



## **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 **Thursday 1 December 2011 commencing at 4.30 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**

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

4. Committee Reports

4.1 **Ballina LEP Renewal - Re-exhibition and LEP Finalisation - Principal Report**

<b>File Reference</b>	Ballina LEP Renewal - Principal Report
<b>CSP Linkage</b>	Diverse and balanced land use
<b>Delivery Program</b>	Strategic Planning
<b>Objective</b>	To provide the Committee with an overview of the public exhibition of the Draft Ballina LEP 2011 and seek direction with respect to the finalisation of the draft plan.

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**1.0 Previous LEP Reporting - Draft Ballina LEP 2010**

The outcomes associated with the public exhibition of the Draft Ballina Local Environmental Plan 2010 were reported to Council's Environmental and Sustainability Committee in May 2011. Following the consideration of the reporting and deputations from stakeholders, the Committee recommended the following to Council:

- "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 & Infrastructure.*
4. *That Council seek written advice from the Department of Planning & 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 & 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.*
8. *That Council conduct a series of workshops during the period from now until completion of receipt and review of further submissions to the re-exhibition. Each workshop is to cover a major item or group of items of the DLEP and submissions."*

Council adopted the recommendation of the Committee at its May 2011 Ordinary Meeting [Minute No.260511/23-28]. Given the Council's resolution, the draft LEP has been the subject of a re-exhibition period (see below) and it is important to note that a number of matters were resolved through the May decision of Council. Items that were resolved as a result of the May 2011 resolution are generally not canvassed further by this report unless related to the finalisation of the draft 2011 LEP.

In accordance with item 3 of the adopted May 2011 recommendations, this report addresses the public exhibition of the draft LEP that has been undertaken having regard for items 1 and 2.

### **1.1 Purpose of Report and Structure**

The purpose of this report is to provide the Committee with information regarding the submissions received in response to the 'second round' public exhibition of the draft Ballina Local Environmental Plan 2011 (draft LEP) and seek direction with respect to the finalisation of Council's draft LEP for submission to the Department of Planning & Infrastructure (DP&I).

In considering this report, it should be noted that several elements of the draft 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 has been disclosed. Therefore, this principal report should be read in association with the sub-reports contained in this agenda.

To assist in the review of the reporting, Councillors may benefit from utilising their Councillor LEP Resource Folders and various LEP materials that have been distributed to Councillors digitally.

### **2.0 Key Issues**

- Matters arising in response to the public exhibition of the Draft Ballina Local Environmental Plan 2011.
- Finalisation of the Draft Ballina Local Environmental Plan for submission to the NSW Department of Planning & Infrastructure.

### **3.0 Background to the LEP Renewal**

#### **3.1 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 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.

### **3.2 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 (Figure 1):

- Ballina Shire Council resolved on 28 September 2006 to formally commence preparation of a new LEP under Section 54 of the EP&A Act.

#### 4.1 Ballina LEP Renewal - Re-exhibition and LEP Finalisation - Principal Report

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- 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 between 15 March 2010 and 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.
- Council resolved to undertake the re-exhibition of its draft local environmental plan due to the scope and nature of the adopted amendments, having regard for Section 68 of the EP&A Act. The plan was re-exhibited as the Draft Ballina Local Environmental Plan 2011 between 19 September 2011 and 19 October 2011.

The remaining steps in the process in order to complete the preparation and implementation of the new LEP for the shire are as follows (Figure 1):

- 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 & Infrastructure. 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.



## 4.1 Ballina LEP Renewal - Re-exhibition and LEP Finalisation - Principal Report

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's preparation.

