items discussed were Fig Tree Hill, Summerhill Crescent, Condon Hill, Alstonville/ Wollongbar Buffer, Building Height, Bulky Goods Retailing, Minimum Lot Size for Urban Subdivision and Environment. Importantly though, these are not the only items that have been raised in submissions. A full outline of the issues identified in the submissions received from the community up until the time of

the briefing was provided to Councillors. The final summary of this information and recommended action is contained in Attachment 1. Summaries of Government agency submissions and recommended actions are contained in Attachment 2.

The following discussion associated with the submissions focuses on the key items discussed at the briefings as well as highlighting other items that are recommended for action involving either amendment to the LEP prior to finalisation or further work that it is recommended be undertaken.

3.4 Community Submissions

3.4.1 Community Submissions Summary

Council's official submissions period in response to the public exhibition of the draft LEP was between 15 March 2010 and 18 June 2010. However, Council continued to receive and process submissions as items in response to the public exhibition up until 17 September 2010. Council received a total of 172 submissions up until 17 September. Copies of these submissions have been distributed to Councillors under separate cover.

Table 3 shows the localities from which submissions were received, whilst Table 4 illustrates the number of submissions relating to broad issue categories where more than 10% of submissions received related to the identified category.

Table 3: Community Submissions by Locality of Origin

Submission Locality	Number	Percentage
<i>Lennox Head (incl. Skennars Head)</i>	63	36.6%
<i>Ballina (incl. East Ballina)</i>	30	17.4%
<i>Rural</i>	17	9.9%
<i>Cumalum</i>	11	6.4%
<i>Alstonville/ Wollongbar</i>	11	6.4%
<i>Newrybar</i>	8	4.7%
<i>Wardell</i>	3	1.7%
<i>Other (within region)</i>	17	9.9%
<i>Other (outside region)</i>	6	3.5%
<i>Unknown</i>	6	3.5%
TOTAL	172	100%

Submissions received from outside the shire generally came from consultants acting on behalf of landholders or persons with specific interests in the shire.

Table 4: Community Submissions by General Issue

General Issue Category	Number	Percentage
<i>Subdivision/ Lot Sizes</i>	64	37.2%
<i>Environment</i>	57	33.1%
<i>Growth Management/ Urban Development</i>	33	19.2%
<i>Commercial/ Industrial Land Use (incl bulky goods)</i>	19	11.0%

The above issue categories were further refined for the address of submission issues as set out in Attachment 1. Therefore, this table is intended as a guide only to the key issue areas raised in the submissions.

Of the submissions received, it is also noteworthy that approximately 42% addressed a specific site or property, 38% addressed issues generally and 24% were specific to the localities of Fig Tree Hill (16%), Summerhill Crescent (6%) or Amber Drive (2%). In considering these figures it should be noted that some submissions addressed more than one of the categories.

3.4.2 Additional Submissions

As outlined above, Council staff received and assessed submissions in response to the public exhibition of the draft LEP up until Friday 17 September 2010, this being some 13 weeks after the end of the extended submissions period associated with the public exhibition of the draft LEP. This timing coincided with the preparation of materials for the Councillor briefing sessions held on 27 and 29 September.

Council has received an additional 23 submissions since 17 September 2010 (up until Friday 15 April 2011) and these have been assessed separately in the community submissions summary in Attachment 1. These submissions were not excluded from consideration in relation to amendment of the draft LEP and as such, staff recommendations with respect to the draft LEP are also set out in Attachment 1. The submissions have been distributed to Councillors under separate cover in the draft LEP submissions set but are not incorporated into the statistical analysis of submissions that forms part of this report.

3.5 Government Agency Submissions

Information packages relating to the draft LEP were forwarded to relevant State Government agencies and a briefing session was also held as noted in Table 1. Several agencies also requested meetings with staff to discuss the draft LEP and their particular issues in more detail.

Submissions were received from twelve (12) public authorities as follows:

- NSW Public Works
- NSW Roads and Traffic Authority
- NSW Department of Education and Training
- NSW Police Force
- NSW Department of Planning and Infrastructure - Heritage Branch
- Industry and Investment NSW
- NSW Land and Property Management Authority
- NSW Department of Environment, Climate Change and Water
- NSW Rural Fire Service
- Rous Water
- Housing NSW

- Northern Rivers Catchment Management Authority

The form of the submissions ranged from brief email responses to detailed submissions providing comment on all sections of the draft LEP. The issues raised in the submissions also ranged from detailed site specific comments to broader planning issues such as the application of zones and the permissible land uses within particular zones. Attachment 2 contains a detailed summary of the issues raised in the submissions from the agencies.

The key issues raised during the public exhibition process by both the agencies and the community are addressed in section 3.7.

3.6 Standard LEP Instrument Amendment February 2011

The Standard Instrument (Local Environmental Plans) Amendment Order 2011 (Standard Instrument Amendment Order) was made and published on 25 February 2011. The Order introduced a number of amendments to the Standard Instrument. The amendments include changes to the 'compulsory' text of the Standard Instrument which must be incorporated in the draft LEP and the provision of additional 'optional' provisions which Council may or may not wish to adopt in the draft LEP.

The key changes to the Standard Instrument, and recommendations in relation to the adoption of the 'optional' provisions, are summarised as follows. Significantly, the alterations to the Standard Instrument have been considered with respect to the analysis of submissions contained in this report.

3.6.1 Clarifying the intent of zones

A number of reasonably minor changes have been made to the mandated land uses within various zones. These include directions associated with new land uses (such as "respite day care centres"), and revised and new objectives for some zones.

The objectives of the B5 Business Development Zone have been amended to replace the reference to "specialist retail uses" with "bulky goods premises". This amendment is discussed in further detail in Sections 3.7.4 and 3.12.2 regarding "bulky goods premises".

3.6.2 Land Use Table Directions

A new direction has been inserted in the plan to clarify which terms in the Dictionary are land use terms and may be included in the Land Use Tables. Council has made a number of representations to DP&I regarding the need for a distinction to be made between "general terms" and "land use terms" in the Dictionary.

While the direction clarifies the uses that may be listed in the Land Use Tables, it is unfortunate that the distinction is not made in the Dictionary itself. The directions will be removed from the draft LEP on gazettal, and while the land use terms will be clear to those drafting the plan, the distinction between the land use terms and general terms will not be clear to plan users. For example, "industrial activity" is not identified as a land use term and therefore cannot be listed in the Land Use Tables. However, it is listed in the Dictionary

with “industrial retail outlet”, “industrial training facility”, and “industry”. There will be nothing in the gazetted plan to indicate that “industrial activity” is not a land use for which development consent can be sought.

It is recommended that Council’s Strategic and Community Services Group continue to make submissions to the DP&I regarding this issue. In the interim it is recommended that the “direction” identifying land use terms is inserted into the LEP as a “note” so as to maintain the listing of the land use terms in the draft LEP to assist in clarifying this matter.

A Land Use Table direction has also been inserted that requires “respite day care centres” to be permitted wherever a “child care centre” is permitted in the Land Use Table.

3.6.3 New and amended clauses

There are a number of new and amended clauses in the revised Standard Instrument. The following summary of revised and new clauses outlines the key amendments applicable to the draft LEP.

3.6.3.1 Clause 2.6 Subdivision Consent

Clause 2.6 has been amended to delete the provisions regarding minor boundary adjustments. These provisions are now contained in State Environmental Planning Policy (Exempt and Complying Development Codes) (Codes SEPP).

3.6.3.2 Clause 4.1AA Minimum subdivision lot size for community title schemes

This clause is an optional clause if clause 4.1 is adopted. This clause applies to the subdivision of land under a community title scheme and requires the minimum lot size of any such lots created to meet the minimum lot size shown on the Lot Size Map.

Council's draft plan, as exhibited, included a clause (clause 4.1B) that prohibits community title subdivision of land within certain rural, environmental protection and residential zones. On review with respect to community title subdivision, it is considered that the form of the subdivision itself is not of concern, but rather the consistency of the subdivision with the minimum lot size that is important. On this basis it is recommended that the optional clause regarding community title subdivision be adopted, and that clause 4.1B of the draft plan be modified to remove reference to community title subdivision. It is recommended that the limitations regarding strata subdivision in rural zones and the R2 zone under 4.1B be retained. It should be noted that the limitation on strata subdivision in the R2 zone reflects long standing policy of Council in relation to this form of subdivision in low density residential areas.

3.6.3.3 Clause 5.4 Controls relating to miscellaneous permissible uses

Minor amendments are proposed to some of the provisions regarding miscellaneous permissible uses including the basis for calculating the maximum permitted floor area of land uses such as secondary dwellings and industrial retail outlets. Given that the basis for the calculation of floor area for some land uses has been amended, it is recommended that the percentage provisions regarding secondary dwellings and industrial retail outlets be adjusted in the draft plan to reflect the revised method for calculating the maximum floor area. This would maintain the approach set out under the exhibited draft LEP.

3.6.3.4 Clause 5.5 Development within the coastal zone

The provisions of this clause have been amended by removing the coastal hazard associated issues from matters which must be taken into consideration in the assessment of applications, and inserting them into the list of matters which the consent authority must be satisfied of. This amendment has the effect of strengthening the consideration of coastal hazards.

3.6.3.5 Clause 5.9 Preservation of trees and vegetation

This clause has been amended from an “optional” clause to a “compulsory” clause. The clause was included in the draft LEP.

The clause has also been amended to include biodiversity values in the zone objective and to clarify the relationship of the clause with the heritage provisions of clause 5.10.

The amendment to the Standard Instrument also introduces a new optional subclause (9). This subclause applies to particular zones including the E2 and E3 zones. It enables Council to require approval for certain activities and clearing permitted without approval under the Native Vegetation Act 2003. That is, if Council adopts this optional subclause Council would be able to require approval for certain activities and clearing presently permitted under the Native Vegetation Act 2003 without consent. The activities and clearing permitted in accordance with the provisions of Divisions 2 and 3 of Part 3 of the Native Vegetation Act 2003 include clearing for routine agricultural management activities, and the clearing of native vegetation regrowth, but not protected regrowth.

Council’s current position (as resolved) in relation to vegetation management, is that it wishes to regulate vegetation removal in the environmental protection zones (E2 and E3 zones). The optional clause would only enable Council to regulate certain activities and clearing presently permitted without consent in accordance with the provisions of the Native Vegetation Act 2003, including routine agricultural management activities, and the clearing of native vegetation regrowth. The optional provision would not enable Council to require approval for other vegetation removal or clearing within the environmental protection zones (responsibility for regulation would lie with another agency).

While the amendment provides for some regulation of vegetation removal within the environmental protection zones it is considered that the types of activities enabled to be regulated with respect to agricultural land management have not been previously identified by Council as issues of concern, and are not necessarily ones which Council would seek to regulate. Further, it is not considered ideal for Council to undertake a role of partial regulation of vegetation management within the E2 and E3 zones.

The amendments to the Standard Instrument do not fully resolve Council's issues in relation to the management of vegetation and it is therefore considered preferable for Council to wait for the broader concerns regarding vegetation management to be addressed prior to adopting the optional subclause.

In the interim it is recommended that Council advise DP&I of the reason for its decision not to adopt the optional subclause, and continue to make submissions to the DP&I regarding this issue.

3.6.3.6 Clause 5.9AA Trees or vegetation not prescribed by development control plan

This clause is a new compulsory clause that applies to any tree or other vegetation that is not of a species prescribed by a development control plan, and permits the removal, lopping etc. of such trees without development consent.

The introduction of this new compulsory clause highlights the need for Council to ensure that the new development control plan for vegetation management addresses all species of trees and other vegetation that Council wishes to protect and / or require consent for its removal.

3.6.3.7 Clause 5.13 Eco-tourist facilities

This clause is compulsory if eco-tourist facilities are permitted with consent.

In considering whether or not to permit eco-tourist facilities with consent, it is important to examine the definition as prescribed in the Dictionary. The Standard Instrument contains the following definition of an eco-tourist facility:

eco-tourist facility means a building or place that:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and*
- (b) is located in or adjacent to an area with special ecological or cultural features, and*
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.*

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

Note. See clause 5.13 for requirements in relation to the granting of development consent for eco-tourist facilities.

Eco-tourist facilities are not a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.

While it is considered that the introduction of additional definitions under the group term “tourist and visitor accommodation” would be beneficial, particularly in relation to defining the desired forms of accommodation in the rural zones, the proposed definition is not considered helpful for the draft LEP.

The definition of an eco-tourist facility is identified in the notes as not being linked to tourist and visitor accommodation despite both land use definitions including the provision of “...temporary or short-term accommodation...on a commercial basis”. The reason for the separation of eco-tourist facilities from the group term is not clear to staff.

The definition of eco-tourist facilities is considered to be problematic given the inclusion of merit-based criteria within the definition itself. That is, the definition refers to a building or place that “is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact”. The inclusion of these merit-based considerations in determining whether a proposal is defined as an eco-tourist facility is considered highly undesirable and may potentially result in circumstances where Council faces legal arguments regarding whether a land use is permitted or prohibited within a particular zone. The inclusion of merit-based considerations within this land use definition may also set an undesirable precedent.

The provisions of clause 5.13 effectively comprise “heads of consideration” for assessing applications for eco-tourist facilities.

The draft LEP as exhibited includes a local provision drafted by Council. Clause 7.9 – Rural and nature based tourism development applies to land within the rural and environment protection zones. This clause requires tourism development to satisfy a number of requirements including adequate access from a road other than a classified road. It also requires tourism development to be of a “small scale” which is complementary to the rural or environmental attributes of the land and its surrounds. The local clause also contains controls regarding the erection of permanent residential accommodation for the owners or managers of the facility.

The local clause for rural and nature based tourism as exhibited in the draft LEP contains a number of provisions that are considered to respond to tourism in the particular circumstances of the local area, and is preferable to the optional clause for eco-tourist facilities.

On the basis of the above, it is recommended that Council not adopt the optional clause for eco-tourist facilities.

3.6.4 Dictionary terms

The amendments to the Standard Instrument include new, renamed and amended definitions.

As also discussed in Section 3.13.3, Council has made numerous representations to DP&I in relation to the Standard Instrument Dictionary. The Standard Instrument adopts a hierarchy of land use definitions comprising ‘group terms’, ‘subsets’, and ‘sub terms’ as well as ‘stand alone terms’.

Council has raised concern on a number of occasions regarding the ambiguity in terms of the relationship between some definitions.

The amendments to the Standard Instrument seek to address this issue. In the case of some definitions, the link is provided within the definitions themselves however, in the majority of cases, 'notes' have been used to explain the relationship between the 'group terms', 'subsets', and 'sub-terms'. As discussed in Section 3.14.3, Council officers are concerned that while the revised Dictionary is an improvement, the status of the notes has not been confirmed in legal terms. Council officers remain concerned that the relationships between definitions, where that relationship is expressed via a note, remain open to challenge and interpretation.

It is recommended that Council continue to make representations to DP&I regarding this issue.

In relation to amended Dictionary terms, a number of the terms have been renamed or revised, and several new terms have also been introduced.

Where the revision to the land use term involves renaming or minor amendment, the permissibility of the land use in each zone will be maintained in accordance with the draft LEP as exhibited, except where an amendment has otherwise been identified in the process.

The following table provides a summary of the key land use terms which are new or substantially revised, and the recommended permissibility of each of them within the land use tables (incorporating the DP&I mandated permissibility of the land uses).

Table 5: New Land Use Terms and Recommended Permissibility

Land Use	Recommended Permissibility
<p>Bee keeping Defined as a stand alone land use so it can be permitted if appropriate in areas not suited to broader agricultural activities.</p>	<p>Permissible without development consent in the RU1, RU2, and E3 zones. Permissible with development consent in the R2, R3, B1, B2, IN1, RE1, RE2 and E2 zones. Prohibited in all other zones.</p>
<p>Boat building and repair facilities Renamed to clarify inclusion of boat building.</p>	<p>Permissible with development consent in the IN1 and W2 zones. Prohibited in all other zones.</p>
<p>Camping ground Previously referred to in the definition of caravan park now separately defined to enable distinction and permit in areas which may not be suited to caravan parks.</p>	<p>Permissible with development consent in the RU2, R2, R3, RE1, RE2, and E3 zones. Prohibited in all other zones.</p>
<p>Garden centres New term that was previously included in 'landscape and garden supplies'. Separation of terms intended to provide flexibility.</p>	<p>Permissible with development consent in the B2, B3, B4, B6 and IN1 zones. Prohibited in all other zones.</p>

Land Use	Recommended Permissibility
<p>General industry New land use to apply to industrial uses that are not considered to be 'light industry' or 'heavy industry'.</p>	<p>Permissible with development consent in the IN1 zone. Prohibited in all other zones.</p>
<p>Hardware and building supplies Renamed / amended term replacing 'timber and building supplies' and separated from timber yard component.</p>	<p>Permissible with development consent in the B2, B3, B4, B6, and IN1 zones. Prohibited in all other zones.</p>
<p>High technology industry New land use term.</p>	<p>Permissible with development consent in the B4, B6 and IN1 zones. Prohibited in all other zones.</p>
<p>Industrial training facilities New land use term to cover vocational training in an activity associated with an industry, rural industry, extractive industry or mining.</p>	<p>Permissible with development consent in the B6 and IN1 zones. Prohibited in all other zones.</p>
<p>Landscaping material supplies New term that was previously included in 'landscape and garden supplies'. Separation of terms intended to provide flexibility.</p>	<p>Permissible with development consent in B2, B3, B4, B6, and IN1 zones. Prohibited in all other zones.</p>
<p>Mooring pens New land use term.</p>	<p>Permissible with development consent in the RU1, RU2, W1 and W2 zones.</p>
<p>Open cut mining New definition intended to distinguish between different forms of mining.</p>	<p>Open cut mining is permissible with development consent on land where development for the purposes of agriculture or industry may be carried out (with or without development consent) in accordance with the provisions of the ISEPP. Council has been instructed by DP&I to remove all ISEPP regulated development from the land use table. On the basis of the above, the LEP can only regulate open cut mining in the B3, B4, W1 and W2 zones. It is proposed to list open cut mining as prohibited within these zones.</p>
<p>Plant nurseries New term that was previously included in 'landscape and garden supplies'. Separation of terms intended to provide flexibility.</p>	<p>Permissible with development consent in the B2, B3, B4, B6, and IN1 zones. Prohibited in all other zones.</p>
<p>Respite day care centres New land use term aims to address provision of short-term, temporary relief for carers of people with a</p>	<p>Permissible with development consent in the R2, R3, B1, B2, B3, B4, B6, RE1 and RE2 zones. Prohibited in all other zones.</p>

Land Use	Recommended Permissibility
<p>disability or the elderly. Added to ensure this use is permissible in a wide variety of zones.</p>	
<p>Timber yards Renamed / amended term replacing 'timber and building supplies' and separated from building supplies component.</p>	<p>Permissible with development consent in the B2, B3, B4, B6, and IN1 zones. Prohibited in all other zones.</p>
<p>Underground mining New definition intended to distinguish between different forms of mining.</p>	<p>Underground mining is permissible with development consent on all land in accordance with the provisions of the ISEPP. Council has been instructed by DP&I to remove all ISEPP regulated development from the land use table. On this basis underground mining will not be listed in the land use table.</p>
<p>Wharf or boating facilities New land use term that enables councils to permit facilities associated with a wharf or boating outside designated ports.</p>	<p>Permissible with development consent in the RU2, B2, B3, B4, RE1, RE2, W1 and W2 zones. Prohibited in all other zones.</p>

3.7 Key Issues Arising from Public Exhibition

The following discussion highlights key issues that have been central during the draft LEP community engagement processes and in the analysis of submissions. This is not an exhaustive list of the issues arising and should be read in conjunction with the summaries and recommended actions contained in Attachments 1 and 2. These summaries provide an address of the submissions received and the associated issues that have been raised. It should be noted that there are numerous amendments to the draft LEP recommended in the summary and action tables.

3.7.1 Locality Specific

3.7.1.1 Fig Tree Hill, Lennox Head

As noted in Section 3.4 of this report regarding the community submissions, approximately 16% of the submissions received in relation to the draft LEP related to the zoning of land at Fig Tree Hill, Lennox Head. This area comprises an existing rural residential subdivision generally surrounded by larger rural holdings. The land is currently zoned 1(b) Rural (Secondary Agricultural Land) Zone in accordance with the provisions of BLEP 1987. The draft LEP as exhibited proposes the application of the RU1 Primary Production Zone to this area.

Submissions were received on behalf of two land owners, seeking the application of the RU2 Rural Landscape Zone to a large lot adjoining the existing rural residential estate, and the application of the R2 Low Density Residential Zone to the existing rural residential subdivision respectively. A total of 28 submissions were received from land owners within the estate

expressing support for the retention of the proposed RU1 zoning of the land and / or seeking the limitation on further subdivision of land at Fig Tree Hill.

The approach adopted for the draft LEP in relation to the zoning of existing rural residential subdivisions was to maintain the existing rural zoning of the land. The draft LEP does not provide for further rural residential subdivision and it is considered appropriate to maintain the existing subdivision pattern in these areas to preserve the limited supply of this form of housing within the shire. On this basis, no amendment is recommended in relation to the zoning or subdivision standards applying to the Fig Tree Hill area.

3.7.1.2 Summerhill Crescent, Cumbalum

This item is addressed elsewhere in this business paper.

3.7.1.3 Condon Hill, Lennox Head

This matter relates to the rezoning of approximately 11 hectares of land located between the Lennox Head village centre and Byron Bay Road commonly referred to as Condon Hill. The subject land includes two adjacent land parcels, Lot 21 DP1007134 owned by the Condon family and Lot 12 DP581159 owned by the Catholic Church, that are currently zoned 1(d) Rural (Urban Investigation) Zone under the Ballina LEP 1987.

The subject land is identified in the Ballina Urban Land Release Strategy (ULRS) for future urban investigation. The Lennox Head Structure Plan (LHSP) identifies parts of the land as candidate investigation areas H1 and H2 as shown in ATTACHMENT 3. The LHSP identifies the following requirements for development of the areas shown as H1 and H2 subject to rezoning investigations:

- Area H1. The preferred land use for area H1 is an extension of the Consulting Room Precinct immediately adjacent to the site. Any development in this area will need to be designed having careful regard to the impact of the development from a geotechnical perspective and to ensure that views to the scenic escarpment are retained. A built form of light weight construction with little or no excavation to minimise disruption to the landform, is also considered appropriate for this site.
- Area H2. A combination of low and medium density residential development (L2 and M1 pursuant to Ballina DCP No.1) is the preferred use for this site. Any such development would need to ensure adequate buffering for road traffic noise and be well screened from the Coast Road. Access to area H2 is to be via Greenwood Place. A built form of light weight construction with little or no excavation to minimise disruption to the landform, is considered appropriate for this site. Any buildings on this site shall have a building height lower than the red roof of the duplex building to north of site at 14 Blue Horizon Drive, so as to minimise the visual impact of development in this area.

The area shown with broken zigzag lines in ATTACHMENT 3 is identified as 'visually significant land' in the LHSP.

Rezoning investigations involving this site have been ongoing over a number of years and Councillors have received reports relating to it at the following meetings:

- Ordinary Meeting held on 23 August 2007 [Minute No.230807(016)]
- Environmental Committee Meeting held on 9 August 2007
- Ordinary Meeting held on 24 August 2006 [Minute No.240806(008)]
- Ordinary Meeting held on 28 April 2005 [Minute No.280405(004)]

The land has previously been the subject of Draft Ballina LEP Amendment No.96 that proposed to rezone the land from 1(d) Rural (Urban Investigation) Zone to 7(d) Environmental Protection (Scenic Escarpment) Zone, over the majority of the Condon land. The draft plan was publicly exhibited during March and April 2005.

The landholder's consultants provided an alternative proposal which envisaged rezoning parts of the site, including the Catholic Church land and a strip of land adjacent the Coast Road (on the Condon land) for residential purposes, with the remainder of the site proposed 6(a) Open Space. The proposal also requested that parts of the land, including the Condon family home and land adjacent to the medical centre be deferred for future investigation.

When the matter was last considered by the Council (23 August 2007) the Council resolved as follows:

1. *That Council incorporate the consideration of zoning and land use for Area H and Condon Hill (as defined under the Lennox Head Structure Plan) into the comprehensive renewal of the Ballina Local Environmental Plan. Further that this consideration be based on the landowner proposed zoning and landuse arrangement as set out in this report.*
2. *That the proponents be advised that Council will require suitable documentation to enable assessment of the proposed zoning arrangement, particularly in relation to those areas proposed to be zoned for residential/urban purposes and that this may be subject to independent assessment at the proponents cost and the applicable Council fees and charges.*

The effect of the above resolution was to incorporate the land into the shire-wide LEP renewal process and specifically extend the area of land to be considered for rezoning to include the adjacent land parcel, owned by the Catholic Church also zoned 1(d) Rural (Urban Investigation) Zone, that was not the subject of LEP Amendment No.96.

In response to the resolution, the landholders were invited to provide further information to support their rezoning request. Due to delays in the provision of the necessary additional information, the matter was not able to be incorporated into the comprehensive LEP prior to the public exhibition.

Further information was subsequently provided by the landholders' representatives and has been considered by Council staff. This matter was also discussed at the Councillor workshop held on 27 September 2010. A review of the documentation available on this matter, including the additional technical reports submitted by landholders, has identified the following key issues relevant to the determination of land use zoning over the Condon Hill site:

- Visual prominence;
- Geotechnical instability; and
- Road noise.

Visual Prominence

Parts of the subject land have significant visual prominence being highly visible from the Lennox Head village centre, beaches and public spaces, surrounding residential areas and the public road network including the scenic coastal road route (the Coast Road).

Extensive consultation undertaken with the Lennox Head community during the preparation of the Lennox Head Community Aspirations Strategic Plan (2002) identified the landscape as a key defining feature of the character of Lennox Head. The visual prominence of parts of the subject site were confirmed by the preparation of a Landscape and Visual Analysis (2003) undertaken by an independent consultant to Council. As a consequence, the LHSP identifies the elevated parts of the site, including prominent ridgelines as 'visually significant land'.

The landholders' consultants provided a visual assessment to support their rezoning request. The report set out a scale of visual constraint and identified areas subject to these constraints. The report also proposed mitigation measures to lesson the visual impact of the proposed development footprint. The prominent ridgelines are generally identified as being subject to 'high constraint', land above the road cutting on Ballina Street is given a 'moderate constraint' and land behind houses on Ballina Street/Park Lane and behind Blue Horizon Drive is shown as subject to 'low constraint'.

The exception to this is a portion of land adjacent to the Coast Road, proposed for residential development, that is identified as subject to 'moderate constraint' if unmitigated and 'low constraint' if mitigated with a vegetated buffer between the Coast Road and the proposed development footprint. It is noted, however, that this last area includes land along the ridgeline that has high visual prominence from the Coast Road/North Creek Road and forms part of the 'visual arc' from the Coast Road to the crest of Condon Hill. It is noted that the view corridor along the Coast Road has greater visual prominence when viewed from the south east as compared from the north west, although land adjacent to the north-south ridgeline itself, which forms the 'visual arc' referred to above, remains a key visual element of the Condon Hill site from both directions.

Geotechnical instability

Geotechnical investigations undertaken in relation to LEP Amendment No.96 and in relation to a development application that was lodged (and subsequently refused by Council and the NSW Land and Environment Court) for a 'seniors living' proposal over part of the site (DA No.2005/516) have identified key geotechnical constraints to development in some parts of the site. The geotechnical assessment provided by the landholders' consultant identifies that the western section of the site has limited constraints to development, however the north-eastern part of the site is subject to the following geotechnical constraints:

- Slope instability risk and history of landslip/slumping;
- Complex and variable geological conditions;
- Deep colluvial soils (soils derived from landslides and slope wash processes);
- Areas of low bearing capacity; and
- Poor site drainage.

The report concludes that:

"...Significant remediation or alteration of the slopes above the area to be redeveloped to near the crest of ridge would be required to allow development to proceed in a manner that may be considered acceptable to the community...Such remedial measures would require significant disturbance of the slopes...The design of such remedial measures would be complex and the economics of such would require detailed geotechnical investigation once the proposed development scheme is understood."

Due to the significant challenges associated with any future development scenarios for the north-eastern portion of the site, the landholder has requested that this portion of the site be deferred for future investigation.

Road noise

Road noise assessments undertaken for the site have indicated that land adjacent to Ballina Street and the Coast Road is subject to road noise impacts. The assessments indicate that the relevant internal noise standards can be met with reliance on the construction of a noise attenuation mound (berm) and on building treatments such as acoustic insulation of buildings and use of air conditioning or mechanical ventilation of buildings (to allow doors and windows to be closed). Further information regarding appropriate building treatments and design standards may be required to support further consideration of land affected by road noise.

Zoning options

It is noted that the subject land is presently zoned 1(d) Rural (Urban Investigation) Zone under the Ballina LEP 1987. The objectives of the 1(d) zone are to ensure that the land is subject to detailed suitability investigations to determine the appropriate zoning regime for the site, including the potential for urban development. The limited range of development types currently permissible on the land reflects this rural zoning.

It is the conclusion of staff that the interaction of visually significant land, geotechnical instability and road noise issues present significant limitations to the suitability of parts of the site to accommodate urban development.

With respect to visually significant of parts of the site, being land adjacent to the site's prominent ridgelines, it is recommended these areas be zoned E3 Environmental Management Zone.

With respect to geotechnical issues affecting parts of the site, it is noted that the landholders' consultants have identified a number of significant geotechnical constraints to development acknowledging that development of the site would be a complex undertaking and require extensive modification of the slopes of the hill. Further, the consultants suggest that such development may not be economically viable, and that this could only be determined when the details of a development proposal are known. It is recommended, therefore, that the parts of the site affected by significant geotechnical constraints be zoned E3 Environmental Management Zone. This includes the north eastern portion of the land identified in the LHSP as area H1.

Parts of the site, not otherwise affected to some degree by the above constraints, appear to have some urban development potential. Having regard for the need for local residents and neighbours to have an opportunity to review the details of a future proposal, it is recommended that the landholders be invited to further progress the matter over the remaining parts of the site separate from the LEP renewal via the planning proposal process. This essentially means preparing and submitting a separate rezoning request with conceptual details of a development proposal for consideration by Council and the Department of Planning and Infrastructure. As an interim measure, it is proposed these areas, primarily located in the south west of the site, be zoned RU2 Rural Landscape Zone under the new LEP.

The recommended zoning regime for the Condon Hill site is shown in Attachment 3.

3.7.2 Alstonville/ Wollongbar Urban Buffer

The zoning pattern for rural land surrounding Alstonville and Wollongbar was applied in the draft LEP to reflect the existing Alstonville/ Wollongbar urban buffer and the removal of the Duck Creek/ Gum Creek water catchment from identification as a water catchment under the LEP.

However, it has been identified that State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 enables development for the purposes of seniors housing on rural land adjacent to land zoned primarily for urban purposes. In the case of Alstonville and Wollongbar, this means that seniors housing is permitted with consent on land proposed for the application of an RU1 Primary Production zone outside the existing 7(i) Environmental Protection (Urban Buffer) Zone under the Ballina LEP 1987 even though this is not a land use envisaged for such land under the draft LEP. This matter was identified in two submissions to the draft LEP and by staff based on discussion during the exhibition period. Importantly, the permissibility of seniors housing under the above circumstances is subject to the issue of a site compatibility certificate by the Director General of the DP&I.

By way of comparison to the Ballina LEP 1987, properties contained in the 7(i) zone and 7(c) Environmental Protection (Water Catchment) Zone are not subject to the permissibility of seniors housing under the SEPP. However, seniors housing is currently a permitted land use on other land parcels zoned for agricultural purposes adjacent to urban zoned land. Under the draft LEP as exhibited, this situation is largely maintained aside from where it is proposed that the water catchment zone for Duck Creek be removed. In this location, 13 properties adjoining the southern edge of the Alstonville urban

area currently subject to the environmental protection zone would be zoned RU1 Primary Production. Application of this zone to the land would mean seniors housing would be a permitted land use on land where it is currently not enabled.

The permissibility of seniors housing on agricultural land surrounding the plateau villages is considered to be in conflict with Council's long standing policy for the retention of the existing urban 'footprints' of Alstonville and Wollongbar (inclusive of the Wollongbar Urban Expansion Area). That is, this land use is essentially urban in nature and is not considered suitable outside the urban 'footprints' of the villages in light of Council's policy position. Council has also relatively recently declined to support expansion of the Seventh Day Adventist aged care facility on Pearces Creek Road which is located as an 'island' of residentially zoned land within the urban buffer around the villages [Minute No.220508/7].

Three options have been considered with respect to the above as follows:

- No change to exhibited draft LEP.

This option means that seniors housing will be a permitted land use, with consent and subject to the issue of a site compatibility certificate by the DP&I, on RU1 zoned land adjacent to the urban areas of the villages of Alstonville and Wollongbar under SEPP (Seniors Housing). The permissibility of seniors housing on this land is not considered consistent with the intent of the draft LEP to preserve agricultural land on the plateau and is inconsistent with Council's long standing policy for the maintenance of an urban buffer around the villages.

However, the need for a site compatibility certificate provides an opportunity to consider the suitability of the land. In particular, the identification of land on the Alstonville Plateau as State and Regionally significant farmland would likely be a key matter for consideration. It is also important to note that this option reflects the content of the exhibited draft LEP which land holders may have viewed and considered appropriate, therefore not making any submission to Council. Further, any application for a seniors living facility, where a site compatibility certificate is issued, would be subject to the development assessment process.

Given the need for a site compatibility certificate and that a number of the land parcels involved have not previously been subject to an environmental protection zone, this approach is recommended as part of the finalisation of the LEP. It is, however, recommended that the provision of an environmental protection zone around the full extent of the villages be examined via a stand alone planning proposal process as an amendment to the new plan, once adopted.

- Re-establish environmental protection zoning over land subject to 7(c) zoning in Ballina LEP 1987.

This option provides an interim position whereby it maintains the extent of the land on which urban development has been envisaged under established planning policy. This approach would mean that 13 properties which adjoin the Alstonville urban area currently zoned 7(c) would be included in an E3 Environmental Management Zone (Attachment 4). Importantly, this zone does not preclude most forms of agriculture from either continuation or commencement (although some new uses may require the prior consent of Council).

The advantage of this approach is that it preserves the existing planning framework in terms of urban development but enables continued agricultural use of the land consistent with the envisaged land uses for the plateau and the agricultural values of the land. This approach could be supplemented by a future amendment to the LEP that expands the urban buffer and enables targeted landholder engagement.

However, it is important to note that this approach involves application of an alternate zone to properties that was not identified in the public exhibition material.

- Establish an environmental protection zone over all proposed RU zoned land that adjoins the urban areas of Alstonville and Wollongbar.

This option provides for the complete encirclement of Alstonville and Wollongbar with an E3 Environmental Management zone to reflect the existing urban buffer value attributable to the land (Attachment 4). This approach involves an additional 27 land parcels in addition to those discussed above in relation to the current 7(c) zone.

As outlined above, this zone would mean that urban development, including seniors housing, would be a prohibited land use on rural land adjoining the villages but it would enable continued use of the land for agricultural production. This approach would also consolidate Council's policy for the maintenance of the planned urban 'footprints' for Alstonville and Wollongbar through its land use zoning framework.

In considering this approach, it is also suggested that several properties that fall between existing E3 zoned land and the revised urban buffer area also be zoned E3 to provide for continuity in the zoning pattern in the locality. This would mean 5 additional properties would be subject to application of an E3 zone over all or part of the land parcel (Attachment 4).

In reviewing this approach, it is noted that there are 5 land parcels south of Ellis Road where it would be logical to apply an RU1 Primary Production zone and remove the proposed E3 Environmental Management zone (Attachment 4). These properties are not adjacent to the urban areas of the villages.

3.7.3 Building Height in the Ballina Town Centre

Under the Ballina LEP 1987, the permitted building height in much of the Ballina Town Centre is 16 metres measured from ground level to the underside of the ceiling of the uppermost floor. The Ballina Shire Combined Development Control Plan (DCP) Chapter 2 indicates that buildings containing up to 5 storeys may be erected within the 16m height standard. Roof structures, lift overruns and other roof top elements generally project above 16m. In this regard, Council's Surveyor advises that the highest points of the existing tall buildings in the CBD are as follows: original Ramada - 16.72m; Dockside - 16.97m; Watermark - 18.4m; Pelican Moorings - 18.84m and new Ramada - 20.12m.

The draft LEP contains two clauses relating to managing building height as follows:

- Clause 4.3 Height of Buildings - states that the height of any building cannot exceed the maximum height shown for the land on the Height of Buildings Map. The new definition of height relates to the overall height of the building (i.e. to the roofline, rather than the ceiling). Where filling of a site is required to meet Council Policy, building height is measured from the top of the minimum fill level. For the Ballina Town Centre the exhibited building height is 16m.
- Clause 5.6 Architectural Roof Features - enables Council to approve roof features which exceed the building height limit but only where Council is satisfied that the feature is a decorative element on the uppermost portion of the building, is not an advertising structure, does not contain floor space, will not cause overshadowing and all service infrastructure (such as lift overruns associated with the feature) are incorporated into the feature design.

Several submissions address the issue of building height in the Ballina Town Centre. In particular, a submission from a local architect argues that the change in method of measuring building height will reduce the development potential in the Ballina Town Centre from that which is possible under the current LEP. If the floor to ceiling heights within Chapter 2 of the DCP are complied with, this results in the ceiling of the uppermost floor of a 5 storey building being just under 16m. There is then no room to provide for a roof and necessary service infrastructure without exceeding the building height limit specified in the draft LEP. The submission also argues that architectural styles have shifted towards more articulation of roof lines (evident by comparing the existing rooflines of the older "Dockside" and newer "Watermark" buildings). This further reinforces the need for a greater overall height standard for buildings in the Ballina Town Centre.

Council staff consider that the building height standard in the town centre warrants amendment to better reflect the existing height provisions under the Ballina LEP 1987. As such, it is recommended that the building height for the Ballina Town Centre be increased to 18m. This will enable articulation of the roof line without enabling the provision of an additional storey within the building. Additional roof features above this height will also be enabled by way of Clause 5.6. This approach effectively preserves similar building height as provided for under the Ballina LEP 1987 whilst recognising the change to the interpretation of building height under the Standard Instrument.

Related to the above, Council is required under the FNCRS to undertake a review of building height in preparing its new LEP. As part of the preparation of the new plan, building height issues have been reviewed on a general basis only, with the proposed approach being to maintain a similar set of controls to those employed under the Ballina 1987 LEP. A more detailed review of height issues is planned in the future via Council's LGMS. A more detailed review is considered desirable at a future date given that the building height review process will be substantial in its own right with matters such as urban design, climate change, servicing and evolving community values being significant elements to be addressed.

3.7.4 Bulky Goods Retailing

The Ballina LEP 1987 currently permits bulky goods premises with consent in Zone No. 4 Industrial Zone. During the preparation of the draft LEP the DP&I formally notified Council that the listing of bulky goods premises as permissible with development consent in the new IN1 General Industrial Zone would not be acceptable. On the basis of this advice the following approach was adopted for the preparation of the draft LEP:

- Bulky goods premises listed as permissible with development consent in the B2 Local Centre Zone, B3 Commercial Core Zone, and B4 Mixed Use Zone;
- Bulky goods premises prohibited in all other zones including the B6 Enterprise Corridor Zone and the IN1 General Industrial Zone; and
- Existing and approved bulky goods premises would be able to continue in accordance with the existing use provisions of the EP & A Act, 1979.

A total of eight submissions were received in relation to bulky goods premises and their permissibility. The two key issues arising from the exhibition of the draft LEP are:

- Appropriate zone to apply to existing and approved bulky goods premises; and
- Permissibility of bulky goods premises on other sites.

The B5 Business Development Zone (B5 zone) was not applied in the draft LEP on the basis that the structure of the zone was not considered to be tailored to bulky goods premises, and aimed to enable a mix of business, warehouse, and specialised retail uses that require a large floor area. The amendments to the Standard Instrument introduced on 25 February 2011 include modifications to the B5 Zone to refer specifically to bulky goods premises in the zone objectives. The definition of "Bulky goods premises" was also amended. The revised B5 zone now lends itself to application as effectively a bulky goods zone.

There are several factors which need to be taken into consideration in the decision of whether or not to introduce the B5 zone to the draft LEP. Firstly, the application of the B5 Zone to sites that have approval for bulky goods premises where those consents are yet to be commenced, may limit the development potential of the land in the event that the approved development does not proceed. The range of land uses permissible with development consent in the B5 Zone is relatively limited, and the application of the IN1

General Industrial Zone for example, may provide for greater flexibility in terms of the permitted land uses.

In relation to the other sites seeking the application of a zoning arrangement to enable bulky goods premises, it is noted that the Retail Showrooms and Bulky Goods Report prepared for Council by Core Economics in 2004 indicates that Ballina has sufficient bulky goods retailing floor space to meet the projected requirements to 2016 (when including approved but not yet operational bulky goods retailing floor space).

The DP&I also released a Draft Centres Policy in April 2009 for consultation purposes, and this policy includes consideration of the application of the B5 zone and also identifies emerging forms of retail such as the 'big-box' facilities. The finalisation of this policy may have implications for the potential application of the B5 zone and the range of permitted uses Council determines to be appropriate within the zone.

It is also noted that Council resolved at its Ordinary Meeting held on 28 April 2011 to approve a development application for bulky goods premises on the Pacific Highway at West Ballina (DA 2010/216) [Minute No.280411/3]. This site is located within the B6 Enterprise Corridor Zone as identified in the draft LEP as exhibited. Having regard for this decision it is also appropriate for the review of the 2004 Retail Showrooms and Bulky Goods study to consider whether bulky goods premises should be a permitted land use within the B6 Zone generally, or whether the approved premises should be zoned B5 Business Development.

On the basis of the above, and in the context of attempting to finalise the draft LEP, it is considered that the following approach is appropriate in relation to bulky goods premises:

- Maintain zoning approach for existing / approved bulky goods premises as exhibited in the draft LEP.
- Undertake a review of the 2004 Retail Showrooms and Bulky Goods study in the context of the State government's Draft Centres Policy, including consideration of 'emerging' forms of retail development.
- Review the zoning of both existing / approved bulky goods premises and alternative sites following the above review, and consider the application of the B5 Zone as a separate planning proposal to amend the LEP if and as appropriate.

3.7.5 Minimum Lot Size for Urban Subdivision

Council received several submissions addressing the matter of development standards for urban lots. More specifically, submissions were received with respect to the minimum lot standard applicable to the subdivision of residential land in Pacific Pines, the Wollongbar Urban Expansion Area, Angels Beach North and Ballina Heights.

The minimum lot standard applied in the LEP is significant as it determines the minimum size for an allotment resulting from the subdivision of land. For example, where the minimum lot size is 600m² in a residential zone, each individual lot created must be at least 600m² in area. The standard is also significant in that where a land parcel is not at least twice the minimum lot size

specified, that land cannot be further subdivided. Drawing on the example above, if a land parcel zoned for residential purposes is 1000m² in area, it cannot be subdivided as two lots of at least 600m² cannot be created.

Based on the analysis of matters associated with minimum lots sizes for urban subdivision, three key issues have emerged; being the application of a smaller general minimum lot standard for residential allotments, minimum lot standards for attached and semi detached housing (and integrated housing development) and minimum lot area requirements for certain forms of residential development such as residential flat buildings. Each of these issues is addressed in further detail below. In considering the issues below, it is important to note that the discussion regarding minimum lot areas does not relate to strata subdivision.

3.7.5.1 Minimum Lot Standards for Residential Lots

The draft LEP establishes minimum lot standards of no less than 600m² for residential development (with a special exception for attached and semi detached housing which is addressed in further detail below). Several submissions received by Council seek the application of a smaller minimum standard in various circumstances. In response to these submissions, application of smaller minimum standard was examined at both a broad scale and site specific level. In this regard, a workshop and bus tour of local residential areas was held with Councillors in November 2010 to explore some of the items arising in relation to urban subdivision.

With respect to the matter of minimum area, 450m² is considered to be a reasonable basis for a reduced standard. This size was specifically requested in two of the submissions received in relation to this issue and it is compatible with the categorisation of lots under the government's NSW Housing Code. Council could consider a further reduction in the minimum lot size. However, it is recommended that this policy initiative be tested with a reduction to 450m² in the first instance as the opportunity for review or consideration of smaller lots in new urban subdivisions is available to Council at any time through the planning proposal process.

With respect to location, application of a smaller minimum lot standard was considered for all residential areas, for new residential areas and for defined locations only. Broad application of the standard to existing residential zoned land is not considered appropriate as it would provide for extensive re-subdivision opportunity which would increase the density of dwellings in existing areas and may introduce issues in relation to servicing. It is suggested that such an initiative should only be undertaken on the basis of detailed analysis relating to density and urban form.

Application of a smaller minimum lot standard to all new residential areas in the shire is also considered unsuitable in the short term as many areas such as the Wollongbar Urban Expansion Area have been the subject of extensive planning on the basis of more conventional residential lot sizes. Therefore, provision for smaller lots on a broad scale basis may adversely impact on planned urban outcomes including in relation to infrastructure and community facility provision. Similar to the above option, such an initiative should be considered on the basis of detailed analysis.

Application of a smaller minimum lot standard to defined areas in new residential areas is considered to be a reasonable means of addressing both the submissions received and testing the suitability of 450m² residential allotments under the new LEP. In this regard, it is suggested that 450m² minimum lot standards for residential subdivision are applied to the following areas as outlined below.

Table 6: Minimum Lot Area for Subdivision on Certain Land

Location	Minimum Lot Area for Subdivision	Rationale
Pacific Pines adjacent to planned commercial area.	450m ²	The Pacific Pines development is subject to an approval from the NSW Department of Planning and Infrastructure. That approval provides small residential lots in the vicinity of the planned commercial area. Application of 450m ² standard in this area would be consistent with that approval.
Ballina Heights adjacent to the planned commercial area	450m ²	The Cumbalum urban release area is a key growth area for the shire. Given that much of the land adjacent to the commercial centre is undeveloped, there is an opportunity to provide for medium density outcomes based on individual lots in close proximity to commercial services (within approximately 400m). This approach is compatible with principles associated with accessibility and walkability for residents near commercial centres.