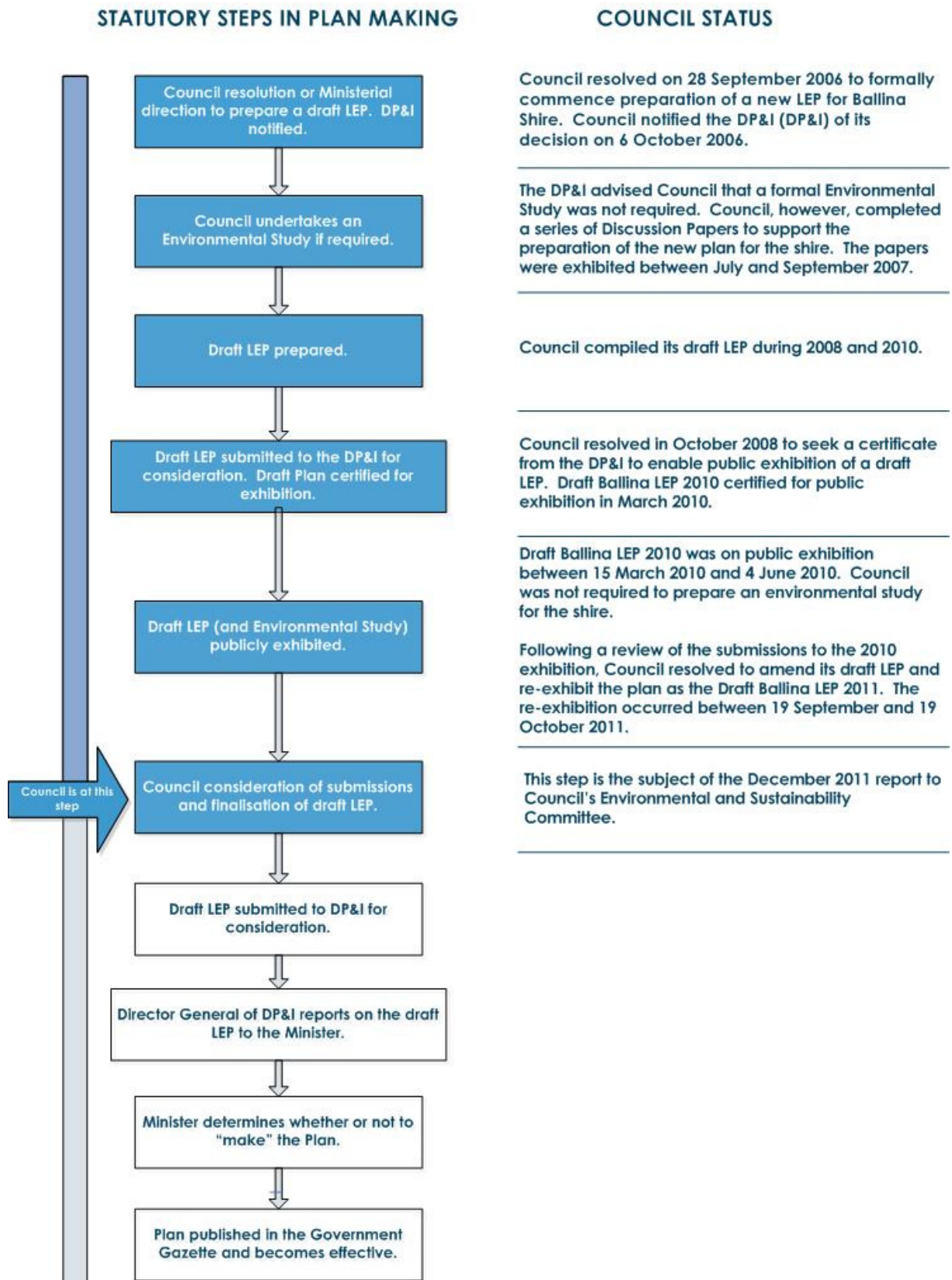


Figure 1: Summary of Statutory Steps in the Plan Making Process

### 3.3 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 (see also Table 1 in Section 5 for overview of community engagement initiatives):

- Internal engagement, including with Council's Regulatory Services Group and executive management.
- Councillor engagement, including 14 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 containing key LEP materials including reports, workshop materials and policy rationale information.
- Compilation of an LEP Rationale and Methodology Report which comprises 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.

Significantly, the preparation of the draft LEP has required a substantial resource commitment from Council in both cash and staff time in particular.

### 3.4 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 which 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.

### 4.0 NSW Department of Planning & 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 from this office 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 a meaningful way to many 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 were identified in the May 2011 report to the Environmental and Sustainability Committee. These issues included the following key items:

- Limitations on boundary adjustment subdivision provisions under the Standard LEP Instrument;
- Provision for subdivision associated with residual lots arising from new urban releases and 'split zone' lots;
- 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); and
- Uncertainty over the role of local government in vegetation management in rural and environmental protection areas.

In considering the above, the Committee made the following recommendation which was adopted by Council at its May 2011 Ordinary Meeting [Minute No.260511/23]

*"That Council seek written advice from the Department of Planning & 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"*

Council received correspondence from the DP&I addressing the above items in August 2011 (Attachment 1). The advice and status with respect to each of the issues is summarised below:

### **4.1 Boundary Adjustment Subdivision**

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 the majority of rural 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 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 and that boundary adjustments in certain circumstances are reasonable from a policy perspective.

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 the address of 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 although the DP&I has advised that it has commenced the necessary review of the Standard Instrument in relation to boundary adjustment subdivision.

Importantly, Council is 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. The potential for inconsistency is considered an inappropriate risk which 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 understanding that the DP&I is continuing to promptly advance this issue.

### **4.2 *Split zone and residual lot subdivision***

Note:

- Split zone lot refers to a lot that is subject to two or more land use zones.
- Residual lot refers to a land parcel that is left over from a subdivision (typically it refers to rural land left over after a subdivision for urban purposes).

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.

The LEP Project Team is of the view that this issue is particularly 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.

In considering the above, it should be noted that the DP&I has advised that the creation of residual lots that do not meet the relevant standard can be approved under the LEP as the residual land will not have been subdivided. The LEP Project Team is concerned that the legal basis for this position is unclear and may be open to challenge, particularly given that residual lots will have new dimension and area characteristics and a new property description, suggesting that the residual lot is a new lot that has been the subject of a subdivision.

The LEP Project Team is of the view that the optimal way in which to address this issue is to include a provision in the LEP that clearly enables the creation of split zone and residual lots in criteria-based circumstances to provide improved flexibility in the instrument and enhanced certainty about when such lot creation will be considered by Council. It is noted that the DP&I has acknowledged this position of Council. The DP&I has also indicated that it raises no objection to split zone subdivision where minimum lots size standards are not met in the delivery of strategically planned urban development outcomes. The DP&I has indicated that this issue is the subject of review.

The DP&I has suggested that one way in which councils can address this issue in the meantime 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.

In considering the above, it should also be noted that the DP&I has previously prepared a model provision aimed at addressing 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. The potential for inconsistency is considered an inappropriate risk which can lead to invalidation of the finalised plan.

Notwithstanding that this issue is yet to be resolved, it is recommended Council progress its LEP on the understanding that the DP&I continue to promptly advance this issue, similar to the approach recommended with respect to boundary adjustments.

### 4.3 *Structure and form of land use definitions*

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.

February 2011 amendments to the Standard Instrument provided for some improvement in the definition set and its structure. However, 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, staff is 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, staff remain concerned that the relationships between definitions, where that relationship is expressed via a "note", remain open to challenge and interpretation.

The LEP Project Team has 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. With respect to this, the Standard Instrument now 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. This is important as the set of land use terms determines how proposed development is characterised and as such, the permissibility of land use proposals in the shire.

Council's exhibited draft LEP seeks to address the clarification of land use definitions by including a note in the LEP that identifies the list of land use terms for the purposes of the land use tables to assist plan users. In the absence of this note, the distinction between land use and other terms may not be clear to plan users.

Aside from the general issues associated with the definition set, Council has also identified a particular concern with the categorisation of wholesale plant nurseries. 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'. Unfortunately though, Council has been unable to distinguish between wholesale plant nurseries and other forms of horticulture in the draft LEP.

Notwithstanding the above, it is considered unlikely that there will be further significant change in the structure and form of the LEP definition set in the foreseeable future. Given this, Council will need to work with the established definition set in order to implement its new LEP despite the limitations noted above. However, it is recommended that Council continue to make submissions to DP&I where the opportunity arises in relation to concerns associated with the structure of the definitions and the status of the notes.

### **4.4 Vegetation management**

Council has engaged the DP&I on numerous occasions seeking clarification in relation to the interpretation of vegetation management provisions associated with the Standard Instrument. The following provides a summary of the history and current Council interpretation associated with the standard vegetation management provisions established by the DP&I.