It is not considered appropriate at this time to apply smaller general minimum lot size standards in the Wollongbar Urban Expansion Area or at Angels Beach North for the following reasons:

- The WUEA is substantially advanced in its planning which was on the basis of a conventional residential subdivision with large lots likely in many areas as a result on site slope constraints. The broad application of a 450m² minimum lots standard in the absence of more detailed site analysis and accompanying density controls could result in a density outcome on the land that is more intensive than planned for. Importantly though, the landholders may continue to seek approval for dual occupancy development and could engage Council further with respect to 450m² lots via a planning proposal process. A planning proposal process would provide for the necessary site analysis with respect to the capability of the land and planned infrastructure to accommodate smaller lots in the order of 450m².
- The Angels Beach North subdivision is effectively complete. As such, the application of a smaller minimum lot standard has no effect and is unnecessary. A similar approach has been taken with other existing subdivisions in the shire (i.e. existing lots below 600m² in area have not been specifically recognised in the minimum lot standards as further subdivision of such land is not intended under the current or proposed planning frameworks).

3.7.5.2 Minimum Lot Standards for Attached and Semi Detached Housing

The Standard Instrument introduces a variety of definitions for forms of housing not currently contained within the Ballina LEP 1987. Two of these forms that are essentially new to Ballina Shire are attached and semi detached dwellings. In summary, an attached dwelling means a building containing 3 or more dwellings where each dwelling is attached to another by a common wall, each dwelling is on its own lot of land and none of the dwellings is located above another. An example of this type of development is a row of terrace houses with each house being on its own freehold lot. A semi detached dwelling is a dwelling on its own lot of land that is attached to only one other dwelling. This is a less intensive form of the attached dwelling housing form.

Given the specific nature and style of attached and semi detached dwellings and the connectivity required between dwellings, it is considered appropriate that these types of buildings be enabled on lots as small as 300m² in area. This promotes housing choice in the shire in terms of design and style. The exhibited draft LEP made allowance for attached and semi detached dwellings on lots of at least 300m² on medium density zoned land by way of an exception to the minimum subdivision lot size provision at clause 4.1 of the plan.

Since the public exhibition of the draft LEP, the DP&I has provided a model clause (Exceptions to minimum lot sizes for certain residential development) addressing the issue of exceptions to minimum lot sizes for subdivision in relation to attached and semi detached housing. Essentially, the model clause achieves the same outcome as intended by Council's exhibited draft provision but requires that at least 3 lots are created in each circumstance and that application for the subdivision of the land and dwelling house be submitted concurrently (providing for integrated development outcomes). The model clause also enables dwelling houses on smaller lots where the application for such development and subdivision of the land is integrated.

The model clause is beneficial in that it establishes a clear requirement for integration between the subdivision and dwelling development. This has the advantage of providing for an upfront illustration of how the allotments and planned dwellings fit together on the land. That is, the relationship between the planned dwellings can be addressed concurrently rather than in an ad hoc fashion. This is important on smaller allotments as it provides opportunity to holistically address access, amenity and other design matters in an attempt to avoid land use conflict. On this basis, it is recommended that the DP&I's model clause be substituted into Council's LEP as a stand alone clause in place of the existing provision at clause 4.1(3a)(a). It is further recommended that the clause adopt minimum area standards of 300m² for attached and semi detached housing and 400m² for dwelling houses.

The effect of this clause is that it will enable attached and semi detached housing on lots down to 300m² in area but only where the design of the dwellings is integrated with the subdivision of the land. The clause will also enable dwelling houses on lots down to 400m² in area but only where the design of the dwellings is integrated with the subdivision of the land. In the case of dwelling houses, this is generally consistent with Council's current policy approach to integrated development. In both instances, diversity in

housing choice is enabled but only where the consent authority is able to consider the entire development outcome on the land.

In considering the above in relation to dwelling houses, it is important to note that the proposed approach essentially means that subdivision of residential land must meet the minimum lot standard specified for subdivision unless the application is for integrated development. In which case, a slightly smaller minimum lot area for each house applies because the consent authority has greater control over how the overall site and dwellings are developed.

3.7.5.3 Minimum Area Requirements for Certain Forms of Residential Development

As is the case with the Ballina LEP 1987, the draft LEP permits a variety of different forms of residential development on land zoned for residential purposes, ranging from dwelling houses to residential flat buildings. The location of medium density forms of housing such as residential flat buildings is currently regulated via Council's Combined DCP. Under the draft LEP, the locations for residential development are allocated via the land use zones, being either an R2 low density residential zone or an R3 medium density residential zone.

The key factor associated with the change in the regulatory framework applying in the shire is that Council can no longer utilise its DCP Control Plan Area maps to direct the specific type of development enabled on individual land parcels (e.g. Council currently nominates lots for duplex development). This is a result of the requirement that DCP provisions must not conflict with the content of the LEP. One example of a challenge arising from the permissibility of medium density housing types on R3 zoned land and the removal of the Control Plan Area maps from Council's planning framework is that residential flat buildings are permissible on lots designated under the existing DCP for duplex purposes. This is problematic as it may result in development on duplex lots that was not envisaged by either Council or nearby residents.

Given the above, the new LEP requires a shift in both the way in which the DCP is utilised to direct subdivision and housing outcomes and consideration with respect to the mechanisms utilised to achieve the desired urban form. In this regard, a number of councils utilise a variety of lot configuration and site design standards within their development control plans to direct housing outcomes in residential areas. Such provisions include minimum areas for certain types of development, minimum lot frontages for different types of housing, minimum landscaped areas, site coverage and access and car parking requirements. Such controls utilised in isolation or combination can have the effect of enabling certain types of housing whilst making it difficult to achieve others. Such controls are commonly used to manage housing density and effectively provide direction to landholders and the community about the form of residential development provided for on a land parcel.

The DP&I has prepared a model clause that provides for the establishment of minimum lot areas for certain forms of residential development. For example, a minimum area can be specified for a residential flat building providing certainty that only lots above that size can be used for that purpose. Although beneficial in terms of the certainty and clear direction provided, the provision

lacks flexibility in that it applies shire wide and is difficult to adapt to the existing residential areas in the shire (including the scenario relating to duplex development outlined above). It is difficult to recognise existing circumstances across each town and village in the shire through the current model clause and any adjustment would require the approval of the DP&I.

A preferred approach is to utilise Council's DCP framework under which there is greater flexibility in the expression of the area requirements, opportunity to incorporate differing standards for different locations and no direct involvement from the DP&I. The DCP can address locality based circumstances and utilise a variety of mapping solutions to articulate the intended provisions. Lot area and configuration standards can also be directly supported by other dwelling density related provisions which are to be inserted into the LEP (e.g. site area per dwelling, landscaped open space).

Importantly, the DCP will be subject to a statutory public exhibition period and as such, there is an opportunity to evaluate proposed provisions with input and feedback from the community. On the basis of the above, it is recommended that Council address lot configuration and design elements with respect to residential dwellings via its DCP framework rather than the LEP.

3.7.5.4 Summary

With respect to urban subdivision, the following amendments to the exhibited draft LEP are recommended:

- Amend the Minimum Lot Size Map to enable creation of lots 450m² or greater in area on land at Pacific Pines Estate and Ballina Heights Estate as described in this report; and
- Insert DP&I model clause - Exceptions to minimum lot sizes for certain residential development in place of existing draft clause 4.1(3a)(a), enabling integrated subdivision and dwelling house outcomes for attached and semi detached dwellings on lots 300m² or greater in area and dwelling houses on lots 400m² in area or greater.

It is further recommended that the LEP is supported by the inclusion of lot area and configuration standards in relation to the various forms of housing in Council's revised DCP which is currently being prepared.

The above approach means, broadly speaking, that the LEP establishes Council's land subdivision standards for residential development and addresses the matter of integrated development. Council's DCP addresses the type and form of housing (aside from integrated development) supported on allotments once the land is subdivided.

3.7.6 Environment

3.7.6.1 Environment Submissions Overview

Council received a substantial number of submissions that addressed environmental considerations. As outlined above, approximately 33% of submissions received at least broadly addressed an environmental issue and upon refinement of issues and submission categorisation, 47 (27%)

submissions were identified as directly addressing an issue or issues categorised as primarily environment related. Of these, 22 submissions indicated specific objection to the scope of land uses permitted in the E2 zone under the draft LEP and/or the suitability of the zone for environmental protection purposes, and 15 submissions raised objection to the application of an E2 zone on particular land.

A number of the submissions from public authorities also raised issues regarding environmental considerations. In particular, the submissions from Industry and Investment NSW (I & I), NSW Land and Property Management Authority (LPMA), NSW Department of Environment, Climate Change and Water (DECCW), Rous Water, and Northern Rivers Catchment Management Authority (CMA) contained specific comments regarding the application of the Environment Protection Zones and the Waterways Zones, and the uses permissible with and without consent within these zones.

3.7.6.2 Objections to Application of E2 Zone

With respect to the objections to the application of an E2 Zone to specific land parcels, each of these submissions has been reviewed by both the LEP Project Team and Council's Environmental Scientist. Attachment 1 identifies the recommended changes in relation to these submissions. In this regard, in most instances, no change is recommended due to the identified environmental attributes associated with the land.

The LPMA also raised objections to the application of an E2 zone to several parcels of Crown land including land at Wardell and East Ballina. The submission has been reviewed by both the LEP Project Team and Council's Environmental Scientist as detailed in Attachment 2. No change is recommended due to the environmental attributes associated with the land.

3.7.6.3 Application and Structure of the E2 Environmental Conservation Zone

The E2 Environmental Conservation zone was applied in the draft LEP based on defined criteria and a philosophy whereby the zone had a relatively broad application accompanied by a relatively broad range of permissible land uses. The intent was to reflect the existing environmental protection zones under the Ballina LEP 1987 and additional areas identified as having environmental attributes within the constraints of the Standard Instrument which effectively offers only 2 environmental protection zones compared to the 7 currently utilised in the shire.

With respect to zone structure, this situation effectively forced a condensing of Council's wetland, habitat and coastal zones into a single zone, meaning that land use permissibility needed to be considered in relation to variable environmental attributes. Council also prepared its land use tables with maximum transparency in mind and as such reflected uses that are permissible via State Environmental Planning Policies in its exhibited land use tables. This led to the establishment of what has been perceived by some as an inappropriately broad range of permissible land uses in the zone as exhibited.

With respect to zone application, additional areas compared to the Ballina LEP 1987 zone arrangements have been identified that meet the established criteria for application of an environmental protection zone as endorsed by Council. In relation to the E2 zone, much of this additional area has been identified in the southern parts of the shire including land in the Bagotville locality and north of Wardell. Such land has primarily been identified on the basis of improved data availability with respect to the vegetation communities present on the land. In particular, this data identifies substantial areas of high conservation value vegetation that warrants environmental protection zoning under the new LEP.

The submissions relating to this matter effectively raise two core issues. One being whether or not the zoning regime adequately captures all high conservation value areas and whether or not the range of land uses permitted in the E2 zone is too broad and, by extension, whether the permissibilities are in conflict with the zone objectives.

Turning first to the matter of spatial zone allocation, the E2 zone was applied on the basis of information available at the time of drafting. Specifically, this issue relates to vegetation values, as coastal values were largely discerned from the Ballina LEP 1987 zoning arrangements. In this regard, it is important to note that Council's vegetation dataset was not (and is not) complete. As such, some areas had not been suitably classified at the time draft zone allocations were made. In order to be consistent with the set of criteria utilised, where data was not available and hence the environmental value of vegetation was uncertain, such areas were not included in E2 zones. Such areas may be the subject of further considerations as discussed below. Therefore, it is not proposed that additional areas of vegetation be zoned E2 unless they have been the subject of specific review triggered by site based submissions or other matters arising from the LEP exhibition process.

Related to spatial application was a petition (approximately 2268 signatures) and feedback that sought a higher order of protection for the coastal area of the shire, particularly between East Ballina and Lennox Head. The basic premise of these submissions was that an E1 zone should be applied to the coastline because the E2 zone allowed too many uses. This approach largely misinterprets both the opportunity for the application of the E1 zone under the Standard Instrument and the outcomes associated with the scope of uses permitted in the E2 zone as exhibited. The E1 zone cannot be applied to land outside the DECCW estate (i.e. national parks and/or nature reserves) and the permissibilities in the zone do not enable subdivision or widespread intensive development. However, it was clear from the submissions that a high level of planning based protection is desirable for the shire coastline. This issue also relates to the structure of the E2 zone and is considered further below.

With regard to the structure of the E2 zone, a number of options were considered in order to address the scope of permissible land uses. In particular, the application of an RE1 Public Open Space zone was assessed as a means of separating coastal land related permissibilities from areas away from the coast where the dominant value is vegetation related. This approach would have involved application of the RE1 zone to areas of the coast identified as likely to be subject to a wider diversity of land use such as surf life saving facilities, car parks and emergency services facilities coupled with a

narrower range of land uses being permitted in the E2 zone. This option was not considered appropriate given the long standing environmental protection zone applied to coastal land in the shire and given that State Environmental Planning Policy (Infrastructure) 2008 (ISEPP) enables a range of potential land uses on public land on the coast. That is, this type of zoning approach is not necessary if the provisions of the ISEPP are utilised.

The introduction of the E4 Environmental Living zone under the Standard LEP Instrument was also considered. This zone was considered as a way of introducing a third tier into the environmental zoning regime in order to enable greater grading of land use permissibilities based on environmental attributes. This could have enabled a vegetation based E2 zone with a narrower range of uses whilst still providing flexibility for land use in coastal and other environment zoned areas. This zone was not considered suitable though due to its structure being focussed around residential uses. As such, it appears more like a rural residential zone rather than one that recognises coastal land attributes or the shared environmental and agricultural attributes of the water catchment, urban buffer and scenic areas in the shire.

The third option considered was the reduction in the range of land uses permitted in the E2 zone. This approach was considered based on a change to the philosophy of the zone whereby a narrower range of permissibilities would be accompanied by a reduced spatial distribution of the zone. The application of the zone as drafted incorporates some land that is cleared and likely suited to agricultural enterprise on the basis that the zone permitted agricultural land uses. However, in a scenario where agricultural uses are more limited, it was considered that the spatial distribution of the zone should reflect this by removing cleared land from the zone where it is not related to a coastal land value.

Based on a consideration of the submissions and associated issues raised, it is recommended that the range of land uses in the E2 zone be narrowed. The altered land use table as recommended is contained in Attachment 5. Key changes relate to increased limitation on agricultural land use, although extensive agriculture remains as a land use permitted with consent, removal of coastal land related uses such as community facilities and the deletion of land uses enabled by State planning instruments. In the case of the State instruments, it is important to note that these remain permissible regardless of the listing of these items in the LEP. This approach is supplemented by a reduction in the application of the zone based on a principle that cleared land outside the coastal zone should be removed from the land use zone. As a result of this approach, various locations in the shire have been subject to modest reductions in the application of the E2 zone, with these areas generally replaced with the contiguous adjoining zone (generally RU1, RU2 or E3).

The above approach is recommended as it increases the strength of the planning framework associated with land identified to be of high conservation value (being areas of coastal land and significant vegetation) whilst drawing on other planning instruments to enable some public land uses in such areas, subject to certain requirements being met.

In considering the above shift in the philosophy underpinning the application of the E2 zone and the availability of additional information relating to vegetation and environmental values, Council could consider inclusion of additional areas within the E2 zone. As outlined above, this has not been undertaken to date on the basis of previous discussion with Council about the approach to the E2 zone. However, should Council wish to incorporate additional areas into the E2 zone based on altered mapping criteria and additional information, this can be incorporated into a revised draft LEP. Alternatively, Council may defer this matter for further address as part of a shire wide biodiversity strategy (discussed below).

3.7.6.4 Clause 7.8 - Natural Areas and Habitat

The exhibited draft LEP incorporates clause 7.8 Natural Areas and Habitat as a means of ensuring that environmental attributes of land are considered in the development assessment process. The clause is designed to address issues that are currently the subject of provisions under the North Coast Regional Environmental Plan which will cease to apply upon adoption of the new LEP and reflect contemporary environmental considerations. The clause is also designed to be supported by development control plan based provisions which provide detail on the interpretation and requirements associated with each element of the provision.

Some of the submissions addressing environmental concerns raise matters of relevance to the structure and application of clause 7.8 and staff have identified opportunities to clarify the intent and application of the provision. In particular, submissions have suggested that Council should incorporate additional mapping and provisions associated with koala habitat and protection, riparian zone management and habitat corridors.

In response to the submissions and issues associated with clause 7.8 arising during the exhibition period, it is recommended that clause 7.8 be modified as set out below:

- Separate the element of the provision establishing the land to which the clause applies in order to improve clarity in relation to the application of the provision.
- Consolidate the matters for consideration and amend the language utilised to remove duplication and ensure consistency.
- Strengthen the clause to require Council to be satisfied that the provisions of the clause are met, rather than take into account the matters listed in the clause.

It is further recommended that the amended clause be supported by specific provisions within Council's DCP that provide further detail and a framework for the address of particular environmental issues such as stormwater, pollutants, water quality, habitat value, corridors, threatened species and riparian values.

The introduction of the clause as amended would have the effect of strengthening Council's requirements in relation to development that requires consent on land where the clause applies whilst allowing Council to direct the details for the application of the clause via its DCP. This approach also enables the address of a number of environment related issues arising from the submissions without the introduction of additional provisions. It is,

however, suggested that the matters of koala habitat, riparian zone management and habitat corridors be further examined as part of a shire wide consideration of biodiversity and environmental values. This matter is discussed in further detail below.

3.7.6.5 Shire Wide Biodiversity Assessment

As outlined above, Council does not have a complete vegetation data set for the shire and submissions to the LEP raised a number of issues relating to mapping of environmental attributes and associated environmental protection provisions. In particular, koala habitat, riparian zones and corridor linkages were the subject of discussion in submissions and during community engagements.

A number of the public authority submissions, including those from DECCW, I & I and Rous Water placed particular emphasis on the desirability of mapping of riparian zones.

Staff are of the view that the amendments recommended in relation to the structure of the E2 zone and the application and function of clause 7.8 provide a reasonable and balanced response to the submissions relating to environmental considerations having regard for the information Council has available to it, to establish its planning policy and State level planning provisions relating to koala habitat, vegetation management and the assessment of development applications. However, it is considered that there is an opportunity to further and more comprehensively address many of the matters raised via Council's engagement in the preparation of a comprehensive biodiversity strategy or similar project.

Such a project could focus on the delivery of enhanced digital data and mapping to support a variety of Council's activities and establish long term policy for the address and management of biodiversity related matters. More specifically, such a project could enable the establishment of a complete vegetation dataset for the shire and specialised mapping information relating to koala habitat, riparian areas and corridor linkages. This information could then be used to determine suitable methods of incorporating Council's biodiversity related policy into the local planning framework and functions of Council. It may also assist in identifying inducements for habitat protection/rehabilitation and would be beneficial as a platform for public and private grant funding.

Having regard for the above, it is recommended, subject to necessary resources becoming available, that Council commit to the preparation of a biodiversity strategy in order to establish a comprehensive biodiversity related mapping dataset, biodiversity policy and demonstrate a commitment to further analysing related issues arising in submissions to the draft LEP.

3.7.6.6 Application and Structure of the E3 Environmental Management Zone

The E3 Environmental Management Zone has been applied to land where it has a rural character but is subject to a particular environmental value. The E3 zone has predominately been applied to land that has agricultural production potential and either water catchment, scenic or buffer values. As such, the zone is structured to recognise the potential for agricultural

production on the land but introduces consideration of the environmental values where development requires consent.

The submissions received from government agencies in relation to the application of the E3 zone varied. DECCW's submission noted that the E3 zone should emphasise the management and restoration of "more disturbed environmentally sensitive areas" which is a different application to that adopted in Ballina Shire. The submission from Rous Water strongly urged Council to limit the range of land uses permitted, with and without consent, in the water catchment areas.

The application of the E3 zone to water catchment areas, while maintaining agricultural land uses, was supported by I&I on the basis that "...the voluntary adoption of best management practice and on-ground environmental works are already occurring and can provide substantial benefits to these catchments".

There is a degree of concern in some submissions that the permissible land uses in the E3 zone are too broad and do not support the environmental values attributable to the zone. In considering this, it is again noteworthy that the limited number of environmental protection zones has required the collapse of differing environmental attributes into a single zone. This results in the need to consider multiple values in establishing permitted land uses. Further, land uses that require consent are subject to clause 7.8 requiring address of environmental considerations in order to satisfy Council that development consent should be granted.

Based on a review of the permissible land uses in the zone, it is recommended that a small number of uses currently listed as permissible become prohibited. Aside from this, the key issue for consideration is the matter of horticulture in the zone. The exhibited draft enables horticulture (including nut cropping, stonefruit cropping, wholesale nurseries, mushrooms production, broad scale vegetable production and intensive use of hot houses and hydroponics) in the zone without consent by virtue of the listing of intensive plant agriculture in the land use table.

With respect to horticulture, there are two broad concerns, the first being that horticultural activities may adversely impact on environmental attributes of land, and particularly drinking water supplies, where they occur unregulated by planning controls. The second concern relates specifically to the matter of wholesale plant nurseries in drinking water catchment areas.

With respect to the occurrence of horticulture without development consent, this approach reflects the existing framework under the Ballina LEP 1987 and the existing farming activity occurring in the proposed E3 zone. However, it could be argued that it is reasonable to require consent for such land uses due to the potential for terrain modification, nutrient application and runoff, chemical application and runoff, land use conflict, vegetation clearing and erection of structures such as sheds, hot houses and netting. Conversely, it may be considered onerous to require detailed environmental assessments and applications from farmers in relation to agricultural production and that the regulation of the land use in the LEP will not affect the operation of existing lawful activities occurring in the proposed zone. In considering this issue, it is evident that there are a variety of perspectives to be considered in seeking to

achieve a balance between agricultural and environmental considerations in the E3 zones.

The particular concern for Council is that horticulture includes the cultivation of cut flowers and foliage and nursery products which means that wholesale plant nurseries can be considered to be horticulture. Councillors also raised concerns with respect to hot house and hydroponic based horticulture during our LEP briefing sessions held in September 2010.

With respect to the matter of wholesale plant nurseries, the February 2011 Standard Instrument amendment altered the definition set in relation to plant nurseries. Unfortunately, the amendments do not enable the separation of wholesale plant nursery uses from horticulture. Further, the revised definition structure consolidates wholesale plant nurseries as a form of horticulture.

The historical context associated with wholesale plant nurseries in water catchment areas in the shire is important to consider in relation to the above. Council has experienced a circumstance where a wholesale plant nursery has commenced operating in an environmental protection zone (being its 7(c) Water Catchment zone). The circumstances surrounding this land use generated an examination of various issues by the NSW Ombudsman's office, with the Ombudsman's report suggesting that wholesale plant nurseries should be prevented from operating in water catchment areas. The Ombudsman notes Council has indicated its intent to seek to address the issues via the implementation of its comprehensive LEP.

Council attempted to reflect the Ombudsman's recommendation and its experience with wholesale plant nurseries by prohibiting landscape and garden supplies in its exhibited E3 Environmental Management zone which encompasses the drinking water catchments in the shire. However, although the areas within the zone have identified environmental values (e.g. scenic, catchment) this zone incorporates large areas of farmland and as such, Council has sought to permit horticulture without development consent to reflect the existing land use pattern (including substantial area of fruit orchards) and historic permissibility of agriculture in the areas the subject of the zone. An outcome of this approach has been ambiguity regarding the permissibility of wholesale plant nurseries without development consent in the zone when it is Council's intent to be clear about the prohibition in the zone. Further, Council is now unable to rely on the definition of Landscape and garden supplies as it has been deleted from the Standard Instrument dictionary.

Council's LEP Project Team has continued to advise the DP&I of its concerns with the definition structure and has examined multiple options for the separation of nursery land use from horticulture including exempt development, complying development and inclusion of localised planning provisions in the LEP. The DP&I has indicated that exempt development is unsuitable as it relates to matters of minimal environmental impact and a local clause is not considered appropriate by the Department for several reasons. Council could use a set of complying development criteria whereby horticulture generally requires consent but certain types of horticulture could pass through the complying development approval process which is essentially simpler. However, a key consideration in relation to this approach

is that it establishes an approval requirement for horticultural activities where there previously has not been a planning based regulatory regime in the past.

Having regard for the circumstances, it is recommended that Council maintains its current approach to horticulture in the E3 zone (that is, the land use be permitted without development consent) on the basis that the Standard Instrument does not provide sufficient flexibility for Council to distinguish between different types of horticultural activity. Importantly, it must be acknowledged that this approach is inconsistent with the recommendations of the Ombudsman in relation to wholesale plant nursery activities in water catchment areas.

Alternatively, Council may amend the E3 zone to require consent for intensive plant agriculture (including horticulture) but apply complying development criteria for broad scale crop based horticulture (such as nuts and stonefruit) in Schedule 2 of the LEP. The criteria could be based on coverage of land with artificial structures, proximity to environmental attributes and dwellings, the presence of structures aside from farm sheds and/or the extent of terrain modification undertaken.

The effect of this would be regulation of horticulture uses via the development application process where they do not meet the complying development criteria. Where the criteria are met, the land use is subject to a streamlined approval process. This approach has the advantage of addressing concerns about intensive forms of horticulture and management of the environmental attributes of the areas within the E3 zone but it does introduce a new regulatory planning framework for farming activity in the E3 zone.

In relation to the submissions by public authorities regarding the application of the E3 zone and the range of uses permitted with and without development consent, a review of the land use table has been undertaken to remove several uses considered to be inappropriate within the zone. Notwithstanding this, it is considered that a number of the land uses permitted with and without development consent should be maintained having regard for the uses presently permitted in water catchment areas, and other environmentally significant areas now contained within the E3 zone, and the application of the proposed provisions of Clause 7.5 to drinking water catchments. The government agency submissions are addressed in detail in Attachment 2.

3.8 Flooding Provisions

In addition to the matters raised in the submissions and the exhibition review process, the form of the flooding provision in Part 7 of the draft LEP is an important consideration. The draft LEP includes a flooding provision at Clause 7.6 that differs from the DP&I's model clause in relation to this matter. The inclusion of a different clause from the DP&I's preferred model was on the basis that the proposed provision better reflects the likely outcomes of Council's Floodplain Management Plan process which is underway. In this regard, the proposed provision is considered to be more flexible than the model in recognition of the existing planned urban development in the floodplain area around Ballina. The proposed provision also recognises the need to consider the impact on flooding on a proposed development and not only surrounding land and uses. It is unclear whether the DP&I's model addresses both the impacts on the development proposed and impacts

associated with the development on other land. Further, it is noteworthy that the model clause has been the subject of numerous changes and it appears that the form of this provision has been difficult to settle at State Government level.

Council has previously indicated to the DP&I that it would revert to the Department's model clause if its floodplain management planning is not sufficiently advanced to demonstrate consistency between the proposed provision and the direction of the plan at the time the draft LEP is to be finalised. Although Council's floodplain management planning process is not yet complete, it is considered that the draft LEP provision is consistent with its current direction. Given this, and the anticipated completion of the management plan process in the near term, it is considered reasonable that Council approach the endorsement of the draft LEP in relation to this matter as follows:

- Include an alternate flood planning provision in the LEP based on the exhibited draft LEP (with amendment as recommended in Attachment 1) in the LEP on the understanding that the floodplain management planning process is nearing completion.
- However, if the floodplain management plan is not sufficiently advanced to provide clear direction regarding the consistency of the LEP with that plan at the time the DP&I is in a position to progress the draft LEP to gazettal, it is recommended that Council indicate its agreement to revert to the DP&I model clause assuming it is considered by Council to be legally sound. In the event this approach is taken, the DP&I would be responsible for making the change to the model provision prior to gazettal of the LEP.

3.9 Potential Urban Release Areas - Rezoning Proposals no Longer Pending

As part of the preparation of the draft LEP, sites the subject of existing and current LEP amendment requests (rezoning requests) generally have had an RU1 or RU2 rural zone applied to the land. This approach was on the basis that a specific zoning pattern, including the location of areas of environmental protection, could be derived via the rezoning process. Importantly, as part of this approach, where rezoning processes came to an end and the zoning arrangement was not resolved, it was intended that these areas would be revisited with respect to environmental protection based zones as part of the comprehensive LEP renewal process.

Since the public exhibition of the draft LEP, two areas have been the subject of lapsed rezoning requests. These areas are generally known as Burns Point Ferry Road at West Ballina and the Barrett Land at Lennox Head. On the basis of the process approach outlined above, it is considered prudent that Council now applies environmental protection land uses zones over these land parcels where warranted by the environmental attributes of the land. In this regard, the following zoning approach is recommended for these two areas:

- Burns Point Ferry Road, West Ballina

Apply an E2 Environmental Conservation zone to the entire area of Lot 4 DP 537419 on the basis of the ecological attributes of the land, including the presence of several endangered ecological communities (Coastal salt marsh, Freshwater wetland and Swamp oak forest), the recorded presence of threatened fauna species and the habitat potential of the landscape and vegetation communities.

Portions of the site not subject to distinct ecological values are limited and such areas are in close proximity to high conservation value vegetation. It is also likely that threatened fauna species utilise fringe areas around high conservation value vegetation. In addition, the land is subject to flooding and poor geotechnical conditions (although it has been previously reported that these two constraints, in isolation, are manageable).

The recommended zone arrangement for the land is contained shown in mapping contained in Attachment 6

- Barrett Land, Lennox Head

Apply an E2 Environmental Conservation zone to areas within Lot 86 DP 755725, Lot 11 DP 1107659, Lot 8 DP 772192 and Lot 103 DP 755684, and adjacent road reserve areas on the basis of native vegetation stands located on these land parcels and the presence of a known Aboriginal cultural heritage site in the eastern part of the land.

The recommended zone arrangement for the land is contained shown in mapping contained in Attachment 6.

3.10 Development Control Plan

The DCP documents detailed design standards applying to development in the Ballina Local Government Area. The DCP is a Council policy document prepared according to the processes within the EP&A Act. Under planning legislation, where there is an inconsistency between an LEP and a DCP, the LEP prevails.

Given that the draft LEP has been prepared using the Standard Instrument, there are many aspects of the Combined DCP which require revision to ensure compliance with the legislation. These areas of revision include:

- 1 Dictionary

Adjusting the "Dictionary" in each part of the DCP to ensure that the definitions match those within the LEP.

- 2 Building Height and Floor Space Ratio

Adjusting elements of the DCP which relate to calculation of building height and floor space ratio to match those within the LEP.

- 3 Residential Design Controls

The draft LEP requires a number of changes to the way that Council's DCP manages development in residential zones. This work is closely linked to the required changes to the subdivision provisions within the DCP.

4 Urban Subdivision

Revision to the urban subdivision provisions is required to match the new framework established under the LEP, as well as responding to the increased demand for smaller lot sizes in new urban release areas. A workshop was held with Councillors in mid November 2010 to discuss the range of issues to be addressed by the DCP.

5 B6 Business Enterprise Zone

A Business Enterprise Zone is proposed in the West Ballina locality, along parts of the Pacific Highway, Kalinga Street and Barlows Road. It is proposed that DCP provisions will be introduced to guide development in this area.

6 Environmental Protection Provisions

As outlined in this report, it is proposed that the DCP be adjusted to better address a range of environmental protection outcomes in the environmental protection zones in specific support of proposed clause 7.8 Natural Areas and Habitat.

7 Vegetation Management

Clause 5.9 of the draft LEP enables Council to regulate the removal of vegetation in urban zones via a DCP. It is envisaged that the DCP will incorporate provisions relating to vegetation management that will:

1. Establish a Significant Vegetation Register (SVR) that would apply to private and public land within urban zones. The SVR will identify specific vegetation that requires Council approval prior to removal; and
2. Contain a number of other provisions including clear exemption criteria and community information concerning desirable plant species and those not so desirable, such as noxious and environmental weeds.

Whilst there are significant changes required to the DCP as a result of the introduction of draft LEP, many of these are "housekeeping" in nature. Others, such as items 3 - 7, above, involve detailed technical considerations. Whilst work has been underway on the DCP renewal for some time now, there remains a significant amount of work to be completed prior to exhibition of the draft DCP. It should be noted that Council staff are also taking the opportunity to adjust the format and structure of the DCP to better match the zone framework created by the new LEP.

It is proposed that key elements of the DCP that are required to support the new LEP will be prepared in the coming months as a matter of priority with these elements to be introduced into Council's DCP framework prior to the introduction of the new LEP for the shire. DCP elements being prepared to support the implementation of the new LEP include items 1 to 7 outlined above.

3.11 Local Growth Management Strategy

Council is required to prepare a LGMS under the FNCRS. The LGMS will form Council's urban land release policy at a strategic level and will incorporate industrial and commercial land in addition to the traditional considerations associated with potential residential land release. The LGMS, when complete, will replace Council's current ULRS.

Council's LGMS is currently under preparation and is being designed to complement the new LEP and establish the framework for future growth in the shire over the forthcoming planning period. In this regard, the LGMS is founded on the principles of Council's Sustainability Framework.

Previously (prior to the draft LEP) Council identified candidate urban land release areas by way of the 1(d) Rural (Urban Investigation) Zone of the Ballina LEP 1987. With the introduction of the Standard Instrument the option for identifying candidate release areas via such a zone was removed from LEPs. The LGMS, in conjunction with the FNCRS, will take on the role of identifying and guiding potential urban land release areas.

The LGMS will provide Council's broad parameters for the future investigation and consideration of the land for residential, commercial, industrial and infrastructure uses. More specifically, the LGMS will establish the foundations or principles for future growth in the shire and will detail a range of local growth management strategies for existing and potential urban areas.

Importantly, the LGMS is being prepared in accordance with the FNCRS which sets out requirements for a council to consider in growth planning. Further, the FNCRS requires that councils prepare a LGMS in accordance with Settlement Planning Guidelines prepared by the DP&I. As outlined in Attachments 1 and 2, it is recommended that some of the matters raised be further considered in the context of the LGMS.

3.12 Recommended Actions Post LEP Finalisation

3.12.1 Vegetation Mapping and Biodiversity

Submissions received suggested that the LEP should incorporate additional provisions and mapping with respect to various environmental attributes. Common themes in this regard were riparian areas, habitat corridors and koala habitat.

The submissions received from several public authorities also supported the extension of the mapping of waterways, the mapping of riparian zones and the consideration of potential wildlife corridors.

Council applied its environmental protection zones based on specific criteria with identified high conservation value vegetation zoned E2 Environmental Conservation. The values of these areas are further supported in the LEP through special provisions including clause 7.8, Natural Areas and Habitat, that require the address of environmental considerations. On this basis, it is not considered necessary to substantially amend the draft LEP beyond the recommendations outlined above in the absence of a long term biodiversity planning policy.

However, it is acknowledged that Council's data and information in this regard could be improved both through enhanced mapping resources and long term biodiversity related policy to guide planning and corporate activity in this field. Upon collation of this information, Council may then wish to refine its planning provisions or specifically address a particular issue. Importantly, it is not only the planning framework that can be utilised to address environment and biodiversity related issues and as such a holistic analysis looking shire and Council wide would be beneficial.

In considering the issues raised, it is suggested that Council endorse, in principle, the preparation of a comprehensive program to establish biodiversity data and policy suitable to support and guide planning decisions and other functions of Council over the longer term. Such a project would enable the address of the issues raised in the submissions without the need for substantial amendment to the draft LEP prior to its finalisation, whilst providing a platform for broad scale consideration of biodiversity management in the shire.

3.12.2 Bulky Goods Analysis

The submissions regarding bulky goods premises and their permissibility generally related to the appropriate zone to apply to existing and approved bulky goods premises, and the permissibility of bulky goods premises on other sites.

As noted in the consideration of the submissions, the Retail Showrooms and Bulky Goods Report prepared for Council by Core Economics in 2004 indicates that Ballina has sufficient bulky goods retailing floor space to meet the projected requirements to 2016. While the B5 Business Development Zone has been amended to specifically apply to bulky goods premises and similar uses, it is considered that further work is required to be undertaken to determine the application of this zone within the shire.

The DP&I also released a Draft Centres Policy in April 2009 for consultation purposes, and this policy includes consideration of the application of the B5 zone and also emerging forms of retail such as the 'big-box' facilities.

On the basis of the above, it is considered appropriate that Council undertake a review of the 2004 Bulky Goods Study in the context of the State Government's Draft Centres Policy, in order to determine the need for bulky goods retailing floor area in the shire, both the suitability and most appropriate application of the B5 Business Development Zone. The introduction of the zone could then occur via a separate planning proposal process, focusing on this particular issue, if found to be warranted.

3.12.3 Site Specific Items for Planning Proposals

Several submissions sought rezoning of land for urban purposes in relation to land that is currently identified as being within a potential urban release area in Council's strategic policy documents. These submissions typically did not provide sufficient information to enable rezoning of the land via the LEP renewal program. However, given their policy context, it is suggested that Council invite those involved in these submissions to engage in the planning

proposal process in order to provide for the comprehensive investigation of the land and its rezoning if the land is determined suitable for the proposed purpose upon its detailed assessment.

In this regard, it is recommended that Council engage with the landholders of the land parcels identified in Attachment 1 (where additional action recommend invitation to participate in a planning proposal process) with respect to the preparation of planning proposals. This would mean that these land parcels would be subject to stand alone LEP amendment investigations separate to the comprehensive LEP, with any recommended amendments arising from this process being incorporated into the planning framework via amendment to the new LEP. Details of these would be reported to the Council for its consideration.

3.12.4 Heritage Item Listings

The heritage schedule in the draft LEP is based on the current heritage schedule contained in the Ballina LEP 1987 and the outcomes of Council's previously endorsed Shire Wide Community Based Heritage Study. Items have only been listed where they are subject to the existing schedule or consistent with Council's resolution in relation to the shire wide study. As such, there are a number of items that have been suggested for listing in the schedule via submissions in response to the exhibition process. For some of these items, additional information or further correspondence with the landowner is recommended in order to determine the suitability of the item for listing. On this basis, it is recommended that Council seek further information in relation to a number of potential heritage items as outlined in Attachment 1. It is not recommended that these items be listed in the LEP heritage schedule prior to further investigations being undertaken and the matters arising being considered by the Council.

3.12.5 Aboriginal Heritage

Aboriginal heritage was raised in submissions received, particularly by DECCW in relation to the inclusion of sites in Council's heritage schedule. In this regard, it is important to note that Council is currently engaged in the preparation of a Shire Wide Aboriginal Heritage Study. A key element of this study is the identification of areas of sites within the shire landscape of significance to the local Aboriginal community. However, given the sensitivity of this information and the Aboriginal community's ownership of much of the knowledge that underpins the study, the project involves the establishment of a protocol for ongoing access and use of the study material.

Having regard for the above, it is recommended that the role of the LEP in relation to Aboriginal cultural heritage be reviewed upon completion of the Shire Wide Aboriginal Heritage Study and implementation of associated information and data management protocols. This means that the finalisation of the LEP will not incorporate sites of Aboriginal cultural significance into its heritage schedule other than those currently listed in the Ballina LEP 1987.

3.12.6 Ballina Island Development Potential

The draft LEP has been prepared on the basis of maintaining the existing planning approach on Ballina Island as closely as possible under the Standard Instrument. This approach is within the context of two key considerations, being climate change and sea level rise and the relative suitability of Ballina Island to house a greater population given its topography, servicing and infrastructure. Given the conundrum associated with increasing residential density on the Island where there is uncertainty regarding the implications of climate change and sea level rise, the draft LEP seeks to maintain a similar density outcome to that currently enabled under the Ballina LEP 1987.

However, in recognition of the importance of Ballina Island as a population centre in the shire, it is considered appropriate that Council engage in a specific review of the planning provisions associated with residential housing and associated infrastructure. It is suggested that this work, which would include consideration of building height and dwelling density matters, could be undertaken following completion of Council's Climate Action Plan. It is recommended that the completion of a review of the planning provisions applicable to Ballina Island be considered in the context of Council's LGMS.

3.13 Other Actions Arising

3.13.1 Flat Rock

Council received a petition containing 487 signatures in support of reclassification of Lot 59 DP 827785, including the Flat Rock Tent Park from 'operational' land to 'community' land in response to the public exhibition of the draft LEP. Although the reclassification of the land may be undertaken via the LEP, it is considered that this suggestion warrants specific consideration separate to the LEP renewal program, given that it relates to the long term status of a significant parcel of public land.

This matter was raised in relation to the coastal shared path project in Council's September Ordinary Meeting agenda, with Council resolving as follows:

"That Council receive a further report in respect to the reclassification of the Council operational land described as Lot 59, DP 197904 to community land. This report is to clarify which parts of this land should be retained as operational land to ensure that the Flat Rock Tent Park can operate effectively as a Council business." [Minute No. 230910/4].

Given the above, no further progress is recommended in relation to this item with respect to the finalisation of the LEP.

3.13.2 Feedback for DP&I arising from submissions

A number of submissions raised matters which relate to the form and structure of the Standard LEP Instrument. These matters are addressed in Attachments 1 and 2 in relation to community and public authority submissions. With respect to these items, where they do not cross over with key issues identified by Council for further discussion with DP&I, it is recommended that Council advise the DP&I of the submissions for its consideration in managing and improving the Standard Instrument.

3.14 Standard Instrument and DP&I Related Items

The following items are key issues that Council has been engaged on with the Department of Planning and Infrastructure during the preparation of the draft LEP. It is considered that address of each of these issues is important to the establishment of a comprehensive and functional LEP. In this regard, the recommendations associated with these items recognise areas where Council has an opportunity to progress the LEP to completion in a satisfactory manner whilst understanding that some items require further address at a State wide level. As shown by the recommendations, it is suggested that Council proceed with the preparation of its LEP on the basis that some of these key matters can be addressed immediately whilst others may take more time.

3.14.1 Boundary adjustment subdivisions - rural land

Council has engaged extensively with the DP&I throughout the preparation of the LEP in relation to boundary adjustment subdivision provisions for rural land. The Standard Instrument establishes substantial limitations on boundary adjustment subdivision in rural areas. A key aspect of this is that the LEP Project Team is of the view that the structure of the Standard Instrument does not permit boundary adjustment subdivisions where one or more allotments involved is less than 90% of the minimum lot size specified for subdivision. Under the current Standard LEP provisions, it appears that adjustments between two lots that are already below the minimum lot standard are unable to be approved.

This is a significant issue in that many lots within the shire are below the minimum subdivision lot standard and Council often receives applications for boundary adjustments based on the merits of particular situations. There can be a number of reasons why a boundary adjustment subdivision can be beneficial. For example, it may assist in achievement of larger agricultural production units, enable creation of more logical property boundaries, or provide opportunities for enhanced agricultural production or diminution of land use conflict.

The primary aim of Council's engagement with the DP&I in relation to this issue has been to have the LEP provide for Council to assess and determine applications for boundary adjustments rather than having a circumstance where a large proportion of proposed adjustments could not proceed even if considered desirable from a land use planning perspective.

The draft LEP was initially drafted to include an additional provision enabling boundary adjustment subdivision, where lots below the minimum lots standard are involved, to occur with development consent. The DP&I required that variations to lot sizes be limited to 10% of the lot areas and the clause was amended to this effect for exhibition.

The boundary adjustment provisions of the draft LEP have been the subject of several submissions from Council which essentially seek greater flexibility in the opportunity for boundary adjustment subdivision. Importantly, the DP&I has finally acknowledged the matter as an issue. Unfortunately, the DP&I is of the view that the resolution of this issue requires an amendment to the Standard Instrument as additional provisions cannot be inconsistent with

standard clauses. That is, the current structure of the Standard Instrument does not provide for the simple inclusion of a provision that addresses the issues identified. On this basis, the DP&I appears to be suggesting that Council leave this item out of its adopted LEP and await resolution at a later date. Under this approach, it is considered unlikely that the matter will be resolved in the near term.

The legal impediment to the resolution of the boundary adjustment issue is further complicated in that Council's exhibited draft clause that provides for adjustment of 10% between lots may also be inconsistent with the mandatory elements of the Standard Instrument. Given this, it is recommended that this provision be removed from the draft LEP. Alternatively, Council could seek to include its own provisions addressing the issue. However, the potential for inconsistency is considered an inappropriate risk as this can lead to invalidation of the finalised plan.

Although immediate resolution of this issue is the preferred outcome, it is evident that the matter will not be addressed by the DP&I in the short term. If Council accepts that the DP&I is working towards an acceptable outcome, it is considered reasonable to progress the LEP on the very clear understanding that the DP&I continue to promptly advance this issue. In this regard, it is recommended that Council seek a written commitment from the DP&I regarding its approach to the resolution of the issues raised with respect to boundary adjustment subdivisions on rural land. It is further recommended that this commitment be sought prior to finalisation of the LEP.

3.14.2 Creation of residual lots or split zone lots where the minimum lot size cannot be met

This item is another example of a subdivision related issue where the Standard Instrument does not provide sufficient flexibility to reflect routine planning practices undertaken by councils. The Standard Instrument establishes rigid minimum lot standards for subdivision of rural land and as such, creation of allotments below the minimum standard (generally 40ha) is difficult. This is significant in relation to subdivisions in new urban areas as it does not enable the creation of residual lots or split zone lots where the lot area is not at least 90% of the minimum standard. This means that routine practices such as excising the balance of a farm after a stage of an urban subdivision, inclusion of environmental protection zoned land in urban lots or separation of areas of environmental values in urban subdivision areas typically cannot be undertaken unless the lots are at least 36ha in area.

The DP&I has indicated that one way in which councils can address this is via the identification of varied lot sizes on the Lot Size Map to reflect the further subdivision layout. This would need to be done at rezoning stage or via an LEP amendment. This is considered to be an exceptionally inefficient approach given that final subdivision layouts often vary substantially from concepts utilised at rezoning stage and LEP amendments require both State Government and Council resources to process.

Further, the DP&I has now recognised the issues associated with this matter and has prepared a model provision to address this item. The model clause is not considered suitable to address the identified circumstances associated with residual lot and split zone lot creation. Therefore, it is not recommended

that Council utilise this provision in its plan. Council is also unable to add its own provisions attempting to address the issue as such an approach generates the potential for inconsistency with mandatory Standard Instrument provisions. As outlined above, the potential for inconsistency is considered an inappropriate risk which can lead to invalidation of the finalised plan.

The key disadvantage of this approach means that Council will not have the flexibility to determine subdivision outcomes for rural and environmental zones associated with urban subdivisions without the need for LEP amendments or excessive details at rezoning stages of urban release planning.

Similar to the approach with respect to boundary adjustment subdivision, it is recommended Council progress its LEP on the clear understanding that the DP&I continue to promptly advance this issue. In this regard, it is recommended that, prior to finalisation of the LEP, Council seek a written commitment from the DP&I regarding its approach to the resolution of the issues raised with respect to residual lot and split zone lot creation.