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 (except as discussed below in relation to 2011 Standard Instrument amendments). This effectively means that Council will not require development consent for the removal of native vegetation on land in rural and environmental protection zones (unless it 'switches on' the available exception to this outlined below). The Catchment Management Authority (CMA) will be the approval authority for such vegetation removal and Office of Environment and Heritage (OEH) 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 OEH available to administer the framework and to follow-up breaches. Unfortunately, Council is of the understanding that this is not currently the case.

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. Don Page MP also made representations to the Minister for Planning & Infrastructure on Council's behalf in relation to vegetation management (see Ministerial response in Attachment 2).

February 2011 amendments to the Standard LEP included amendments to the vegetation management provisions contained in Clause 5.9. The Clause was amended from "optional" to "compulsory". An additional optional subclause was also introduced which enables Council to require development consent for clearing associated with RAMAs and regrowth (as defined under the NV Act) 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.

The optional subclause has been included in Council's exhibited draft LEP. The clause appears reliant on the identification of specific vegetation in Council's vegetation management DCP to cause the clause to have effect. In essence, this means that Council has the flexibility to determine under what circumstances, if any, it would seek to regulate RAMA and regrowth based clearing in environmental protection zones under its DCP. As such, Council may decide on its preferred approach separate to the LEP and without direct intervention from the DP&I.

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. In this regard, the DP&I has indicated that a practice note is being prepared to provide guidance although it is not yet available. Notwithstanding, from the information available to Council to date, it is considered that the interpretation outlined above is consistent with the intended outcomes of the provisions.

Having regard for the above, it is recommended that Council maintain the inclusion of clause 5.9 as exhibited and further consider vegetation management as part of its development control plan framework.

### **4.5 DP&I Issue Summary**

Council staff has extensively engaged with the DP&I throughout the LEP renewal process in relation to a number of key 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 draft 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. However, it is open to Council to decline to submit its draft LEP to the DP&I for finalisation pending satisfactory resolution of identified outstanding issues of concern.

### 5.0 Information

#### 5.1 2010 Exhibition Overview

The draft LEP 2010 was publicly exhibited between 15 March 2010 and 4 June 2010. Extensive information regarding the exhibition process and outcomes is contained in the May 2011 report to Council's Environmental and Sustainability Committee. However, Table 1 provides a brief overview of the exhibition process and outcomes:

**Table 1: Draft LEP Exhibition Summary**

<b>Exhibition Element</b>	<b>Notes</b>
<i>Exhibition Length:</i>	82 days
<i>Exhibition Locations:</i>	6 locations + dedicated website
<i>Engagement Mechanisms:</i>	Exhibition launch, display material, exhibition guide, counter enquiry system, project website, dedicated phone line and business card, project branding, media engagement, stakeholder group briefings, street stalls, targeted notifications, advertising and interactive mapping.
<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>Community Briefings:</i>	15 + 4 street stalls
<i>Government Briefings:</i>	1 x State Government agencies and 1 x neighbouring councils
<i>Enquiries:</i>	232 over telephone and counter
<i>Community Submissions:</i>	195
<i>Government Agency Submissions:</i>	12

### **5.2 2011 Re-exhibition Overview**

As outlined above, Council undertook the re-exhibition of its Draft Ballina Local Environmental Plan 2011 between 19 September and 19 October 2011. The re-exhibition was advertised in local media and through Council's Community Connect newsletter. Those who previously made submission to the 2010 plan were also advised of the re-exhibition along with relevant government agencies. The following provides an overview of the submissions received, with a detailed analysis of submissions and associated recommendations contained in Attachments 3, 4, 5 and 6. Copies of the submissions received have been distributed to Councillors under separate cover.

With respect to the submissions analysis, there are a number of circumstances where no change is recommended at this time. However, in some cases there may be merit in further examining the requested outcome. With respect to such matters, it is suggested that the consideration of the proposed outcome be by way of a planning proposal (rather than direct amendment to the comprehensive LEP at its current stage of preparation). In many of the circumstances it is considered necessary to obtain further and more detailed information and appropriate to enable specific review of the proposal by the community (i.e. public exhibition). The address of submissions in the attachments to the reporting identify circumstances where a planning proposal process may be an appropriate course of action.

### **5.3 Community Submissions**

Council's official submissions period in response to the public exhibition of the draft LEP was between 19 September 2011 and 19 October 2011. However, Council continued to receive and process submissions as items in response to the public exhibition up until 4 November 2011. Submissions made pre re-exhibition were also considered. On the basis of the above, 96 submissions have been reviewed in relation to the re-exhibition of the draft LEP. Analysis of the submissions is contained in Attachment 3.

The majority of submissions received in response to the re-exhibition of the draft LEP relate to site specific issues and considerations. Of the submissions received, it is noteworthy that approximately 18% of submissions received related to the planning framework proposed for the Summerhill Crescent locality. This item is the subject of a separate report to the Committee located elsewhere in this business paper.

### **5.4 Government Agency Submissions**

Information packages relating to the draft LEP were forwarded to relevant State Government agencies. Submissions were received in response to the re-exhibition of the draft 2011 from eleven public authorities as follows:

- Lismore City Council
- Richmond Valley Council
- NSW Department of Primary Industries: Catchments & Lands
- NSW Marine Parks Authority

- NSW Office of Environment and Heritage
- NSW Roads and Traffic Authority
- NSW Rural Fire Service
- Department of Trade and Investment: Resources and Energy
- NSW Primary Industries
- Rous Water
- NSW Family and Community Services: Housing NSW

Attachment 4 contains a summary of the issues raised in the submissions from the agencies and associated recommendations.

### **5.5 Staff and DP&I Identified Issues**

In addition to the matters raised in stakeholder submissions (both community and government based), LEP project staff and Council's liaison officer at the Grafton regional office of the DP&I have also identified several items for further consideration with respect to the finalisation of the plan. These items are outlined in Attachments 5 and 6 along with recommendations for amendments prior to the finalisation of the LEP.

### **5.6 Flooding Provisions**

One of the matters identified by The LEP Project Team in addition to the matters raised in the submissions is the form of the flooding provision in Part 7 of the draft LEP. 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 would better reflect the likely outcomes of Council's Floodplain Management Plan process which is underway. Unfortunately, the timing for completion of the management plan process is not known.