3.14.3 Interpretation of the land use tables and use of “parent-child” definition structure.

Council has consistently engaged with the DP&I with respect to the structure of the Standard Instrument definition set and the listing of land uses in the land use tables. Council’s concerns have related to ambiguity, confusion and a lack of transparency associated with the definition structure and DP&I recommended drafting approach to listings in the land use tables. In response to these issues the draft LEP as exhibited, sought to partially address this through the listing of uses considered to be ambiguous in their relationships with other terms for clarity as to whether they are intended as permitted or prohibited. This approach was not preferred by the DP&I.

In March 2010, the DP&I released an “Options Paper” detailing potential amendments to the Standard Instrument for consultation. The Options Paper included potential amendments to the Standard Instrument definitions to address the issues of ambiguity and clarify the relationship between various definitions.

On 25 February 2011 the Standard Instrument Amendment Order was gazetted. The amendments to the Standard Instrument definitions adopt a different approach to that outlined in the Options Paper. While some definitions have been amended to clearly contain a link with a “parent” or “child” definition within the definition itself, the majority of definition relationships are identified via a “note” under the definition itself. While the relationships between definitions have been clarified by the amendment to the Standard Instrument, Council officers are concerned that the mechanism adopted to address this issue is not sufficiently rigorous.

Clause 1.5 of the Standard Instrument (Local Environmental Plans) Order 2006 states that “Notes in this Plan are provided for guidance and do not form part of this Plan”. Given this, Council officers remain concerned that the relationships between definitions, where that relationship is expressed via a “note”, remain open to challenge and interpretation.

As previously discussed in Section 3.6 regarding the recent amendments to the Standard Instrument, Council officers have also made representations to the DP&I regarding the lack of distinction in the Dictionary between land use terms and general terms. Council's preferred option was for the Dictionary to be divided into two sections to clearly identify which definitions are land uses and which definitions are not. The Standard Instrument Amendment Order includes a "Direction" in relation to the land use table which states that only the types of development identified in the list relating to the direction may be included in the land use table.

While it is evident that this provision seeks to clarify which definitions comprise land uses, this clarification is not transparent given that the direction is not published in the LEP itself. That is, while the Strategic and Community Services Group preparing the draft Plan will be clear that certain terms do not constitute "land uses", this will not be clear to other users of the plan, including Regulatory Services Group staff. Council officers are not able to deduce why the above amendments made to the Standard Instrument were drafted as they are.

Aside from the general issues associated with the definition set, Council has also identified a particular concern with the categorisation of wholesale plant nurseries. As detailed in relation to the E3 zone above, a number of options have been explored to separate wholesale plant nurseries and other more intensive forms of intensive plant agriculture (e.g. forms involving igloo structures) from both the group term intensive plant agriculture and its child term 'horticulture'.

It is recommended that Council continue to make submissions to DP&I regarding concerns associated with the structure of the definitions and the status of the notes. As discussed in Section 3.6.2 of this report it is also recommended that Council insert the Direction regarding land use terms as a "note", within the new plan.

3.14.4 Limitations on the opportunities for the LEP to link directly with strategic planning documents such as Local Growth Management Strategies.

The initial approach to the drafting of the LEP sought to incorporate Council's extensive strategic planning work into the development assessment framework. In particular, the concept of linking development assessment to the outcomes documented in Council's LGMS was seen as a means of improving outcomes in relation to matters such as delivery of key infrastructure, land use conflict and environmental management, as well as improving transparency in the planning process.

The DP&I advised Council during the LEP drafting process that Council could not establish linkages with the LEP to non statutory documents. Given this, the draft LEP does not incorporate any provision linking development assessment to Council's LGMS.

Notwithstanding this, it should be noted that Council has engaged with the DP&I in relation to this matter given that staff have identified instances, particularly in State Environmental Planning Polices, where non statutory documents are part of the plan provisions. On this basis, and very reluctantly,

it is suggested that Council continue to monitor opportunities in relation to the relationship between the LGMS and LEP but no further action is recommended on this matter in relation to finalisation of the LEP.

3.14.5 Role of local government in vegetation management in rural and environmental protection areas.

Under the Ballina LEP 1987, Council consent is required for the removal of native vegetation in both rural and environmental protection zones. In the early phases of preparing the draft LEP Council had resolved to discontinue requiring Council consent for removal of native vegetation in rural zones, but to continue to require it in environmental protection zones [Minute No. 260608/10]. As drafting evolved, it became evident that this was not possible under the framework provided by the Standard Instrument.

The exhibited draft LEP incorporates clause 5.9 "Preservation of Trees or Vegetation" from the Standard Instrument. This clause enables Council to regulate the removal of trees and other vegetation by way of a Development Control Plan (DCP). Council has resolved to prepare and exhibit a Vegetation Management DCP following exhibition of the draft LEP and this is scheduled to occur in the coming months.

Clause 5.9 lists a number of circumstances where Council's Vegetation Management DCP will not apply. These include clearing of vegetation "authorised or permitted by" the Native Vegetation Act 2003 and removal of plants declared to be noxious weeds under the Noxious Weeds Act 1993. This effectively means that Council will not require development consent for the removal of native vegetation on land in rural and environmental protection zones. The Catchment Management Authority (CMA) will be the approval authority for such vegetation removal and DECCW will be the body responsible for prosecuting breaches of the EP&A Act. In addition, Council will not be able to regulate the removal of noxious weeds, including the clearing of Camphor Laurel.

The drafting of the Native Vegetation Act 2003 (NV Act) appears to have focused on managing broad scale clearing in the western parts of NSW. Given this, there are some challenges in effectively managing vegetation clearing in relatively densely settled areas with high bio-diversity (such as the North Coast). In this regard, the NV Act includes exemptions for "routine agricultural management activities" (RAMAs) which are arguably generous for the landowner and permit the removal of ecologically significant vegetation provided that the work meets the definition of a RAMA.

The NV Act was also drafted on the premise of removing the requirement for landholders to obtain more than one approval to remove vegetation. The concept of removing dual consent requirements may be reasonable if there were adequate resources within the CMA and DECCW available to administer the framework and to follow-up breaches. Unfortunately, Council is of the understanding that this is not currently the case. Further, as clearing will not be a breach of the Ballina LEP, Council officers will have no role in the regulation of land clearing or associated activities such as conducting site visits, issuing stop work notices, or gathering evidence unless associated with a land use that requires development consent.

From a Council staff perspective, it is considered appropriate that Council has a role in regulating vegetation removal in environmental protection zones and particularly within the E2 Environmental Conservation Zone. The dilemma is that clause 5.9 is contained within the Standard Instrument and it is not possible for Council to alter or add to the wording of this clause without amending the Standard Instrument itself. This would only occur if the DP&I supported the proposal at a state wide level. It would also be complex given the legal relationships between the Standard Instrument and various pieces of planning and environmental legislation. Council staff are also of the view that there is merit in applying a regulatory framework to the broad scale removal of Camphor Laurel, although it may be able to be managed via an industry "code of practice" rather than a formal development consent process.

It is noted that these issues are of concern to a number of councils in regional areas. NOROC wrote to the DP&I in late 2010 requesting that the natural resource management provisions (including clause 5.9) in the Standard Instrument be amended. In response, a meeting was held between senior DP&I staff and representatives of local councils in early August 2010. At this meeting, the Department undertook to explore options to resolve the key issues of concern.

As discussed in Section 3.6.3.5, the Standard Instrument Amendment Order which was made and published on 25 February 2011, includes amendments to the vegetation management provisions contained in Clause 5.9. The Clause has been amended from "optional" to "compulsory". An additional optional subclause has also been introduced which enables Council to require development consent for RAMAs in the E2 and E3 zones. This would provide for some regulation of vegetation removal within the environmental protection zones however it does not fully resolve Council's issues in relation to vegetation management within these zones. Unfortunately, there remains a substantial level of confusion and uncertainty with respect to the interpretation of the recent amendments to Clause 5.9 and with respect to the roles and responsibilities of local government in the field of vegetation management in rural areas.

The following options have been considered with respect to the above:

- No change to exhibited draft LEP with respect to vegetation management in environmental protection zones.

This approach should be coupled with continued engagement with the DP&I to amend the provisions of the Standard Instrument in the short term to enable Council involvement in regulating the removal of native vegetation in environmental protection zones. Engagement should also occur with Far North Coast Weeds concerning the practices for the removal of Camphor Laurel. This option acknowledges the complexity of the issue whilst providing for ongoing discussion towards improvements and as such is the preferred approach.

- Amendment to the exhibited draft LEP to include the optional subclause 9.

This approach would enable Council to require development consent for certain works within the environmental protection zones, including RAMAs, which are currently permitted without consent in accordance with the provisions of the NV Act. This would provide Council with the regulation of some vegetation management works in these zones however it is considered that partial regulation is not ideal or satisfactory, and would potentially lead to considerable community confusion.

Given the uncertainty associated with the vegetation management framework as outlined above, it is recommended that Council seek a written interpretation of the current Standard Instrument provisions from the DP&I prior to finalisation of its LEP.

- Decline to adopt the LEP until the issue of vegetation management in environmental protection zones has been resolved.

Should Council feel strongly that it should have a role in the regulation of vegetation removal in environmental protection zones, Council could decline to finalise the draft LEP until this issue is resolved by the DP&I. This is likely to take a significant period of time and extensively delay the introduction of the new LEP. This approach is not recommended.

3.14.6 DP&I Issue Summary

Council staff have extensively engaged with the DP&I throughout the LEP renewal process in relation to a number of matters it has considered to be unsatisfactory. Most of these items have arisen as a result of the limitations of creating a Standard Instrument that fits all local circumstances throughout the State and the inability of the DP&I to examine some issues, explore solutions and provide logical rationale for decisions made in a timely manner.

Whilst Council staff continue to have reservations about some elements of the Standard Instrument and DP&I policy approaches, including in relation to the items above, on balance it is considered reasonable for Council to proceed to progress its LEP and continue to act in good faith in delivering its LEP renewal program. It is also considered beneficial to advance the positive elements of the draft LEP in a holistic fashion and that these positive elements ultimately outweigh the known limitations.

It is hoped that Council's good will in seeking to progress the plan when some elements are considered to be less than ideal or will lead to poor outcomes will encourage the DP&I to work constructively with Council to arrive at satisfactory outcomes on the above items in a timely manner. This approach is assisted in that Council need not submit its formal report to the DP&I requesting completion of the LEP until it is satisfied that the DP&I is committed to advancing the matters raised or is agreeable to the recommended approaches in this report.

3.15 Re-Exhibition

Council may re-exhibit part or all of its draft LEP for public comment having regard for the nature and scope of alterations proposed. With respect to the draft LEP, there is a variety of amendments recommended as part of the finalisation of the plan. The majority of these amendments are considered minor in that they maintain or confirm existing or known planning policies. However, there is some uncertainty about whether the recent amendments to the Standard Instrument are of a nature to warrant re-exhibition. Further, in some instances, such as where land use zones or land use permissibilities are being altered, it may be both necessary and desirable to re-exhibit the draft LEP in order to allow landholders and other stakeholders the opportunity to provide comment on the proposed amendment.

Re-exhibition of the plan is consistent with the open and transparent process Council has engaged in with respect to the preparation of its new LEP. Re-exhibition is also a means by which Council can demonstrate its responses to the submissions process and it enables additional time for the resolution of outstanding issues with the DP&I.

A disadvantage of the re-exhibition process from Council's perspective is that it requires additional resources and Council has already gone well beyond the statutory requirements for exhibition and community engagement with respect to the plan. In this regard, there is limited guidance in the EP&A Act with respect to re-exhibition. In considering re-exhibition of the plan, it is important to consider whether the plan is substantially different to that which was exhibited and it is suggested that Council maintains its inclusive and transparent approach to the preparation of the plan.

Having regard for the extensive plan preparation and community engagement processes undertaken in compiling the draft LEP and the scope and nature of the recommended amendments, it is considered appropriate that Council proceed to re-exhibit its revised draft Ballina Local Environmental Plan prior to finalisation and submission of the plan to the DP&I. It is suggested that the plan be re-exhibited as the Draft Ballina Local Environmental Plan 2011 to distinguish it from the 2010 document.

With respect the re-exhibition of the plan, it is recommended that the exhibition period be for approximately 4 weeks to meet the statutory requirement. This approach also recognises that the plan has been subject to extensive community engagement to date with the revised draft reflecting the outcomes of the previous exhibition process. Importantly, the re-exhibition of the plan will necessitate another submissions review and assessment process. This process and the final recommended form of the new LEP would be the subject of a further report to Council following the re-exhibition period.

As an alternative, Council could elect to proceed to finalise the LEP without further exhibition. This approach is not recommended as it is considered both warranted and desirable for the revised draft LEP to be available to the community for further consideration prior to finalisation.

3.16 Public Hearing

Under Section 68 of the Act, persons making a submission to the exhibition of a draft local environmental plan may request that Council holds a public hearing into certain issues. Council has the discretion to determine whether or not it wishes to convene such a public hearing before considering alterations to the LEP. The outcomes of the hearing process then inform the formulation of the final draft LEP.

Council received 6 requests for a public hearing in submissions to the draft LEP. Each of the requests was made by SJ Connelly Pty Ltd on behalf of particular landholders as set out below:

- Supbrook, Riverbend, Lot 12 DP 1092324, West Ballina.
- North Angels Beach Development (Ballina) Pty Ltd, Angels Beach Estate, Lots 22, 23 and 24 DP 1150518, East Ballina.
- Mr M Hickey, Fig Tree Hill Drive, Lot 60 DP 1067198, Lennox Head.
- Ballina HSC Pty Ltd, land to the west of the planned western arterial road alignment, Part Lot 11 DP 1011575, West Ballina.
- Ballina HSC Pty Ltd, land to the east of the planned western arterial road alignment, Part Lot 11 DP 1011575, West Ballina.
- Ballina HSC Pty Ltd, land adjacent to Ballina Pacific Highway Bypass, Lot 226 DP 112079 and northward, West Ballina.

The primary advantage of a public hearing process is that the independent person appointed to convene the hearing has an opportunity to delve into much greater detail concerning the matters being considered. The presiding person may then make certain recommendations upon which the Council is then invited to respond. However, in considering this, it should be noted that the LEP renewal process has incorporated substantial opportunity for stakeholder engagement and analysis of issues arising. Key disadvantages associated with the holding of a public hearing are time and costs. Council has not provided a specific budgetary allocation to finance the convening of a public hearing outside the matters associated with the proposed reclassification of land under the draft LEP.

Further to the above, it should be noted that Council is not required to hold a hearing upon request. Given this, the site specific nature of the issues raised and the engagement processes utilised by Council in preparing the draft LEP, it is not considered that a public hearing is warranted in relation to matters arising from the public exhibition period. It is of course open to the Council to form an alternative view.

3.17 Reclassifications of Public Land

Under the terms of the LG Act, the reclassification of public land may be made by a local environmental plan. In this regard, the Standard Instrument includes a specific mechanism to enable the reclassification of public land. Having regard for the provisions of the LG Act and the Standard Instrument, the draft LEP proposes the reclassification of the following 8 land parcels from 'community' land to 'operational' land.

- Lennox Head Lot 20 DP 1108820, Tallowwood Place
- North Ballina Lot 2 DP 238394, Pacific Highway
- Pimlico Lot 3 DP 561944, Pimlico Road
- Wardell Lot 1 DP 854149, Kays Road
- West Ballina Lot 1 DP 133631, Fishery Creek Road
- West Ballina Lot 1 DP 572329, Fishery Creek Road
- West Ballina Lot 1 DP 843728, Fishery Creek Road
- Wollongbar Lot 1 DP 177365, Rifle Range Road

Each site has been identified as it is considered appropriate that the land be reclassified to reflect its existing or planned purpose. The classification of public land as 'operational' provides greater flexibility for Council in the use of the land. Importantly, land classification as discussed in this report is not the same as land use zoning. Public land that is owned by Council has both a land classification and a land use zone applied to it under the relevant local environmental plan.

In order to reclassify land, Council is required to comply with the requirements associated with land classification set out in the LG Act. Council was advised of the requirements associated with the proposed reclassification at its May 2010 Ordinary Meeting [Minute No 270510/6].

In completing the relevant steps under the LG Act a public hearing has been held into the reclassification of the land. The hearing was held in accordance with procedures set out in the EP&A Act and associated Regulation. Council held the mandatory public hearing in relation to the proposed reclassification of land under the draft LEP on Tuesday 20 July 2010, with the hearing being convened by Mr George Pearse, being a person with distinguished local government and community service.

The outcome of the public hearing process was reported to Council at its August Ordinary Meeting [Minute No.260810/11]. No members of the community attended the public hearing. However, one submission to the draft LEP made reference to land the subject of the proposed reclassification, being Lot 1 DP 177365, Rifle Range Road at Wollongbar (commonly known as the former Drive-In Theatre site).

Mr Pearse, as the presiding officer, has prepared reports on the hearing outlining his consideration of the proposed reclassification of each land parcel, including recommendations regarding the reclassification of the land. The reports were distributed with the August 2010 Ordinary Meeting agenda. As outlined in the reporting, each of the land parcels is recommended for reclassification by the presiding officer. With respect to the finalisation of the new LEP, it is recommended that the reclassification of the nominated land parcels proceed.

3.18 Pecuniary Interest Items

As outlined above, prior to the preparation of this report, Councillors were invited to disclose to the General Manager known pecuniary interests relating specifically to the new LEP. This approach has enabled the separation of items the subject of pecuniary interests from the consideration of the LEP overall. Items the subject of previously declared pecuniary interests are addressed in reports elsewhere in this business paper that are separate but related to this principal report. These items are as follows:

- Proposed removal of water catchment based environmental protection zone over the Duck Creek/ Gum Creek catchment area.
- Proposed land use planning framework at Summerhill Crescent, Cumbalum including application of an R2 Low Density Residential zone and 1ha minimum lot size for subdivision.
- Proposed land use planning framework at the southern end of North Creek Road in Ballina, including application of an R3 Medium Density Residential zone.
- Proposed land use planning framework for land in Fawcett Street, Ballina, including application of B3 Core Commercial and RE1 Public Recreation zones.
- Proposed land use planning framework for the Alstonville village centre, including the application of a B2 Local Centre zone.
- Proposed land use planning framework in the Brighton and Easton Street locality, East Ballina, including application of an R3 Medium Density Residential zone.
- Proposed land use planning framework over the southern end of Oakland Avenue, West Ballina, including application of an R2 Low Density Residential zone.
- Proposed land use planning framework in Camoola Avenue, Ballina, including application of an R3 Medium Density Residential zone.

Importantly, it should be noted that Councillors are still required to identify any pecuniary interests through the formal meeting structure when considering the LEP material, in accordance with the requirements of the LG Act.

3.19 Statutory Planning Framework and Function Post Adoption of LEP

The following points provide an outline of the planning framework that will apply in the shire as Council moves towards completion of its new LEP and upon the plan being made by the Minister for Planning.

- Adoption of LEP for submission to the DP&I.

Upon adoption of the new LEP in full for submission to the DP&I, the existing planning framework, including the Ballina LEP 1987, will continue to apply until such time at the new LEP is made by the Minister for Planning. The assessment of development applications during this period is on the basis that the draft LEP has been exhibited but not commenced.

As outlined above, prior to adoption of the final LEP for submission to the DP&I, it is recommended that the draft plan be revised based on the recommendations contained in this report (and other associated reports) and the revised plan be re-exhibited for public comment.

- Making of the Ballina LEP by the Minister for Planning.

Upon the making of the new LEP by the Minister for Planning, the local planning framework will change. Specifically, the Ballina LEP 1987 will not apply to development applications lodged after the date the LEP commences operation (DAs previously lodged will be subject to the existing system). In addition, the introduction of the new Ballina LEP will result in the repeal of the North Coast Regional Environmental Plan and as such, the provision of this plan will no longer apply to development in the shire. The LEP will remain subordinate to State Environmental Planning Policies.

It is also intended that the local planning framework will be altered by way of introduction of a new DCP. The extent to which the DCP has been revised will depend upon the timing of the LEP's introduction. However, as is outlined in this report, it is recommended that certain elements of the new DCP framework are completed prior to the making of the new LEP.

4.0 Legal / Resource / Financial Implications

Council has undertaken the renewal of the Ballina LEP in accordance with the requirements set out in the Environmental Planning and Assessment Act 1979 and the associated Regulation. The steps undertaken and the remaining requirements of the EP&A Act are outlined earlier in this report.

The LEP renewal program has involved a substantial resource commitment from Council in staff time, office consumables and monetary contributions. The level of commitment by the Council itself in overseeing the project has been very important and must be acknowledged. The very significant support in plan preparation from other Council officers should not be understated. Support from officers within Council's Regulatory Services Group is particularly acknowledged. An outline of the estimated project costs is provided elsewhere in this report. However, by way of summary, the project has been centred in the Strategic and Community Services Group with 5 professional staff members directly engaged in the program since its inception in 2005. The estimated cost the organisation in time, consumables and cash resources upon completion of the plan and associated projects is in excess of \$1.8 million. The majority of this cost has been attributable to staff time and as such, the cost for delivery of the project has drawn only a relatively small volume of cash funds from Council's general fund revenues.

5.0 Consultation

Council has undertaken an extensive engagement program since the outset of the LEP renewal process. In addition to the public exhibition process associated with the draft LEP, Council also undertook a variety of other community engagement initiatives during the plan's preparation commencing with the preparation of the Sustainability Framework and including the LEP Policy Forum and LEP Discussion Paper Series.

Details of the engagement activities and processes undertaken are set out earlier in this report.

Further, it is recommended that Council undertake the re-exhibition of the draft LEP on the basis of the suggested amendments set out in this report (and the associated reports contained in the Committee agenda).

6.0 Options

1. Finalise the Draft Ballina LEP 2010 to the DP&I as exhibited.

This option would involve the submission of the draft LEP for completion in the form in which it was exhibited. This approach is not responsive to the submissions received and a number of opportunities for improvements in the LEP have been identified and documented.

The primary advantage of this approach is that the plan submitted for finalisation would be as viewed by those who engaged in the exhibition process and is the most expedient approach for the completion of the plan. However, it is open to Council to make amendments to the exhibited draft plan where considered appropriate and this is a normal part of an LEP preparation process.

2. Finalise the Draft Ballina LEP 2010 to the DP&I with amendment.

This scenario would involve the finalisation of the draft LEP for submission to the DP&I subject to a number of amendments as recommended in this report and/or in accordance with other modifications identified by the Council itself. The recommended amendments relate to both land use zone arrangements and written planning provisions and relate to numerous elements of the plan. Importantly, the amendments are proposed in response to the formal submissions to the LEP and associated analysis of the draft LEP during the exhibition period. Prior to submission to the DP&I, it is recommended that the revised draft LEP be re-exhibited for public comment for a period of approximately 4 weeks.

The advantage of this approach is that it will effectively complete Council's considerations with respect to the preparation of the draft LEP and enable its progress to the Department of Planning and Infrastructure for completion. A key disadvantage is that there are several issues associated with the Standard Instrument that are considered to warrant further attention or where recommended amendments are likely to be subject to DP&I support. In this regard, there can be no guarantee that remaining issues of concern will be adequately addressed or that the Minister will not make further changes to the LEP before its finalisation.

Having regard for the above, it is recommended that this approach is accompanied by several other actions including the following:

- Prior to the submission of reporting to the Director General of the Department of Planning and Infrastructure, Council seek a written commitment from the Department with respect to the address of issues identified in this report in relation to boundary adjustment subdivisions, split zone lot and residual lots, vegetation management and land use definitions.