Council has previously indicated to the DP&I that it would revert to the Department's model clause if its local 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.

It was hoped at the time the draft LEP was prepared that Council's floodplain management planning process would be largely complete following the public exhibition of the draft LEP. However, Council has not yet resolved its floodplain management policy. As such, it is recommended that Council amend the draft LEP to adopt the relevant provisions of the DP&I's model clause (a copy of the DP&I model clause and associated notes for implementation are contained in Attachment 7).

### **5.7 Councillor Re-exhibition Briefing**

In accordance with the adopted recommendation of Council's May 2011 Environmental and Sustainability Committee meeting, a series of three workshops were held with Councillors on 29 and 31 August and 3 September 2011. The workshops addressed key aspects of the draft 2011 and several key issues arising during the preparation of the draft instrument.

### **5.8 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 has received five 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:

- Ballina Waterways Pty Ltd, Burns Point Ferry Road, Lot 4 DP 537419, West Ballina (submission 16a).
- North Angels Beach Development (Ballina) Pty Ltd, Angels Beach Estate, Lots 22, 23 and 24 DP 1150518, East Ballina (submission 68).
- Supbrook, Riverbend, Lot 12 DP 1092324, West Ballina (submission 70).
- Ballina HSC Pty Ltd, Part Lot 11 DP 1011575, West Ballina (submission 72).
- Live International, Condon Hill, Lot 21 DP 1007134, Lennox Head (submission 73).

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.

### 5.9 *Reclassification 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 Pearce, 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.

### **5.10 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.
- Proposed land use planning framework at the southern end of North Creek Road in Ballina.
- Proposed land use planning framework for land in Fawcett Street.
- Proposed land use planning framework for the Alstonville village centre.
- Proposed land use planning framework in the Brighton and Easton Street locality, East Ballina.
- Proposed land use planning framework over the southern end of Oakland Avenue, West Ballina.
- Proposed land use planning framework in Camoola Avenue, Ballina.

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.

### **5.11 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 & Infrastructure.

- 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 the date the new LEP is made by the Minister for Planning & Infrastructure. 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).

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

Upon the making of the new LEP by the Minister for Planning and Infrastructure, 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, it is intended that certain elements of the new DCP framework will be completed prior to the making of the new LEP.

### 6.0 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* (EP&A Act) 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.

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 for the majority of the period 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.

### 7.0 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.

### 8.0 Options

1. Finalise the Draft Ballina LEP 2011 and submit 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 some of 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.

*Note:* the process associated with DP&I review and finalisation of the LEP is outlined in relation to option 2.

2. Finalise the Draft Ballina LEP 2011 with amendment and submit to the DP&I.

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.

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 DP&I for completion. A disadvantage is that there are several issues associated with the Standard Instrument that are considered to warrant further attention. 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.

The above approach provides for the completion of the LEP renewal program. This is the recommended approach as the plan is considered to be suitable for implementation (notwithstanding there remain some outstanding concerns). Implementation provides for improved certainty and direction with respect to the local planning framework. In particular, progress to implementation of the new LEP will remove the current need for dual assessment of development applications under the 1987 LEP and the draft LEP, allow resources to be applied to other key projects such as the renewal of Council's DCP and provide closure to what has been an extensive analysis and stakeholder engagement process over 6 years.

Under this scenario Council would submit its final draft LEP along with required reporting to the DP&I. The LEP will then be the subject of review by the DP&I from a policy, legal and technical perspective and by Parliamentary Counsel from a legal perspective. These review processes may lead to the amendment of the LEP prior to its finalisation by the DP&I. Amendments may be made by the DP&I without further liaison with Council.

3. Defer submission of the Draft Ballina Local Environmental Plan 2011 to the DP&I.

Under this scenario, Council may elect to defer the finalisation of the LEP for submission to the DP&I 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. It should be noted that under this scenario, the Minister for Planning & Infrastructure may elect to progress the plan to completion independent of Council's decision.

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.

### **8.1 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. There may also be State Government initiated amendment to the Standard LEP Instrument which will in turn amend the Ballina LEP.

**8.2 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 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 2011 as exhibited based on:
  - (a) the amendments set out in Attachments 3, 4, 5 and 6 and associated consequential adjustments to descriptions, numbering and plan formatting (in relation to both the written instrument and mapping); and
  - (b) Council's decisions with respect to each of the items relating to the content of the LEP contained elsewhere in this business agenda; and
  - (c) general typographical adjustments in relation to text, grammar, labelling and formatting.
2. That Council submit the revised Draft Ballina Local Environmental Plan 2011 to the Department of Planning & Infrastructure and request that the plan be finalised for implementation in accordance with the terms of the *Environmental Planning and Assessment Act* and associated Regulation.

## Attachment(s)

1. DP&I Correspondence September 2011 - Outstanding Key Issues
2. Minister for Planning & Infrastructure Correspondence September 2011 - Vegetation Management
3. Community Submissions - Final Summary and Recommendations (distributed under separate cover).
4. Government Agency Submissions - Final Summary and Recommendations (distributed under separate cover).
5. LEP Project Team Identified Issues - Final Summary and Recommendations (distributed under separate cover).
6. DP&I Identified Issues - Final Summary and Recommendations (distributed under separate cover).
7. DP&I Model flood planning provision and associated directions.

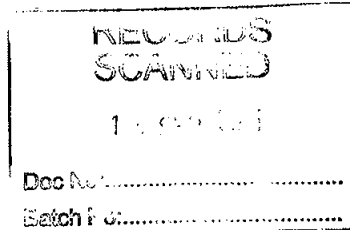
Community and Government Agency Submission Sets (distributed under separate cover).

Attachment 1. DP&I Correspondence September 2011 - Outstanding Key Issues.



Planning &  
Infrastructure

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



11/13030

Attention: Steve Barrier

Dear Mr Hickey

**Ballina Draft Comprehensive LEP**

I refer to your letter to the Director General on 15 June 2011, regarding Ballina draft Comprehensive LEP and our interim response. The Director General has asked me to reply on his behalf. In your letter you requested advice on the following issues regarding the draft plan:

- a) Boundary adjustment subdivision on rural land;
- b) Split zone and residual lots;
- c) Structure and form of land use definitions;
- d) Vegetation management.

**Boundary adjustment subdivision on rural land**

Under the current Standard Instrument template, it is not possible to include a local boundary adjustment clause permitting boundary adjustments where a resulting lot is less than 90% of the minimum lot size. The Standard Instrument (SI) Order directs that a local LEP clause cannot conflict with a compulsory clause, and clause 4.6(6), in precluding variations over 10% in zones RU1, RU2, RU3, RU4, RU6, R5, E2, E3 and E4, sets an overall limit for varying the minimum lot size in those zones. Although it is not explicit, the Direction in clause 4.1 allowing exceptions to the minimum size to be specified does not apply to land to which clause 4.6(6) refers.

However, where positive agricultural or environmental outcomes are created, boundary adjustments are reasonable from a policy perspective. As I indicated in Lismore on 21 July there is a need to have clause 4.6 reviewed, and the Department has commenced this review. If a future amendment to the clause is supported, it may enable you to draft a local LEP clause allowing boundary adjustments in certain circumstances.

In the interim, major boundary adjustments can be achieved by way of a planning proposal to alter the minimum lot size applying to an individual parcel of land.

**Split zones and residential lots**

When considering subdivision of a lot occupying both an urban and non-urban zone, Council may need to deal with an undersized residual lot solely in the non-urban zone where the variance from the minimum lot size is greater than 10%.

As previously advised, such applications can be approved under clause 4.1, as the residual land will not have been subdivided. However, I note the Council's view that it would be preferable to include provisions which are clearly consistent with the Standard Instrument Order.

Bridge St Office 23-33 Bridge St Sydney NSW 2000 GPO Box 39 Sydney NSW 2001 DX 22 Sydney  
Telephone (02) 9228 6111 Facsimile (02) 9228 6191 Website [planning.nsw.gov.au](http://planning.nsw.gov.au)

Attachment 2. Minister for Planning & Infrastructure Correspondence  
September 2011 - Vegetation Management



PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE ASSEMBLY

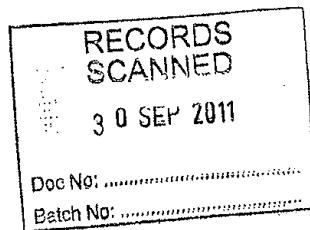


**DON PAGE, M.P.**  
MEMBER FOR BALLINA

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7 Moon Street  
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28<sup>th</sup> September 2011

Mr M Wood  
Strategic Planner  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478



Dear Mr Wood,

I refer to my representations on your behalf to the Hon. Brad Hazzard MP, Minister for Planning and Infrastructure regarding clause 5.9 of the Standard Instrument - Principal Local Environmental Plan.

I now enclose herewith a copy of the response received from Mr Craig Baumann MP, Parliamentary Secretary for your information.

Yours faithfully

A handwritten signature in black ink, appearing to read "Don Page".

Don Page MP  
MEMBER FOR BALLINA

encl.  
DP:dc



**Office of the Hon Brad Hazzard MP**  
Minister for Planning and Infrastructure  
Minister Assisting the Premier on Infrastructure NSW  
**28 SEP 2011**

The Hon Don Page MP  
Minister for Local Government and  
Minister for the North Coast  
Member for Ballina  
PO Box 1018  
BALLINA, NSW 2478

11/14700

Dear Minister *Don*

I refer to your representations on behalf of Ballina Shire Council concerning clause 5.9 'preservation of trees or vegetation' of the Standard Instrument – Principal Local Environmental Plan (the Standard Instrument). The Minister has asked me to respond to you on his behalf.

An approval required under an Act of Parliament cannot be fettered by a subordinate instrument of another Act, unless specifically stated. As the *Native Vegetation Act (2003)* requires authorisation under that Act for clearing of native vegetation on non-urban land, a council Local Environmental Plan (LEP) should not duplicate that approval process. The amendments to clause 5.9 in February this year have not changed this position, which has been operational since the Standard Instrument commenced in 2005. The February 2011 amendments were made in response to concerns raised by Ballina and other North Coast councils on this matter.

The Department of Planning and Infrastructure recently released a draft practice note on clause 5.9 and its implementation. Council has made a submission on the practice note and the issues raised are currently being considered by the Department.

Council may also wish to provide advice on this issue to the Local Planning Panel which the Minister recently established to engage with local councils and report back to the Government on how the Standard Instrument can be improved.

Should Ballina Shire Council have any further enquiries on this matter, I have arranged for Ms Cheramie Marsden, Manager, Planning Systems, of the Department of Planning and Infrastructure, to assist. Ms Marsden can be contacted on telephone number (02) 9228 6458.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Craig Baumann', with a horizontal line extending to the right.

Craig Baumann MP  
Parliamentary Secretary

*23 Sep 11*

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Level 33 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000  
Phone: (61 2) 9228 5258 Fax: (61 2) 9228 5721 Email: [office@hazzard.minister.nsw.gov.au](mailto:office@hazzard.minister.nsw.gov.au)

**Attachment 3. Community Submissions - Final Summary and Recommendations (distributed under separate cover).**

**Attachment 4. Government Agency Submissions - Final Summary and Recommendations (distributed under separate cover).**

**Attachment 5. LEP Project Team Identified Issues - Final Summary and Recommendations (distributed under separate cover).**

**Attachment 6. DP&I Identified Issues - Final Summary and Recommendations (distributed under separate cover).**



**Attachment 7. DP&I Model flood planning provision and associated directions.**

7.3 Flood planning

**General information**

Councils are first encouraged to identify flood planning areas through their strategic work and to zone appropriately, wherever possible. Care should therefore be taken in determining the permissible development on land that may be subject to flooding to ensure that appropriate uses are included and that relevant types of development require consent under the applicable zones.

Councils are then encouraged to apply this model clause in flood planning areas, particularly where flooding matters cannot be fully addressed by limiting land uses e.g. in areas where an existing zone and existing land uses include residential accommodation.

Councils in coastal areas may wish to refer to 'projected sea level rise' instead of 'climate change' in subclause (1)(b).

Councils' attention is also drawn to the section 117 Direction 4.3 Flood Prone Land.

In applying the clause, councils should provide a map of the flood planning area. This will assist councils in demonstrating their consideration of s 149(2) certificate matters.