4.1 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Principal Report

- Council advise the Department of Planning and Infrastructure of the feedback provided in submissions received in response to the public exhibition of the draft LEP with respect to the form and content of the Standard Instrument where such feedback is not addressed by way of amendments to the exhibited draft plan.
- Council endorses the additional recommended actions set out in Attachments 1 and 2.
- Council endorses further examinations of the following projects in principle, subject to the receipt of a further report regarding each item.
 - Preparation of a biodiversity strategy or similar document that includes comprehensive mapping and discussion of the shire's ecological attributes.
 - Preparation of a new analysis and study in relation to large format retailing activity in the shire.
 - Review of the development potential of Ballina Island following completion of Council's Climate Action Plan.

The above approach provides for the completion of the LEP renewal program whilst providing opportunity to engage further with the DP&I on remaining issues of concern and demonstrating a comprehensive consideration of the issues the subject of the submissions received.

Given the above, this is the recommended approach.

3. Defer submission of the Draft Ballina Local Environmental Plan 2010 to the DP&I.

Under this scenario, Council may elect to defer the finalisation of the LEP for submission to the Department of Planning and Infrastructure in order to obtain further information, engage further with the DP&I regarding outstanding items, undertake further community engagement or hold a public hearing.

This approach may provide time for Council to examine issues arising in further detail with the community, DP&I, other government agencies or experts in specific fields.

Given the extent of work undertaken on the renewal program since 2005, including extensive community engagement, and the requirements to implement the Standard Instrument, this approach is not recommended.

4. Decline to proceed further with the preparation of the comprehensive LEP for the shire in accordance with the Standard LEP.

It is open to Council to cease further preparation of its draft LEP and therefore discontinue implementation of the Standard Instrument through the LEP renewal program.

This approach is not recommended given the investment Council has made in the preparation of a new plan for the shire, the requirement of the NSW Government for Council to engage in the preparation of a new plan and that the preparation of a new plan is an opportunity to adapt the local planning framework to more contemporary circumstances having regard for the current and future aspirations, values, concerns and needs of the Ballina Shire community.

6.1 LEP Amendment

In considering the progress and completion of the LEP, it is important to recognise that local environmental plans and the planning framework generally are not static. The framework is intended to be responsive to change in the community and improved planning practice. As such, it is both appropriate and routine to amend LEPs following their introduction. By way of example, Council has considered approximately 113 amendments to the Ballina LEP 1987 with the majority of these proceeding to alter the LEP. Therefore, it is open to Council to revisit existing issues or address new issues arising following the completion of the LEP through the LEP amendment process.

6.2 Decision Framework

It is recognised that the preparation of the draft LEP has been undertaken over a period of time where two elected Councils have served the community (with several members of the current Council also serving on the previous Council). In effect, the early preparation and basic foundations of the plan included the views of the previous Council, with the completion of the draft LEP and public exhibition process occurring under the guidance of the current Council. The preparation of the LEP has therefore sought to balance the views of the two Councils in order to establish a plan that reflects the issues, aspirations, visions and needs of the Ballina Shire community for the forthcoming planning period.

Assistance has been provided to the Council throughout the plan preparation process in the form of various information tools such as the Councillor LEP Renewal Resource Folders, formal reporting (31 LEP related reports inclusive of this report) and briefing sessions. The aim of this approach has been to equip the Council with the information necessary to both guide the LEP renewal process and determine the direction for the completion and implementation of the plan. Given this, if the Council is of the view that relevant issues have received adequate consideration, and sufficient information in relation to these items is available to the Council, it is recommended that Council proceed to progress its new LEP for the shire based on the recommendations set out in this report.

RECOMMENDATIONS

1. That Council amend the Draft Ballina Local Environmental Plan 2010 as exhibited based on:
 - (a) the amendments set out in Attachments 1 and 2 and associated consequential adjustments to descriptions, numbering and plan formatting; and
 - (b) the recommended amendments with respect to the February 2011 Standard LEP Instrument amendment as set out in this report; and
 - (c) Council's decisions with respect to each of the items relating to the content of the LEP contained elsewhere in this business agenda.
2. That Council re-exhibit the revised Draft Ballina Local Environmental Plan 2011 in accordance with the terms of the Environmental Planning and Assessment Act for a period of at least 4 weeks.
3. That Council receive a further report in relation to the re-exhibition of the Draft Ballina Local Environmental Plan 2011 (as amended) prior to finalisation of the Plan for submission to the Department of Planning and Infrastructure & Infrastructure.
4. That Council seek written advice from the Department of Planning and Infrastructure & Infrastructure that it is committed to address, in a timely manner, the following items to achieve outcomes discussed in the body of this report:
 - (a) the address of boundary adjustment subdivisions;
 - (b) split zone lot and residual lots;
 - (c) vegetation management; and
 - (d) structure and form of land use definitions
5. That Council advise the Department of Planning and Infrastructure of the feedback provided in submissions received in response to the public exhibition of the Draft Ballina Local Environmental Plan 2010 with respect to the form and content of Standard LEP Instrument where such feedback is not addressed by way of amendments to the exhibited draft plan.
6. That Council endorse the recommended actions contained in attachments 1 and 2 that are in addition to the recommended amendments to the Draft Ballina Local Environmental Plan 2010, including:
 - Preparation of development control plan provisions to support the introduction of the new LEP in relation to:
 - Ensuring consistency with the definition structure contained within the LEP;

- Ensuring consistency with the framework for managing building height and floor space ratio in the LEP;
 - Residential development;
 - Urban subdivision;
 - Managing building height within the Ballina Town Centre;
 - Environmental management in relation to clause 7.8;
 - Vegetation management in relation to clause 5.9; and
 - Land use in the B6 Enterprise zone.
- Provision of an invitation to landholders as identified in Attachment 1 to progress their requested amendments in relation to potential urban land release areas via the planning proposal process separate to the LEP renewal program.
7. That Council endorse in principle the undertaking of the following projects, subject to the receipt of a further report regarding each item.
- Preparation of a biodiversity strategy or similar document that includes comprehensive mapping of the shire's ecological attributes.
 - Preparation of a new analysis and study in relation to large format retailing activity in the shire including review of the application of a bulky goods specific zone within the shire.
 - Review of the development potential of Ballina Island following completion of the Council's Climate Action Plan.

Attachment(s)

1. Community Submissions - Final Summary and Recommendations (distributed under separate cover).
2. Government Agency Submissions - Final Summary and Recommendations (distributed under separate cover).
3. Condon Hill.
4. Alstonville/ Wollongbar Urban Buffer.
5. Recommended E2 Land Use Table.
6. Burns Point Ferry Road and Barrett Land.

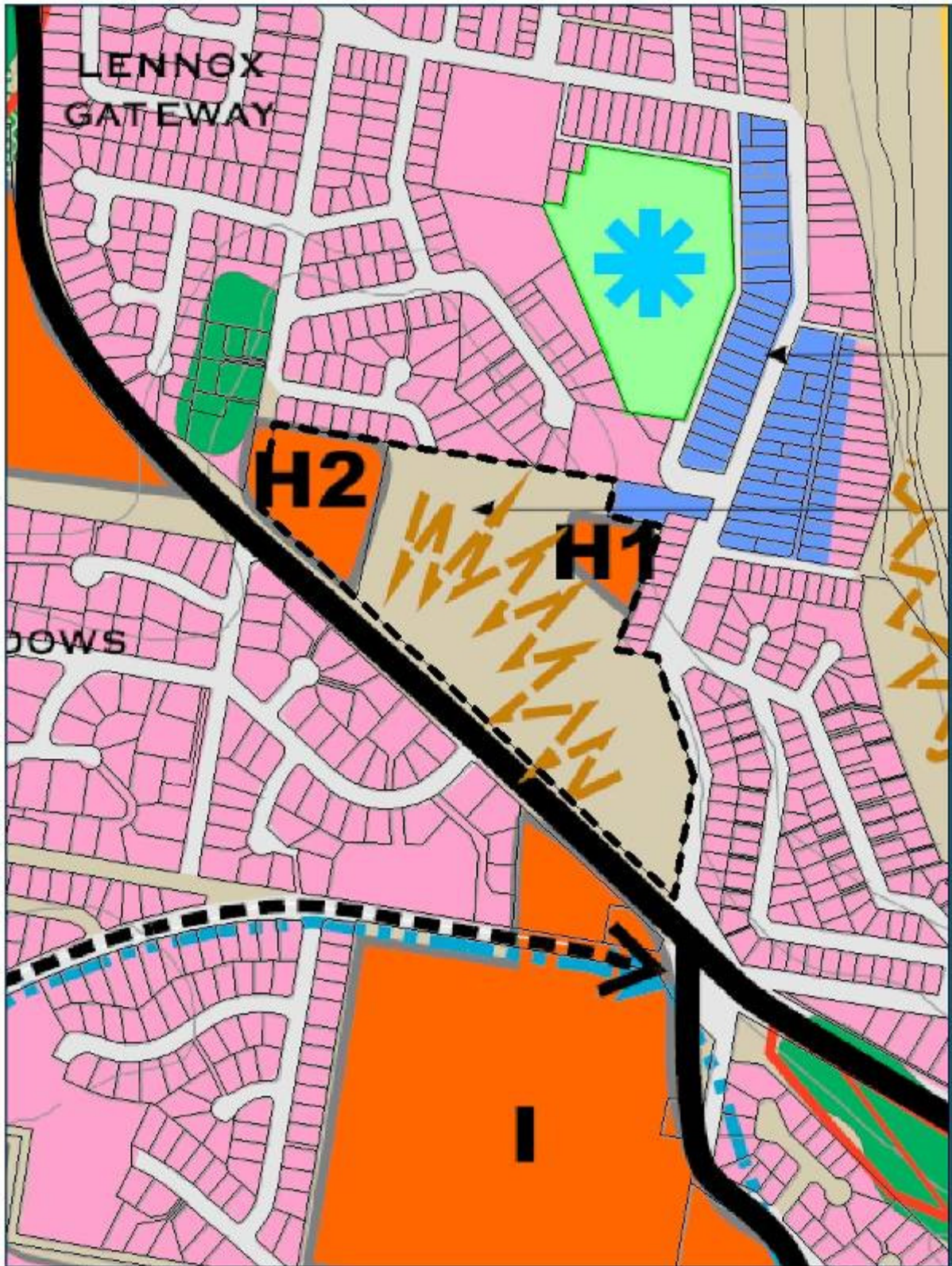
Attachment 1. Community Submissions - Final Summary and Recommendations.




Distributed under separate cover.

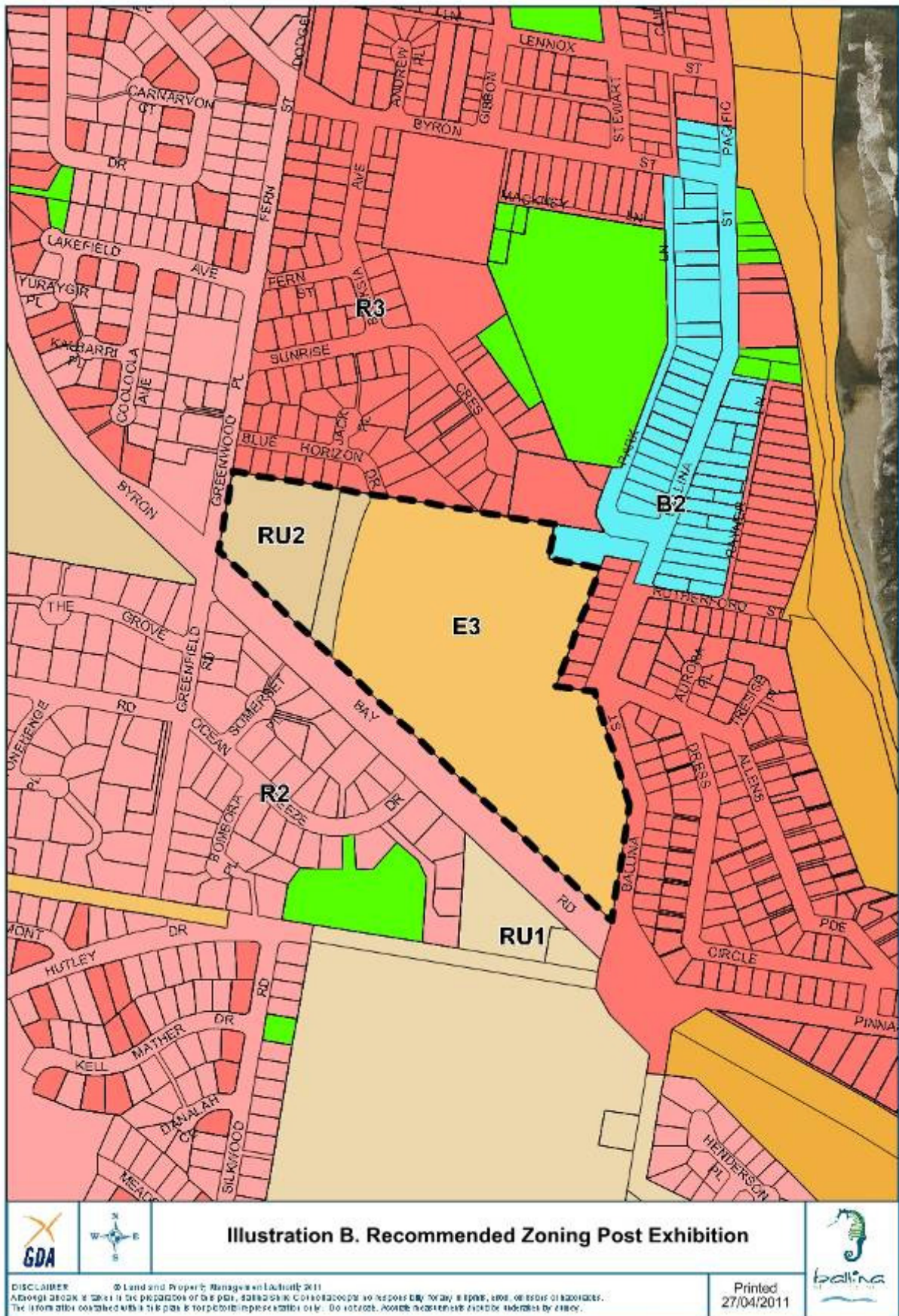
Attachment 2. Government Agency Submissions - Final Summary and Recommendations.

Distributed under separate cover.

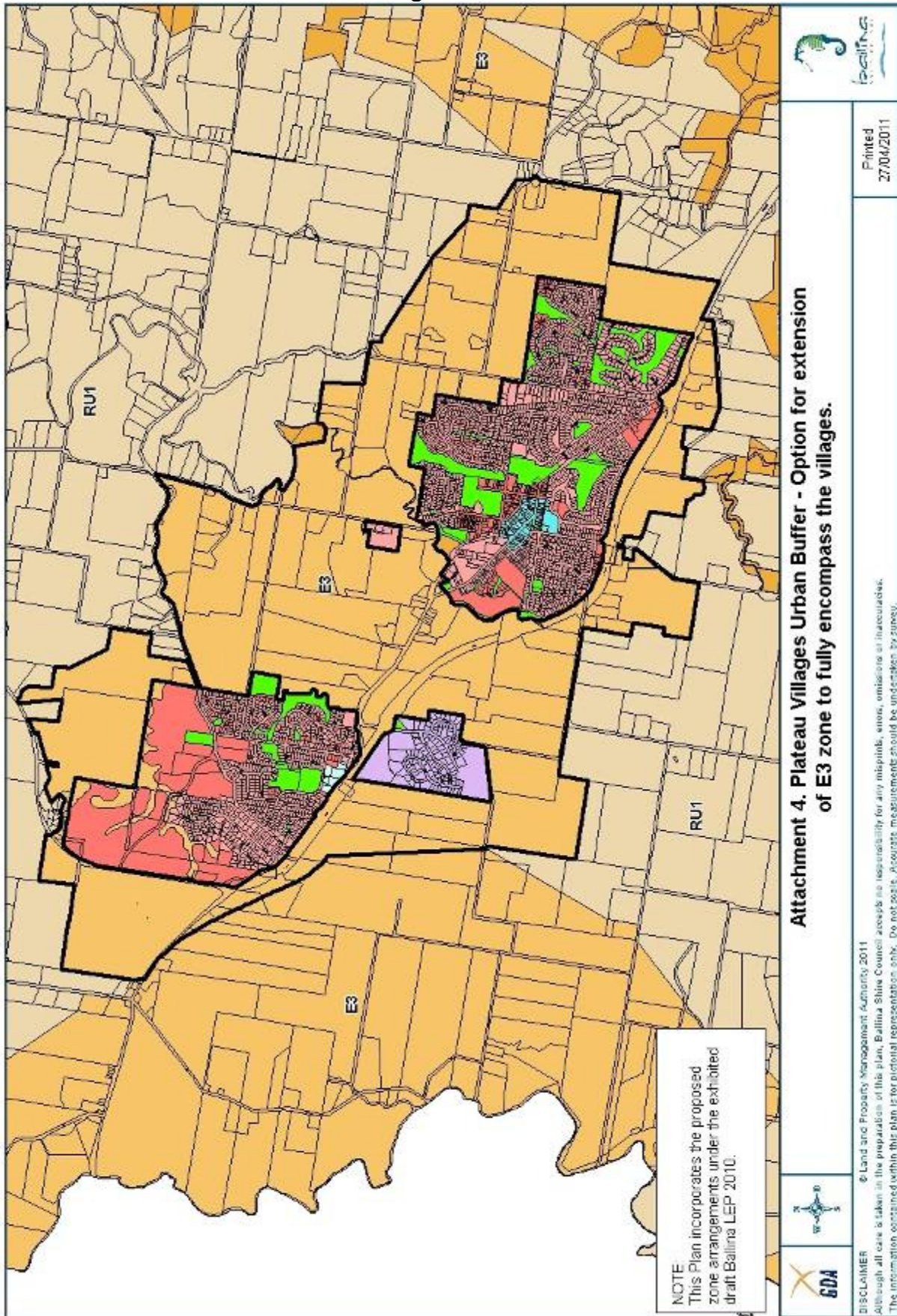
Attachment 3. Condon Hill.



		Illustration A. Lennox Head Structure Plan Summary Map Excerpt	
<small>DISCLAIMER © Land and Property Management Authority 2011 Although this map is taken in the preparation of the plan, Ballina Shire Council accepts no responsibility for any errors, omissions or inaccuracies. The information contained in this plan is for general information only. Do not take any action in reliance on this information without first consulting a professional.</small>			Printed 27/04/2011



Attachment 4. Alstonville/ Wollongbar Urban Buffer.

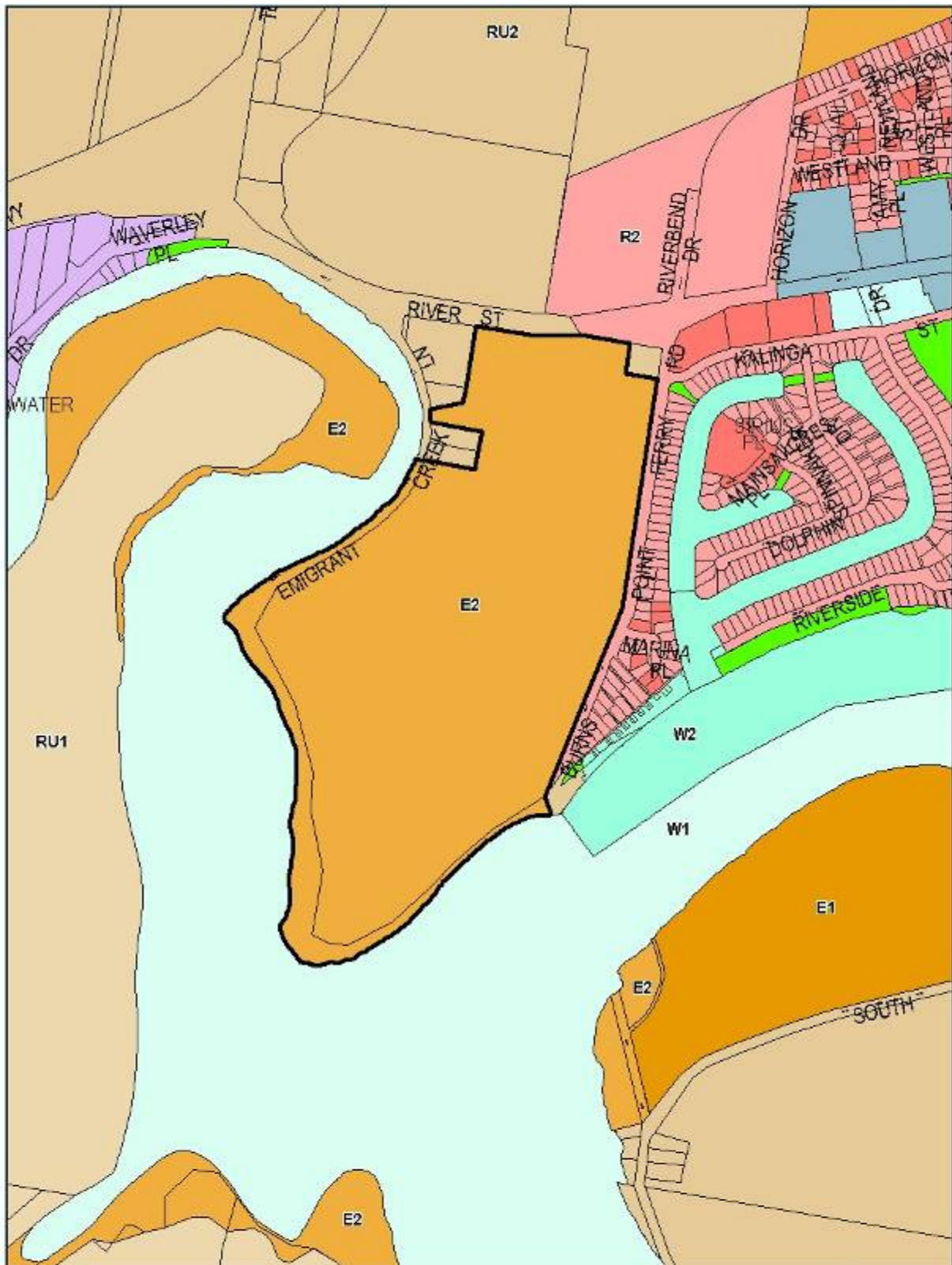


Attachment 5. Recommended E2 Land Use Table.