Further details of requirements behind the clause should be provided in councils' DCPs. This may include, for example, evacuation route maps, setbacks for buildings and types of construction. An LEP Practice Note to provide further guidance on the use of this clause is being prepared.

(1) The objectives of this clause are as follows:

- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,
- (c) to avoid significant adverse impacts on flood behaviour and the environment.

(2) This clause applies to:

- (a) land that is shown as "Flood planning area" on the Flood Planning Map, and
- (b) other land at or below the flood planning level.

**Drafting direction**

Councils know of some areas that flood and those areas are mapped as the "flood planning area", but there are other areas where accurate mapping is not possible. Consequently, the wording of this subclause captures the land that can be accurately mapped and the land that cannot. Such unmapped land includes the "flood planning area" (as defined in the Floodplain Development Manual) up to the "flood planning level".

(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land; and
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

**Drafting direction**

The following subclauses apply to council areas that include coastal land:

- (4) Subclause (5) applies to:
- (a) land shown as "projected 2100 flood planning area" and "projected 2050 flood planning area" on the Flood Planning Map; and to
  - (b) other land below the projected 2100 flood planning level and the projected 2050 flood planning level as a consequence of projected sea level rise.
- (5) When determining development to which this subclause applies, council must take into consideration any relevant matters outlined in **subclause 3(a) – (e)**, depending on the context of the following:
- (a) the proximity of the development to the current flood planning area; and
  - (b) the intended design life of the development; and
  - (c) the scale of the development; and
  - (d) the sensitivity of the development in relation to managing the risk to life from any flood, and
  - (e) the potential to relocate, modify or remove the development.

**Drafting direction**

Subclauses (4) & (5) shall only be used once council has identified the 'projected 2100 flood planning area' and 'projected 2050 flood planning area' as outlined in the to be finalised draft Flood Risk Management Guide 2009, which will update the sea level rise information in the NSW Floodplain Development Manual 2005

The definition of **projected sea level rise** shall only be included in subclauses (6) once council has identified the 'projected 2100 flood planning area' as outlined in the to be finalised draft Flood Risk Management Guide 2009, which will update the sea level rise information in the NSW Floodplain Development Manual 2005

6. A word or expression used in this clause has the same meaning as it has in the NSW Government's *Floodplain Development Manual* published in 2005, unless it is otherwise defined in this clause.

7. In this clause:

**flood planning area** means the land shown as "Flood planning area" on the Flood Planning Map

**flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus [XX] metres freeboard.

**Flood Planning Map** means the [Name] Local Environment Plan 2010 Flood Planning Map.

**projected sea level rise** means the 2050 and 2100 sea level rise planning benchmarks as specified in the NSW Government's *Sea Level Rise Policy Statement 2009*.

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### 4.2 Report A - Duck Creek/ Gum Creek Catchment Area

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

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#### **Background and Information**

The Draft Ballina Local Environmental Plan 2011 (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 Council resolved in May 2011 to examine the expansion of an urban buffer around Alstonville and Wollongbar separate to the comprehensive LEP renewal process. As a result, there may be an alteration to the exhibited zoning arrangement by virtue of Council's future 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 Report A - Duck Creek/ Gum Creek Catchment Area

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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.

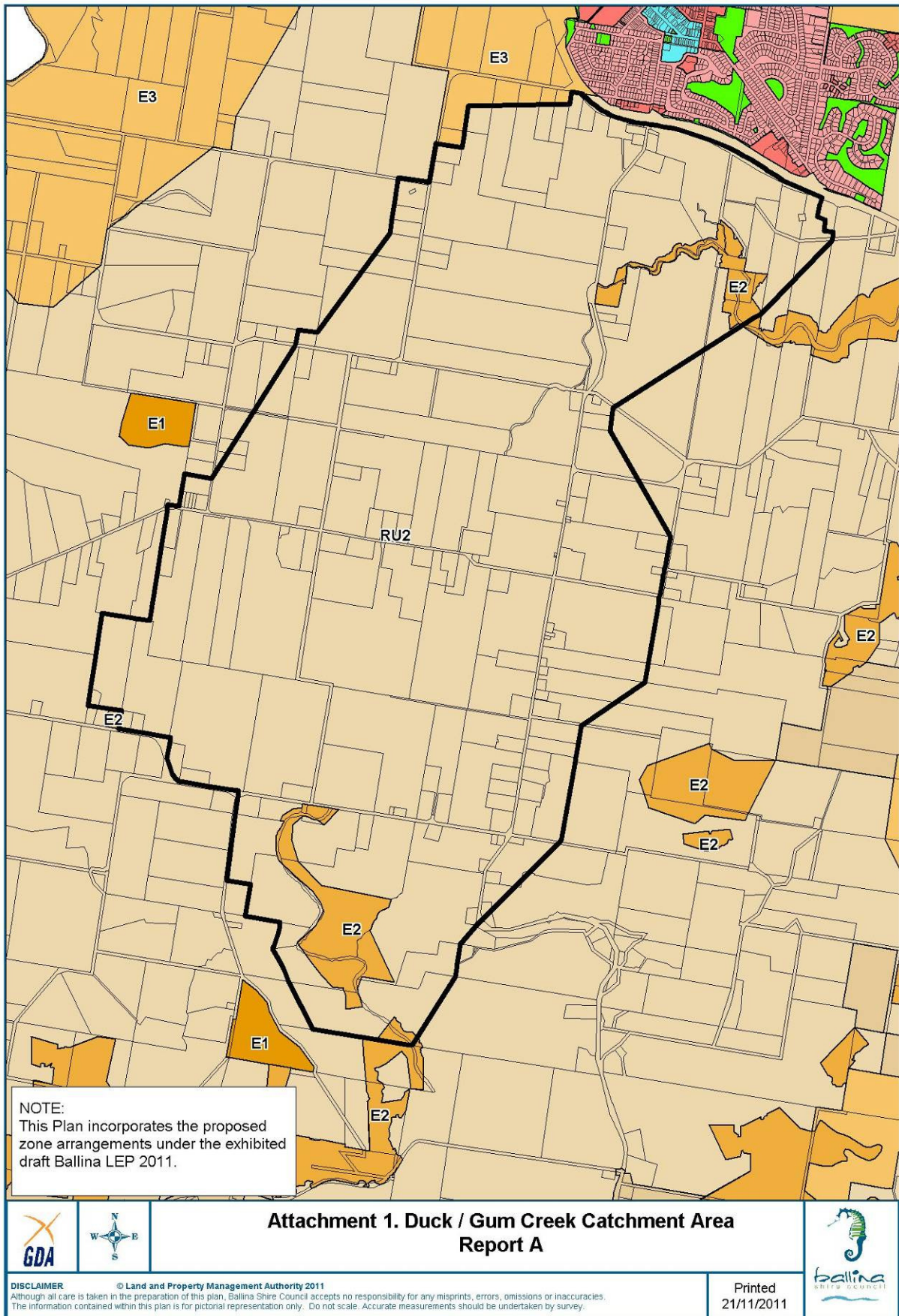
### **RECOMMENDATIONS**

That Council endorse the planning framework for the Duck Creek/ Gum Creek catchment area as exhibited under the Draft Ballina Local Environmental Plan 2011.