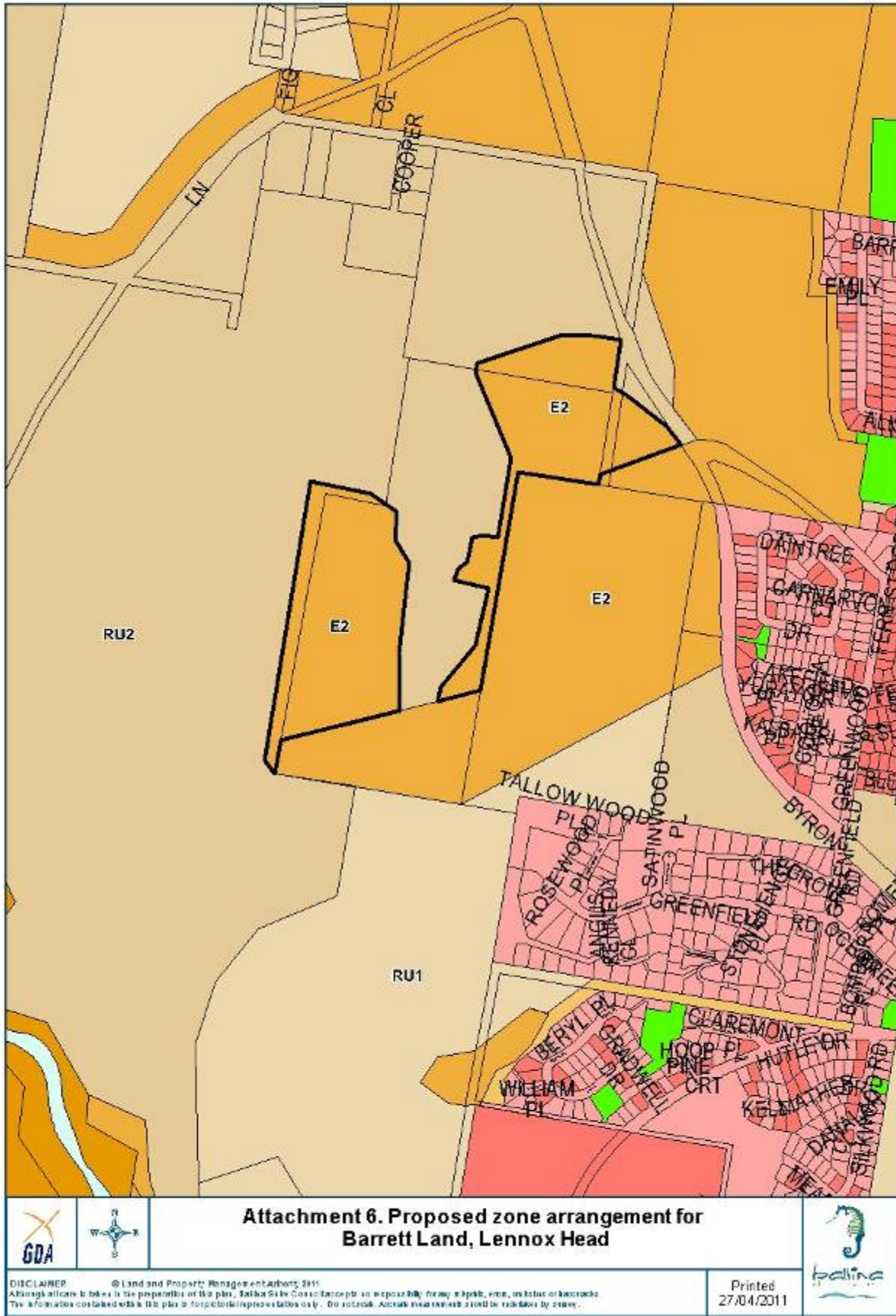
Zone E2 Environmental Conservation

- 1 Objectives of zone
 - To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
 - To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
 - To protect and conserve areas of wetland, rainforest, key habitat, coastline and wildlife corridors.
 - To enable development activities that support, share, manage, enhance and/or protect the ecological, scientific, cultural and aesthetic values of the land.
 - To promote the restoration and enhancement of the natural environment.
- 2 Permitted without consent
Nil.
- 3 Permitted with consent
Bed and breakfast accommodation; Dual occupancy [attached]; Dwelling houses; Environmental facilities; Environmental protection works; Extensive agriculture; Home based child care; Home occupations; Information and education facilities; Research stations; Roads; Signage.
- 4 Prohibited
Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3.

Attachment 6. Burns Point Ferry Road and Barrett Land.



		<p>Attachment 6. Proposed zone arrangement for Burns Point Ferry Road, West Ballina</p>	
<p><small>DISCLAIMER: © Land and property management consultants All rights reserved. This is a preliminary draft plan. Ballina Shire Council accepts no responsibility for errors, omissions or inaccuracies. The information contained in this plan is for general representation only. Do not rely. Accuracy of information should be verified by survey.</small></p>		<p>Printed 27/04/2011</p>	



4.2 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report A - Duck Creek/ Gum Creek Catchment Area

4.2 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report A - Duck Creek/ Gum Creek Catchment Area

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for the Duck Creek/ Gum Creek water catchment area.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use planning framework applying to the Duck Creek/ Gum Creek catchment area near Alstonville. Information regarding the overall approach proposed in the Draft LEP is contained in the draft LEP exhibition material set.

Under the Ballina LEP 1987, the catchment area is identified as a drinking water catchment by virtue of a 7(c) Environmental Protection (Water Catchment) Zone. With respect to the drinking water catchment value of the area, Council's Civil Services Group, being the water supply authority for the Duck Creek/ Gum Creek catchment, has advised that the Duck Creek catchment is no longer required for the purposes of a drinking water supply.

In response to the advice from the water supply authority, the draft LEP proposes the application of an RU1 Primary Production zone over the majority of the current 7(c) zoned area, with an E2 Environmental Conservation zone to be applied to areas assessed as being of high conservation value within the catchment (Attachment 1). The RU1 zone recognises the high quality of the land for agricultural production. One submission received indicated an objection to the removal of the environmental protection zone over the catchment area.

With respect to other elements of the planning framework, it is proposed that a 40ha minimum lot standard for subdivision and an 8.5m building height standard be applied. This provides for a subdivision standard generally consistent with the provisions of the Ballina LEP 1987 and building height provisions that enable 2 storey dwellings on the land.

It is important to note that there may be an alteration to the exhibited zoning arrangement by virtue of Council's position with respect to the establishment of an environmental protection based buffer around the southern edge of Alstonville. If the buffer is extended, the northern portion of the catchment where it adjoins Alstonville would be subject to an alternate zone.

4.2 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report A - Duck Creek/ Gum Creek Catchment Area

Having regard for the above, it is recommended that the proposed planning framework including the land use zoning for the Duck Creek/ Gum Creek catchment area be adopted as exhibited (subject to the endorsed approach with respect to the Alstonville buffer area).

Alternatively, it is open to the Committee to suggest a different planning regime such as the identification of the area as a drinking water catchment. This would be achieved via the use of an E3 Environmental Management zone and designation of the catchment of the Drinking Water Catchments map. The Committee may also seek additional information prior to proceeding. These approaches are not recommended given the advice of the water supply authority.

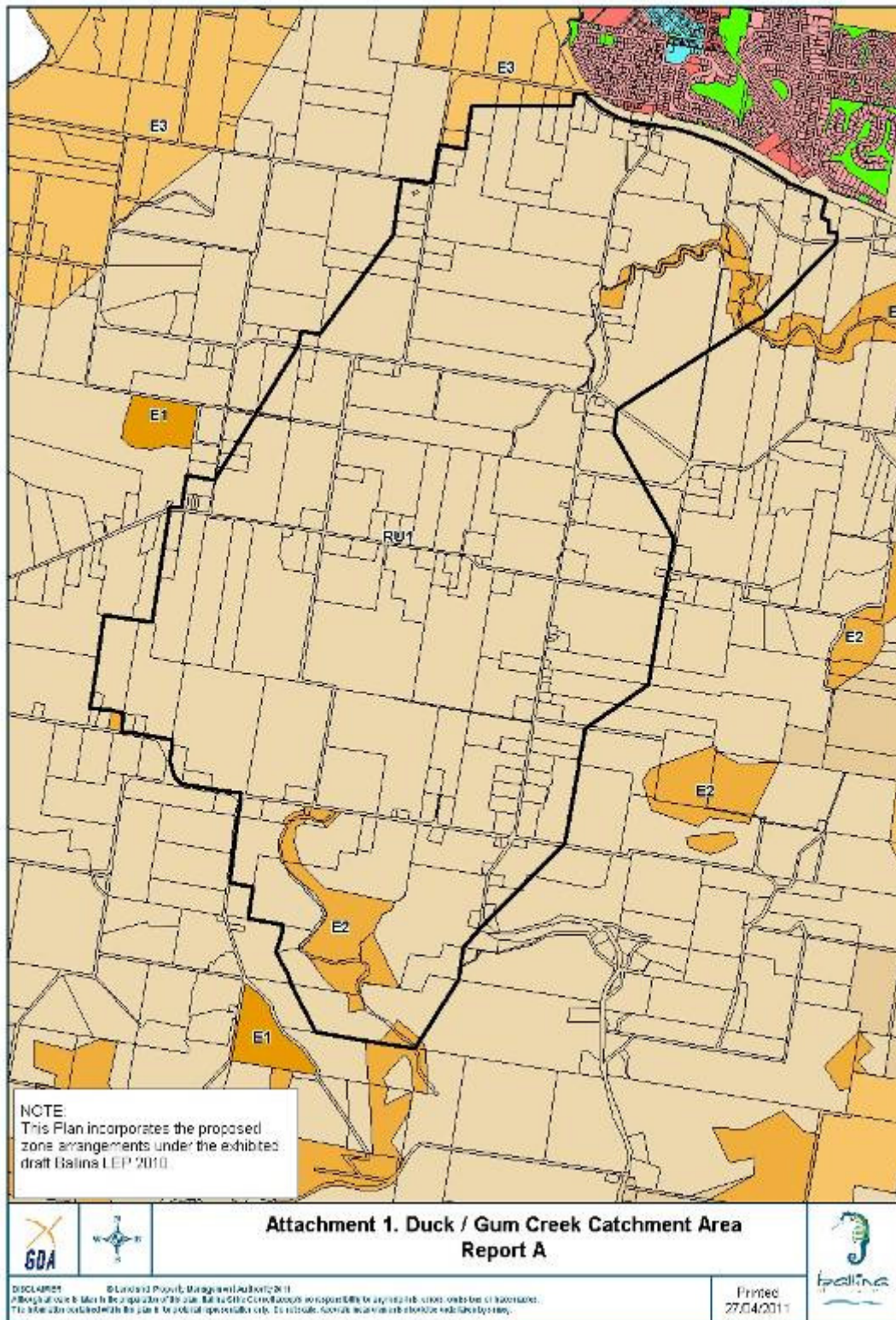
RECOMMENDATIONS

That Council endorse the planning framework for the Duck Creek/ Gum Creek catchment area as exhibited under the Draft Ballina Local Environmental Plan 2010, subject to the planning framework adopted for the urban buffer adjacent to the southern extent of the Alstonville urban area.

Attachment(s)

1. Duck Creek/ Gum Creek catchment.

Attachment 1. Duck Creek/ Gum Creek catchment.



4.3 **Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report B - Summerhill Crescent, Cumbalum**

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for the Summerhill Crescent area at Cumbalum.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use zone planning framework applying to the Summerhill Crescent area. Information regarding the overall approach proposed in the draft LEP is contained in the draft LEP exhibition material set.

Under the Ballina LEP 1987, the Summerhill Crescent area, which is generally in the form of a rural residential subdivision, is zoned 1(d) Rural (Urban Investigation) Zone. The land adjoins the southern extent of the Ballina Heights urban area (Attachment 1). However, the land is not identified for residential expansion beyond the current land use in the Cumbalum Structure Plan which was adopted by Council in July 2006.

With respect to the 1(d) zone, the Standard Instrument does not incorporate an equivalent zone and therefore, Council is unable to continue to identify the land as a potential urban release area. Two primary options were considered in this regard, being the application of a rural zone which would be consistent with all other rural residential subdivisions in the shire and application of a residential zone to reflect the proximity of the subdivision to the Ballina Heights urban area. The draft LEP was exhibited on the basis of the application of an R2 Low Density Residential zone over the majority of the land (Attachment 1). The Draft LEP also incorporates a 1ha minimum lot standard identified for an R2 zone for the subdivision of the land. This provision is designed to prevent further subdivision of the land for the following reasons:

- The allotments provide for housing choice, particularly given that no further rural residential subdivision is enabled within the shire. That is, the larger lots in the locality provide a lifestyle and housing choice option that is limited in Ballina Shire.
- The Draft LEP does not enable further rural residential subdivisions in the shire and does not provide for the further subdivision of any existing rural residential estates beyond existing approvals, consistent with Council's approach to rural residential subdivision.

4.3 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report B - Summerhill Crescent, Cumbalum

- The sewer upgrade under the backlog program was not designed for a substantial increase in the number of dwellings in the area. Council's Civil Services Group has advised that the backlog sewer infrastructure was designed for in the order of 35 dwellings (there are presently 34 lots in the estate).
- Intensification of development on the land may raise concern about the distribution of traffic flow from additional dwellings, particularly given foreshadowed changes in the use of Deadmans Creek Road, and this has not been assessed.
- Intensification of development on the land may raise concerns about neighbourhood amenity, particularly in circumstances where some landholders seek to subdivide and others do not.
- Additional urban allotments beyond the planning areas for Cumbalum precincts A and B are not required in the locality.

The potential for subdivision of the land was the subject of 10 submissions which supported provisions enabling the subdivision of the land in response to the Draft LEP exhibition. A further 5 submissions were received from landholders who had not previously made a submission to the draft LEP exhibition before 17 September 2010 (being the last date for analysis of submissions to the exhibition prior to the Councillor briefings in September 2010). 1 submission was received in support of Council's proposed approach under the draft LEP, leaving 18 properties where landholders did not make a submission.

On review of the issues raised in response to the public exhibition of the draft LEP, it is considered that the proposed R2 zone has led to confusion about future land use potential and the application of a residential zone enables the use of the land for medium density style affordable housing development (under State Environmental Planning Policy (Affordable Rental Housing)). Medium density development outcomes are not considered to be consistent with the planned or intended rural residential character of the locality.

Given the above, it is recommended that the exhibited draft LEP be amended to apply an RU2 Rural Landscape zone accompanied by a 40ha minimum lot size for subdivision to the Summerhill Crescent rural residential estate. This approach is consistent with the application of rural land use zones to all other rural residential estates in the shire. This approach provides clarity with respect to the subdivision potential of the land and maintains the area as a rural residential estate, being the purpose for which the land was originally subdivided.

Alternatively, it is open to the Committee to suggest a different planning regime such as the application of lot size provisions enabling subdivision of the land or the retention of the approach taken under the exhibited draft LEP. The Committee may also seek additional information prior to proceeding. These alternative approaches are not recommended given the rationale outlined above.

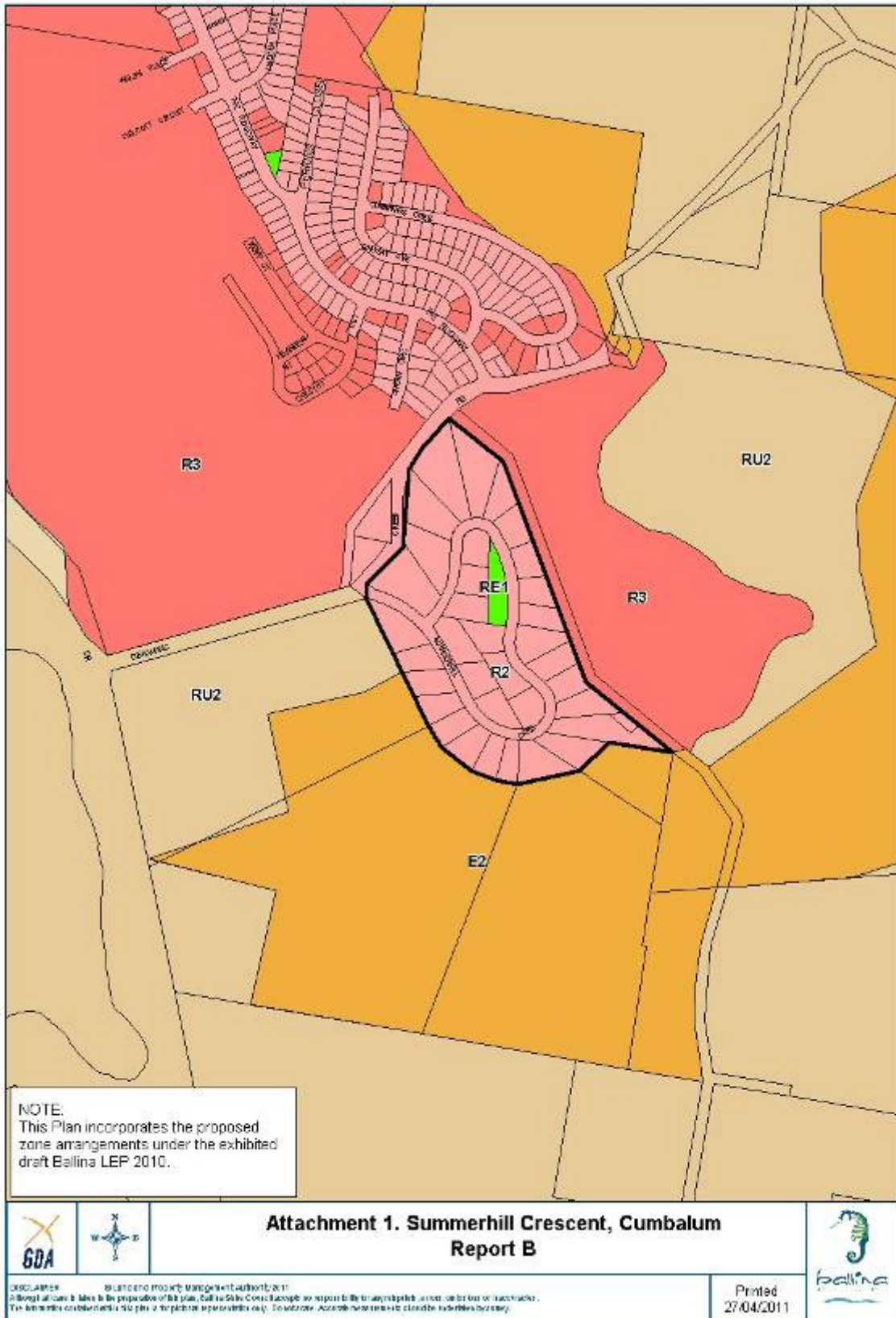
RECOMMENDATIONS

That with respect to the renewal of the Ballina local environmental plan, Council endorse the application of an RU2 Rural landscape zone and 40ha minimum lot size for subdivision for the Summerhill Crescent locality.

Attachment(s)

1. Summerhill Crescent Locality.

Attachment 1. Summerhill Crescent Locality.



4.4 **Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report C - Fawcett Street, Ballina**

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for land in the vicinity of Fawcett Park, Ballina.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use planning framework applying to land in the vicinity of Fawcett Park in Fawcett Street, Ballina. Information regarding the overall approach proposed in the draft LEP is contained in the draft LEP exhibition material set.

Under the Ballina LEP 1987, the land is zoned 3 - Business Zone. The land includes both areas of commercial development and Fawcett Park. The land use zone arrangement and associated planning framework applied in the draft LEP is based on the land on the northern side of Fawcett Street being part of the Ballina Town Centre and land on the southern side being predominately Fawcett Park but including the café/ restaurant use (Attachment 1). The proposed zone arrangement is considered consistent with the current and planned use of the land. No submissions were received specifically with respect to the proposed zone arrangement.

In considering the application of the B3 zone to the northern side of Fawcett Street and the café site, it is important to note that it is recommended elsewhere in this business agenda that the building height standard exhibited under the draft LEP be increased to 18m from 16m. This is to reflect the change in definition for building height under the Standard Instrument in order to maintain similar provisions for the overall height of buildings compared to those currently applying.

With respect to Fawcett Park, it is important to note that this land is classified as operational land for the purposes of the Local Government Act and as such, Council is able to seek the use of the land for commercial returns. The RE1 Public Recreation zone proposed for this land allows a number of commercial uses such as markets, restaurants and take away food and drink premises but it should be noted that it does not enable the wide range of business and commercial activities provided for in the B3 zone. Notwithstanding this, it is considered that the RE1 zone best reflects the planned use of this land as a key foreshore park in the shire's open space network.

4.4 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report C - Fawcett Street, Ballina

The rationale for the application of the proposed land use framework has not changed since the preparation of the draft LEP and as such, it is recommended that the Committee support the adoption of the LEP based planning framework for the land in the vicinity of Fawcett Park in Fawcett Street in accordance with the draft LEP as exhibited (subject to the endorsed approach with respect to building height in the Ballina Town Centre).

Alternatively, it is open to the Committee to suggest a different planning regime or seek additional information before proceeding. These approaches are not recommended given the rationale outlined above.

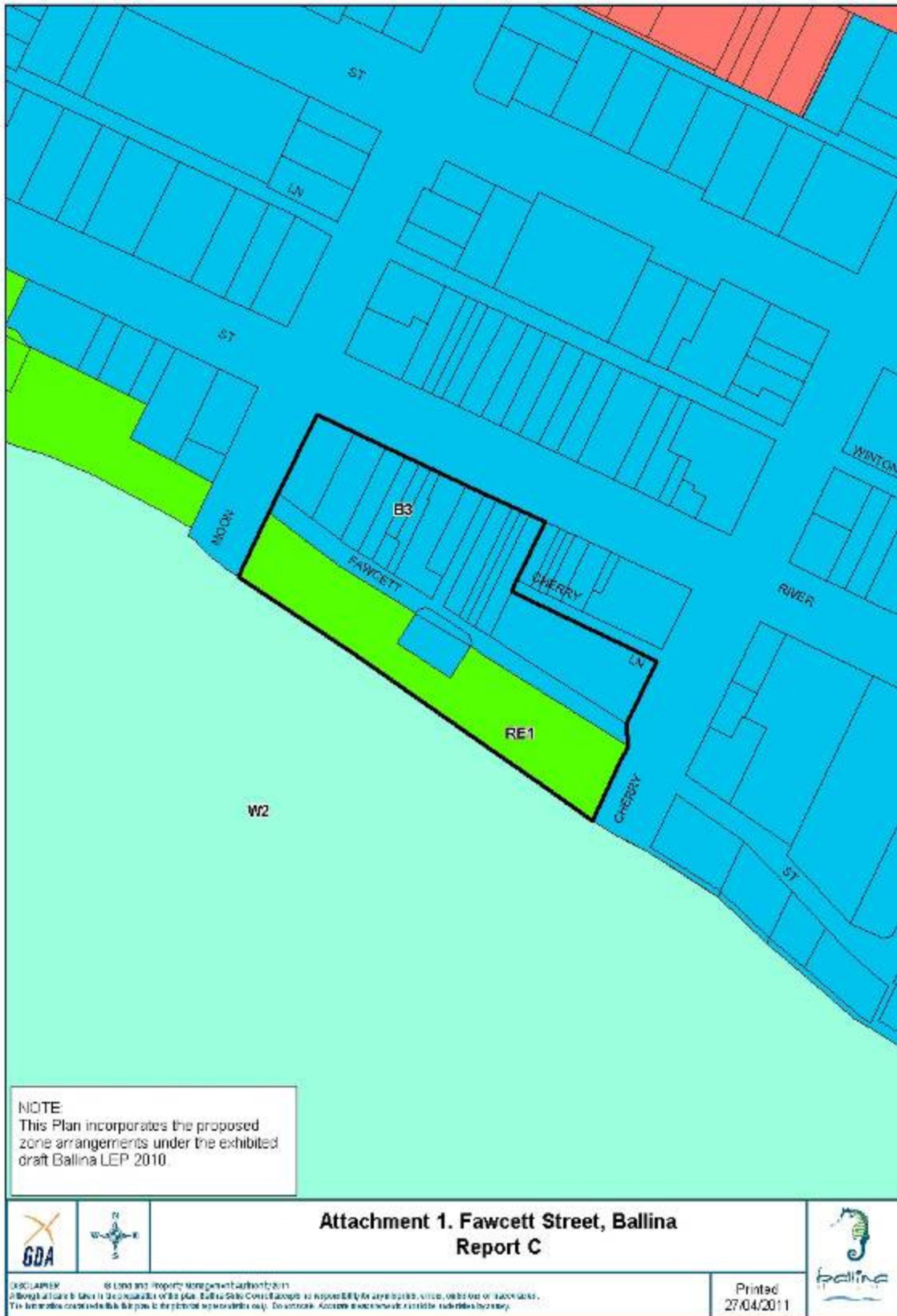
RECOMMENDATIONS

That Council endorse the planning framework for Fawcett Street in the vicinity of Fawcett Park, Ballina as exhibited in the Draft Ballina Local Environmental Plan 2010 (subject to the endorsed approach with respect to building height in the Ballina Town Centre).