### **Attachment(s)**

1. Duck Creek/ Gum Creek catchment.

Attachment 1. Duck Creek/ Gum Creek catchment.



### 4.3 Report B - Summerhill Crescent, Cumbalum

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

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#### **Background and Information**

Under the Ballina LEP 1987, the Summerhill Crescent area, which comprises a rural residential subdivision, is zoned 1(d) Rural (Urban Investigation) Zone. The land adjoins the southern extent of the Ballina Heights Estate (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 by way of zone. Two primary options were considered by the Committee in May 2011, 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 Estate. The 2010 version of the draft LEP applied an R2 Low density residential zone with a 1ha minimum lot size for subdivision to the properties fronting Summerhill Crescent.

Following consideration of the matter by the Committee, Council resolved to apply an RU2 Rural landscape zone and 40ha minimum lot size for subdivision for the Summerhill Crescent locality for the re-exhibition of the draft LEP (Attachment 1). This framework is designed to provide for consistency in the zone arrangements applied to rural residential estate areas in the shire and prevent further subdivision of the land in the absence of a coordinated strategic consideration of the characteristics and capability 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 Report B - Summerhill Crescent, Cumbalum

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- It is likely that infrastructure will require augmentation. It is considered that any such augmentation should be considered within a strategic context prior to application of an urban zone, having regard for likely land use outcomes in the entire estate and its surrounds.
- 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.

In response to the re-exhibition of the draft LEP, Council received submissions from 18 property owners in the Summerhill Crescent locality. One of the submissions supports the proposed rural zone and minimum lot standard arrangement as exhibited. The remainder of the submissions seek adjustment to the planning framework, with the majority of these submissions being by way of a form letter. The form letter submissions request that Council revert to the planning framework exhibited in 2010, being an R2 Low density residential zone and a 1ha minimum lot standard for subdivision based on several reasons. The reasons cited in the form letter are addressed as follows:

*Summerhill Crescent is a residential environment with service availability. The land is also rated residentially.*

The Summerhill Crescent locality is largely unchanged in its character since the development of the estate. However, the surrounding locality is changing as the Ballina Heights Estate residential area expands.

With respect to servicing, the level of infrastructure is similar to that available in most rural residential estates in the shire, although the area likely benefits from services associated with Ballina Heights and it has been fitted with reticulated sewer under Council's backlog sewer program.

The rating of the land is not necessarily related to the applicable zoning in that there are only three rating categories (being residential, commercial and farmland) and these are typically applied based on a number of considerations including the existing and potential land use.

*Rural zoning is not necessary to limit the future subdivision potential of the land.*

Council is able to manage subdivision potential of land by way of minimum lot standards and in this regard need not apply particular zones to achieve subdivision related outcomes. However, zoning can be used in conjunction with lot size standards to reinforce the applicable policy position.

With respect to the use of an R2 zoning in the Summerhill Crescent area, the concern is that this zone may lead to future expectation that the land will be subdivided, especially for those unfamiliar with the history of the LEP process. This may in turn lead to misunderstanding of the planning framework and pressure for change in the absence of a coordinated strategic planning process.

*Affordable housing potential as a reason for use of the RU2 zone.*

The form submission states that the potential for affordable housing under the Affordable Rental Housing SEPP was the major reason for the recommendation to apply the RU2 zone to the locality. This is incorrect and is a misrepresentation of the reporting. The potential for medium density style development under the affordable housing SEPP was cited as one of the reasons for the recommended planning framework to fully inform the Council of the implications of the R2 zone. However, the primary reasons were related to consistency in application of the planning framework and subdivision potential as outlined above and in previous reporting. This rationale has been communicated directly to some of the landowners in the Summerhill Crescent area who made submissions to the exhibition of the draft LEP.

Notwithstanding the above, the potential for medium density style housing under the SEPP has been removed via amendments to the SEPP since the drafting of the 2011 LEP. As such, this is no longer considered to be a matter for consideration in relation to this item.

*Removal of land zoning/ land use confusion is an objective of the new LEP.*

The form submission suggests that application of a rural zoning over the land will create confusion for current landowners and potential purchasers. However the use of the RU2 zone is considered to be appropriate as it is consistent with the current rural land use zone applicable to the Summerhill Crescent rural residential estate and all other rural residential estates in the shire (the rural zoning of the Summerhill Crescent area has applied since 1987). The application of the RU2 zone in the Summerhill Crescent area provides for consistent treatment of rural residential areas in the shire.

The form submission also suggests that the Summerhill Crescent area can no longer be considered a rural residential estate due to the development of the adjacent Ballina Heights Estate. Some properties in the estate will adjoin development in the Ballina Heights Estate but at present, it is considered that the rural residential character of the area remains largely intact. However, if the Committee considers that the character of the estate has changed or may change over time, it is suggested that coordinated strategic consideration of the capacity of the area for changes to residential land use outcomes and/or integration with Ballina Heights Estate is the appropriate mechanism to address this consideration.

One other reason cited in support of a residential zone for the land is that it would enable a secondary dwelling (a detached dwelling that is smaller than the principal dwelling) on the land with consent. If this form of development is desirable in the locality to the Committee, it is again suggested that coordinated strategic consideration of the capacity of the area for changes to



residential land use outcomes and/or integration with Ballina Heights is the appropriate mechanism to address this issue. In considering this, it should be noted that attached dual occupancy is permitted with consent in the RU2 zone. Indeed, this style of development has been permissible in the estate since 1987.