Attachment(s)

1. Fawcett Street in the vicinity of Fawcett Park.

Attachment 1. Fawcett Street in the vicinity of Fawcett Park



4.5 **Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report D - North Creek Road North Ballina**

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for the southern end of North Creek Road, North Ballina.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use planning framework applying to land at the southern end of North Creek Road at North Ballina. Information regarding the overall approach proposed in the draft LEP is contained in the draft LEP exhibition material set.

Under the Ballina LEP 1987, the land is zoned 1(d) Rural (Urban Investigation) Zone. The neighbourhood shopping centre that includes Aldi is located south of the land, caravan park uses (including permanent residents) are located to the west and industrial land zoned land is located to the north and east.

With respect to the 1(d) zone, the Standard Instrument does not incorporate an equivalent zone and therefore, Council is unable to continue to identify the land as a potential urban release area. Two primary options were considered in this regard in preparing the new LEP, being the application of an industrial zone and application of a residential zone. The draft LEP did not adopt an industrial zone primarily on the basis that it would introduce an additional industrial interface to the caravan park uses immediately to the west of the land. No submissions were received specifically with respect to the proposed planning framework in response to the exhibition of the draft LEP. However, Council has previously received representations during the preparation of the draft LEP seeking application of an alternate zone to the land that reflects land use in the area.

Having regard for this, an R3 Medium Density Residential zone was applied to the land on the basis that it is consistent with the residential uses to the west and enjoys some buffering to industrial uses through the presence of an open space corridor to the north and North Creek Road separates the land from uses to the east (Attachment 1). The R3 zone is accompanied by an 800m² minimum lot standard for subdivision and an 8.5m building height standard. These standards would permit subdivision of all but one of the allotments into two lots and enables more intensive forms of residential land uses including residential flat buildings, subject to Council's consent.

4.5 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report D - North Creek Road North Ballina

The rationale for the application of the proposed land use framework has not changed since the preparation of the draft LEP and as such, it is recommended that the Committee support the adoption of the LEP based planning framework for the southern end of North Creek Road at North Ballina in accordance with the draft LEP as exhibited. Under this approach, it should be noted that lawful existing land uses (such as industrial activities) may continue operation subject to continuing use rights.

Alternatively, it is open to the Committee to apply a different planning regime such as the application of lot size provisions preventing subdivision of the land or the application of a low density residential zone. The Committee may also seek further information before proceeding. These approaches are not recommended given the rationale outlined above.

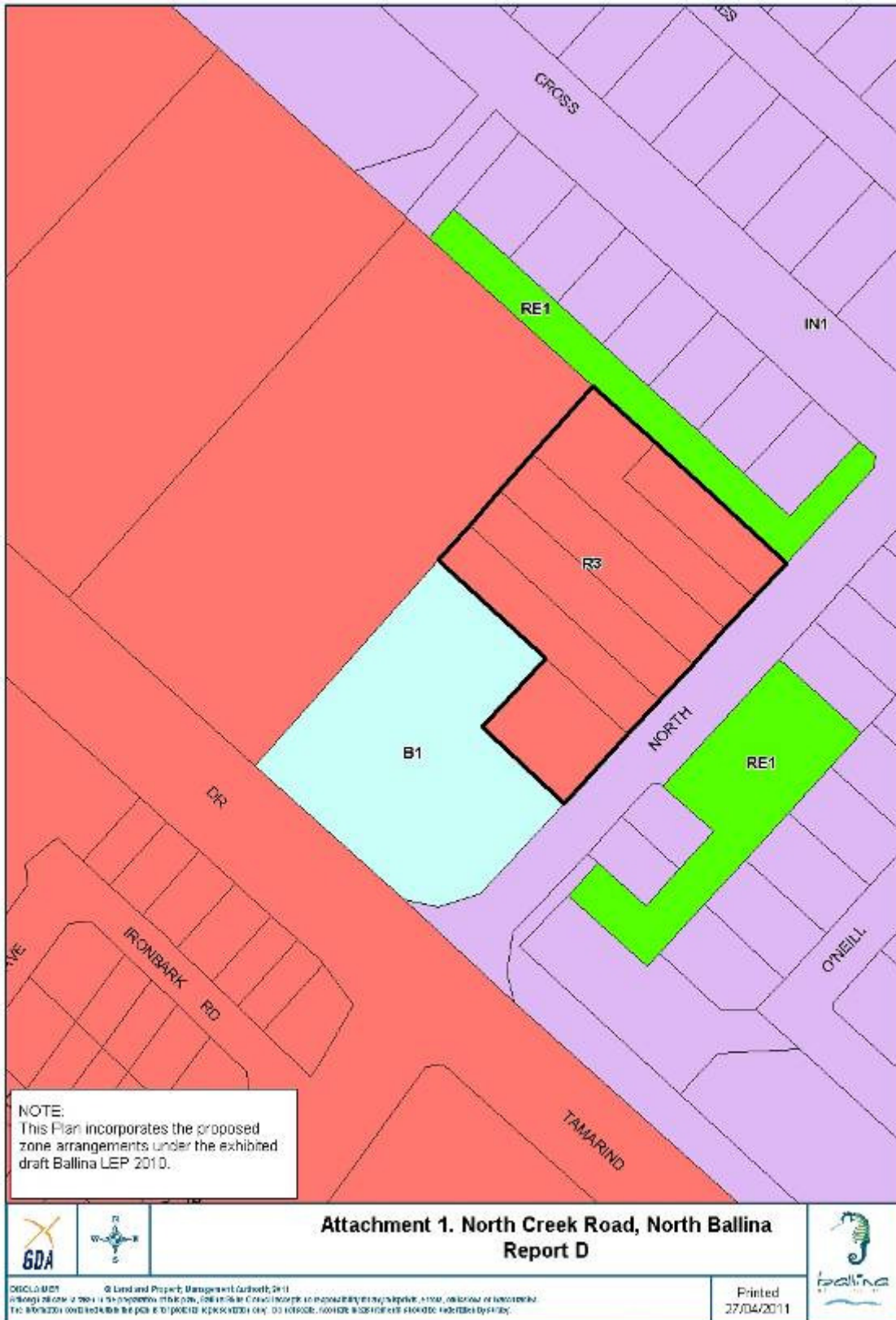
RECOMMENDATIONS

That Council endorse the planning framework for the southern end of North Creek Road at North Ballina as exhibited in the Draft Ballina Local Environmental Plan 2010.

Attachment(s)

1. North Creek Road (South), North Ballina.

Attachment 1. North Creek Road (South), North Ballina.



4.6 **Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report E - Alstonville Village Centre**

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for land in the Alstonville Village Centre.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use planning framework applying to land in the Alstonville Village Centre. Information regarding the overall approach proposed in the draft LEP is contained in the draft LEP exhibition material set.

Under the Ballina LEP 1987, the land is zoned 2(b) - Village Area Zone and it is identified in the Ballina Combined DCP primarily as C2 District Centre. The Draft LEP proposes the application of a B2 Local Centre zone to the majority of the area (Attachment 1). The business zones have been applied to town and village settlements in the shire on the basis of the adopted retail hierarchy for the shire. That is, the Ballina Town Centre and Kerr Street retail precinct are subject to a B3 Commercial Core zone to reflect their status at the top of the retail hierarchy.

The village centre in Alstonville is identified as a key commercial area in the shire but subordinate to Ballina's core commercial areas. As such, the B2 zone has been considered appropriate to delineate the area in terms of the retail hierarchy and clarify its extent with respect to surrounding land uses. No submissions were received specifically with respect to the proposed planning framework in response to the exhibition of the draft LEP. However, Council has previously received a request for the application of as commercial zone to land in Robertson Street (see below).

The B2 zone is supported by a range of commercial land use permissibilities, a building height standard of 9m (consistent with that applied in Lennox Head for some time) and a minimum lot size for Torrens title subdivision of 800m² that seeks to avoid fragmentation of the land holdings. The application of the B2 zone also includes the addition of 3 properties in Robertson Street where it is considered that the properties are more closely associated with the village centre than the surrounding residential uses.

With respect to the 9m height standard, it has been identified that several allotments did not receive this designation under the draft LEP but should have in recognition of their location in the village centre. As such, it is recommended that the draft LEP is amended to apply a 9m building height standard to the site of Crawford House and Lots 77, 78 and 79 DP 247578 in Robertson Street Alstonville.

The rationale for the application of the proposed land use framework has not changed since the preparation of the draft LEP and as such, it is recommended that the Committee support the adoption of the overall LEP based planning framework for the Alstonville Village Centre in accordance with the draft LEP as exhibited, but with amendment to apply a 9m building height standard to the properties identified above.

Alternatively, it is open to the Committee to suggest a different planning regime or seek further information before proceeding. These approaches are not recommended given the rationale outlined above.

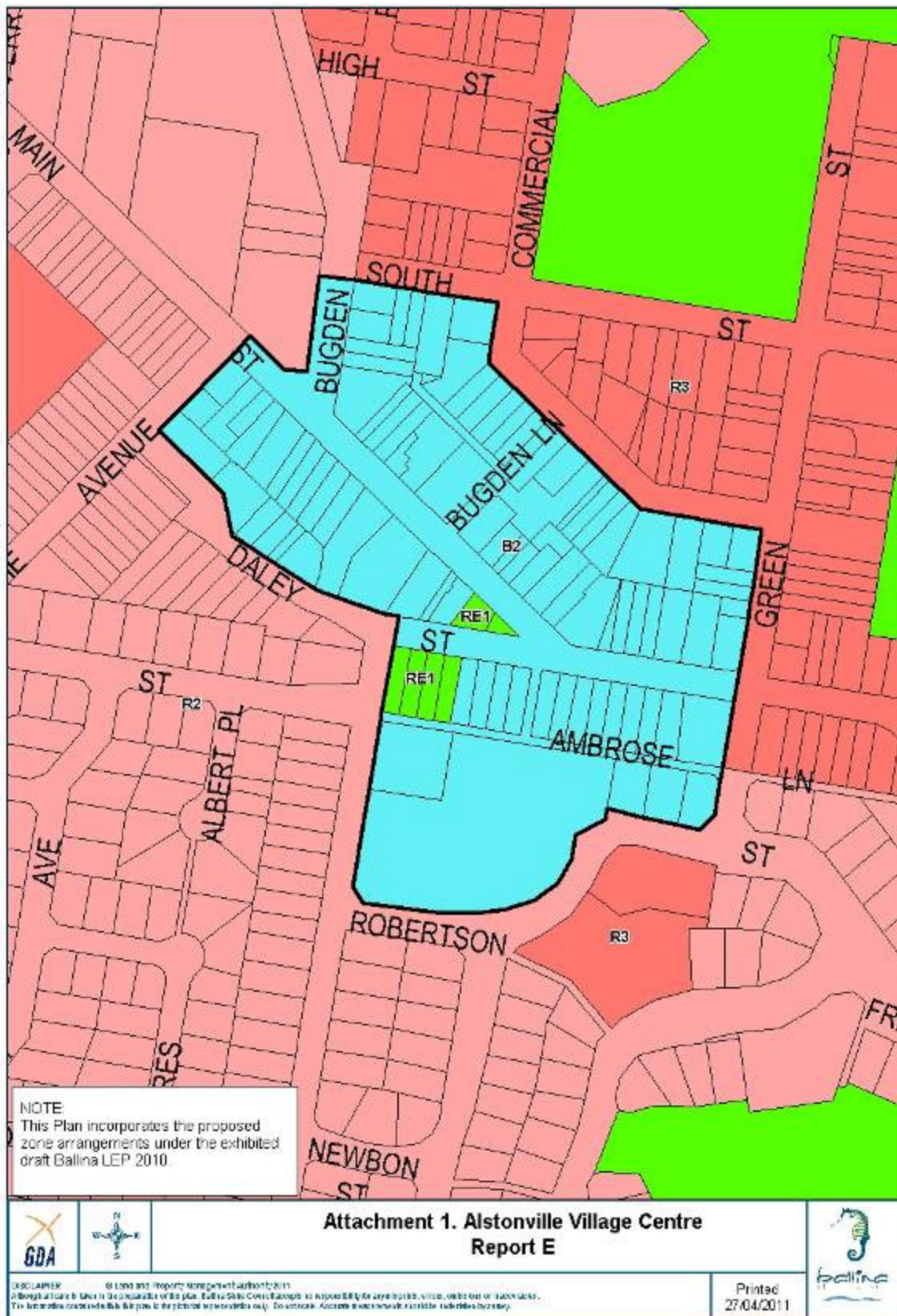
RECOMMENDATIONS

That Council endorse the planning framework for the Alstonville Village Centre as exhibited in the Draft Ballina Local Environmental Plan 2010 but with amendment to apply a 9m building height standard to the site of Crawford House and Lots 77, 78 and 79 DP 247578 in Robertson Street Alstonville.

Attachment(s)

1. Alstonville Village Centre.

Attachment 1. Alstonville Village Centre.



4.7 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report F - Brighton Street and Easton Place, East Ballina

4.7 Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report F - Brighton Street and Easton Place, East Ballina

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for residential land in Brighton Street and Easton Place, East Ballina.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use planning framework applying to residential areas in Brighton Street and Easton Place in East Ballina. Information regarding the overall approach proposed in the draft LEP is contained in the draft LEP exhibition material set .

Under the Ballina LEP 1987, the land is zoned 2(a) - Living Area Zone and it is identified in the Ballina Shire Combined DCP as M1 Medium Density. The Draft LEP proposes the application of an R3 Medium Density Residential zone to the land (Attachment 1). This zone has been applied in recognition of the DCP control plan area designation attributable to the land. The methodology for the application of residential zones in existing areas of the shire utilised the DCP control plan area designations in most instances in order to maintain the existing planning framework for the land as far as possible under the Standard Instrument. A low density zone has been applied to areas with low density designations and a medium density zone has been applied to areas where duplex, medium density and high density DCP designations are currently applicable. The application of the R3 zone to the subject land is consistent with this methodology. No submissions were received specifically with respect to the proposed planning framework for the subject land.

The R3 zone is supported by a range of residential land use permissibilities, a building height standard of 8.5m (consistent with other residential areas in the shire) and a minimum lot size for Torrens title subdivision of 800m².

The rationale for the application of the proposed planning framework has not changed since the preparation of the draft LEP and as such, it is recommended that the Committee support the adoption of the LEP based planning framework for the residential areas in Brighton Street and Easton Place in accordance with the draft LEP as exhibited.

Alternatively, it is open to the Committee to suggest a different planning regime or seek further information before proceeding. These approaches are not recommended given the rationale outlined above.

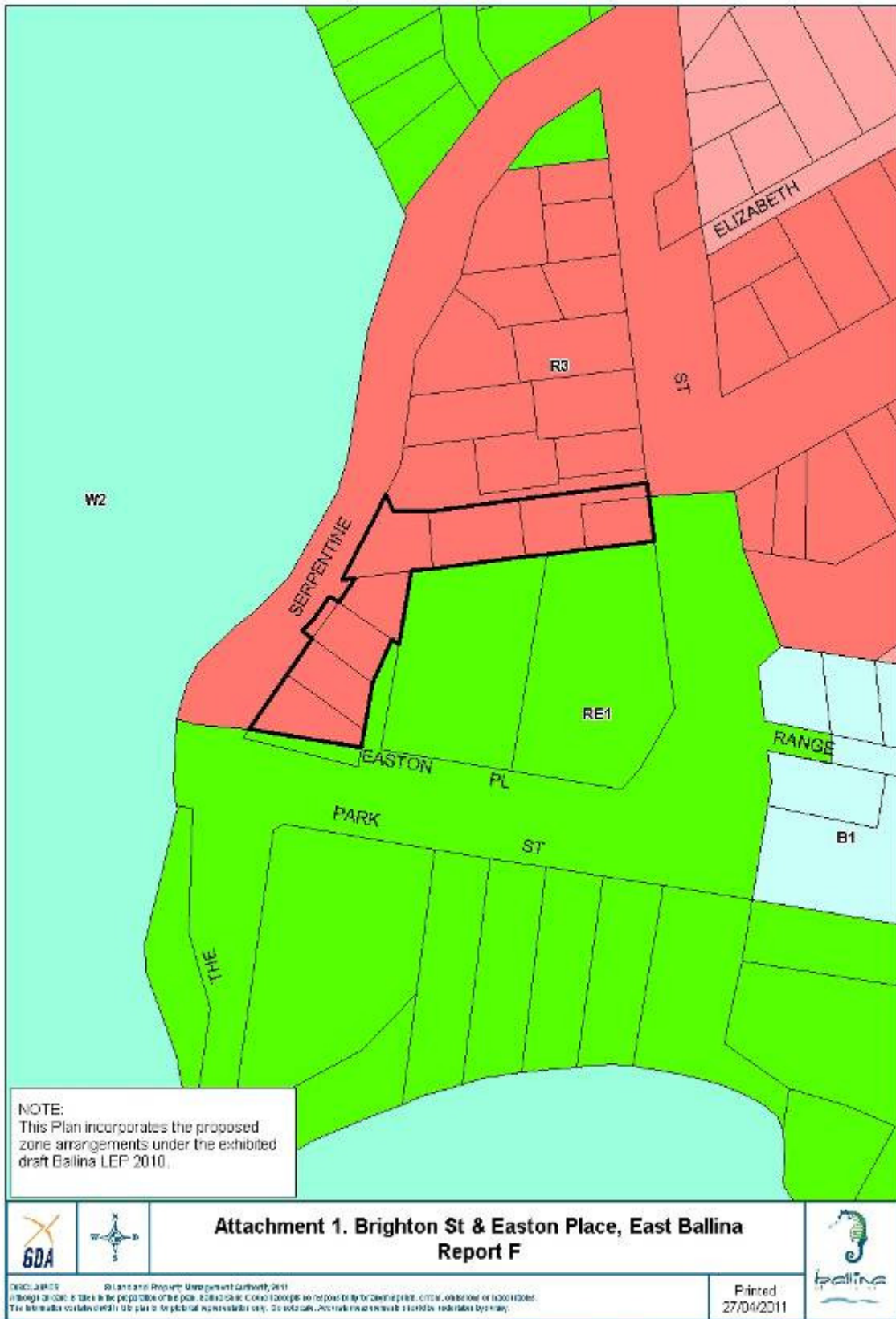
RECOMMENDATIONS

That Council endorse the planning framework for the residential areas in Brighton Street and Easton Place, East Ballina as exhibited in the Draft Ballina Local Environmental Plan 2010.

Attachment(s)

1. Brighton Street and Easton Place, East Ballina.

Attachment 1. Brighton Street and Easton Place, East Ballina.



4.8 **Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report G - Oakland Avenue West Ballina**

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for land at the southern end of Oakland Avenue, West Ballina.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use planning framework applying to residential areas at the southern end of Oakland Avenue, West Ballina. Information regarding the overall approach proposed in the draft LEP is contained in the draft LEP exhibition material set.

Under the Ballina LEP 1987, the land is zoned 2(a) - Living Area Zone and it is identified in the Ballina Shire Combined DCP as L2 Low Density (dwellings and dual occupancies).

The draft LEP proposes the application of an R2 Low Density Residential zone to the land (Attachment 1). This zone has been applied in recognition of the DCP control plan area designation attributable to the land. The methodology for the application of residential zones in existing areas of the shire utilised the DCP control plan area designations in most instances in order to maintain the existing planning framework for the land as far as possible under the Standard Instrument. A low density zone has been applied to areas with low density designations and a medium density zone has been applied to areas where duplex, medium density and high density DCP designations are currently applicable. The application of the R2 zone to the subject land is consistent with this methodology. No submissions were received specifically with respect to the proposed planning framework for the subject land.

The R2 zone permits the erection of several forms of residential dwelling including dwelling houses but does not enable a range of uses that have been incorporated into the medium density zone including dual occupancies (currently known as duplexes) and residential flat buildings. The proposed building height standard in the zone is 8.5m (consistent with other residential areas in the shire) and the minimum lot size for Torrens title subdivision is identified as 600m². Minimum lot standards have been established with regard for the current planning provisions applicable to the land.

The rationale for the application of the proposed planning framework has not changed since the preparation of the draft LEP and as such, it is recommended that the Committee support the adoption of the LEP based planning framework for the land at the southern end of Oakland Avenue West Ballina in accordance with the draft LEP as exhibited.

Alternatively, it is open to the Committee to suggest a different planning regime or seek additional information before proceeding. These approaches are not recommended given the rationale outlined above.

RECOMMENDATIONS

That Council endorse the planning framework for the southern end of Oakland Avenue, West Ballina as exhibited in the Draft Ballina Local Environmental Plan 2010.

Attachment(s)

1. Oakland Avenue, West Ballina.

Attachment 1. Oakland Avenue, West Ballina.



4.9 **Ballina LEP Renewal - Public Exhibition and LEP Finalisation - Report H - Camoola Avenue, Ballina**

File Reference	Ballina LEP Renewal
CSP Linkage	Diverse and balanced land use
Delivery Program	Strategic Planning
Objective	To seek direction from the Committee with respect to the proposed planning framework for land in Camoola Avenue, Ballina.

Background and Information

The Draft Ballina Local Environmental Plan 2010 (draft LEP) proposes a change to the land use planning framework applying to land adjacent to Camoola Avenue, Ballina. Information regarding the overall approach proposed in the draft LEP is contained in the draft LEP exhibition material set.

Under the Ballina LEP 1987, the land is zoned 2(a) - Living Area Zone and it is identified in the Ballina Shire Combined DCP as M1 Medium Density. The draft LEP proposes the application of an R3 Medium Density Residential zone to the land (Attachment 1). This zone has been applied in recognition of the DCP control plan area designation attributable to the land. The methodology for the application of residential zones in existing areas of the shire utilised the DCP control plan area designations in most instances in order to maintain the existing planning framework for the land as far as possible under the Standard Instrument. A low density zone has been applied to areas with low density designations and a medium density zone has been applied to areas where duplex, medium density and high density DCP designations are currently applicable. The application of the R3 zone to the subject land is consistent with this methodology. No submissions were received specifically with respect to the proposed planning framework for the subject land.

The R3 zone is supported by a range of residential land use permissibilities, a building height standard of 8.5m (consistent with other residential areas in the shire) and a minimum lot size for Torrens title subdivision of 800m².

The rationale for the application of the proposed planning framework has not changed since the preparation of the draft LEP and as such, it is recommended that the Committee support the adoption of the LEP based planning framework for the land in the vicinity of Camoola Avenue, Ballina in accordance with the draft LEP as exhibited.

Alternatively, it is open to the Committee to suggest a different planning regime or seek additional information before proceeding. These approaches are not recommended given the rationale outlined above.

RECOMMENDATIONS

That Council endorse the planning framework for the land in the vicinity of Camoola Avenue, Ballina as exhibited in the Draft Ballina Local Environmental Plan 2010.

Attachment(s)

1. Camoola Avenue, Ballina.

Attachment 1. Camoola Avenue, Ballina