Impact on property values associated with the Ballina Heights development has also been cited as a concern. In this regard, it may be difficult to discern the actual impact of Ballina Heights on property value given that the market has been affected by wider financial related factors in recent years. Notwithstanding this, land use zones and the associated planning framework have been applied in the shire based on the characteristics of the land and the existing planning framework. In terms of site specific planning requests, property values are more of a political consideration in this circumstance.

Given the above, it is recommended that the exhibited RU2 Rural Landscape zone accompanied by a 40ha minimum lot size for subdivision over the Summerhill Crescent rural residential estate be retained. However, in recognition of the potential for a coordinated review of the applicable planning framework and the proximity of the Ballina Heights estate, it is recommended that the RU2 zoned area in the estate be identified in Council's urban growth planning as a potential infill area. This would include identification of the land in the Strategic Urban Growth Areas map under the LEP.

The above recommended approach provides for consistency in the planning framework applied to rural residential areas and the way in which potential urban areas are examined and ultimately zoned. The identification of the estate as a potential urban infill area allows the landholders to prepare a holistic proposal for a change to the planning framework to Council.

Alternatively, it is open to the Committee to suggest a different planning regime. In this regard, if the Committee is supportive of the application of a residential zone to the estate area, it is suggested that the R2 zone is the most appropriate available zone. Further, it is suggested that the land be subject to a 40ha minimum lot standard to reinforce subdivision limitations on the land.

The Committee may also seek additional information prior to proceeding. However, the alternative approaches are not recommended given the rationale outlined above.

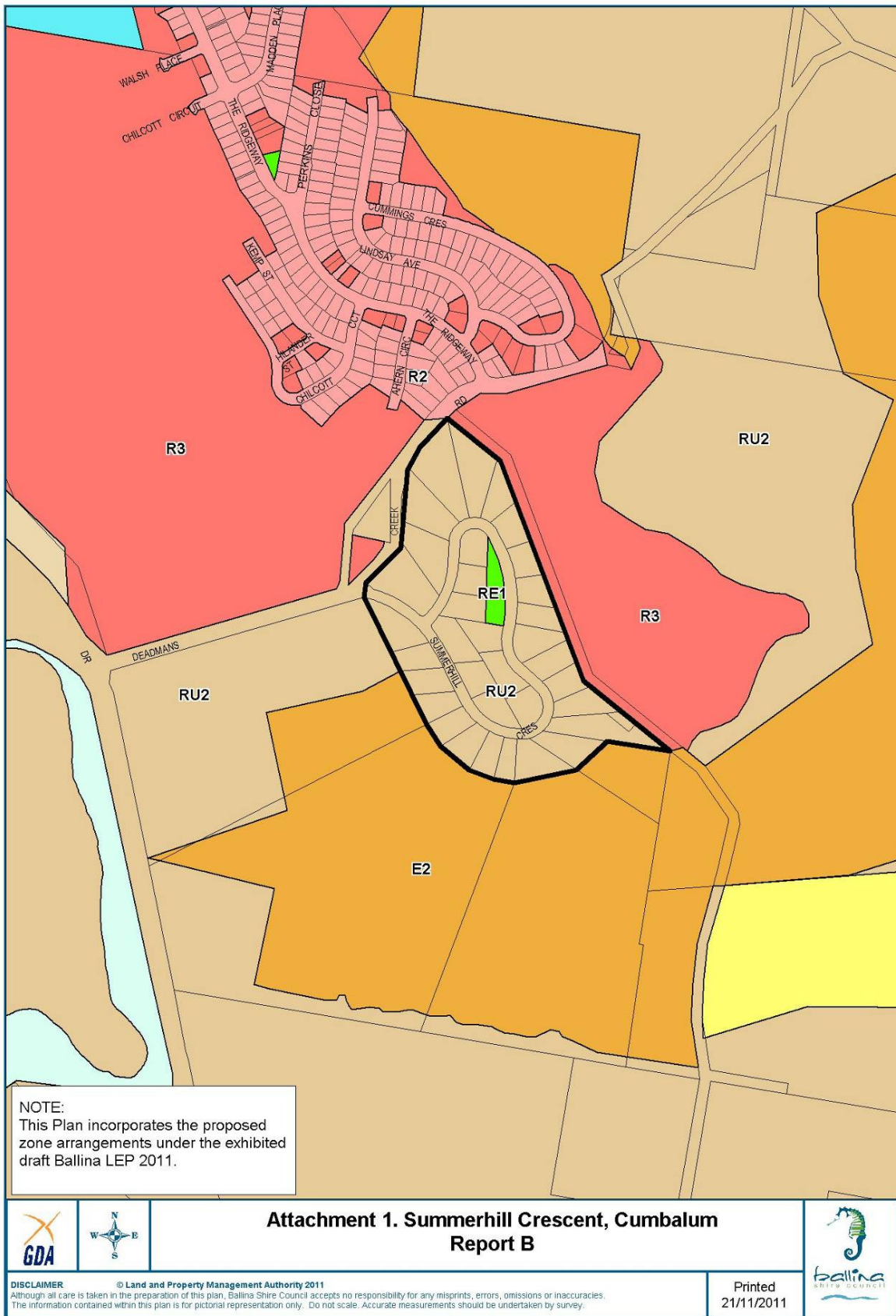
#### **RECOMMENDATIONS**

That Council endorse the application of an RU2 Rural landscape zone and 40ha minimum lot size for subdivision for the Summerhill Crescent locality, as exhibited in the Draft Ballina Local Environmental Plan 2011.

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

1. Summerhill Crescent Locality.

Attachment 1. Summerhill Crescent Locality.



### 4.4 Report C - Fawcett Street, Ballina

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

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#### **Background and Information**

The Draft Ballina Local Environmental Plan 2011 (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.

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.

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.

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 2011.

**Attachment(s)**

1. Fawcett Street in the vicinity of Fawcett Park.

Attachment 1. Fawcett Street in the vicinity of Fawcett Park



4.5 **Report D - North Creek Road North Ballina**

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

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**Background and Information**

The Draft Ballina Local Environmental Plan 2011 (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 800m<sup>2</sup> 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 Report D - North Creek Road North Ballina

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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.

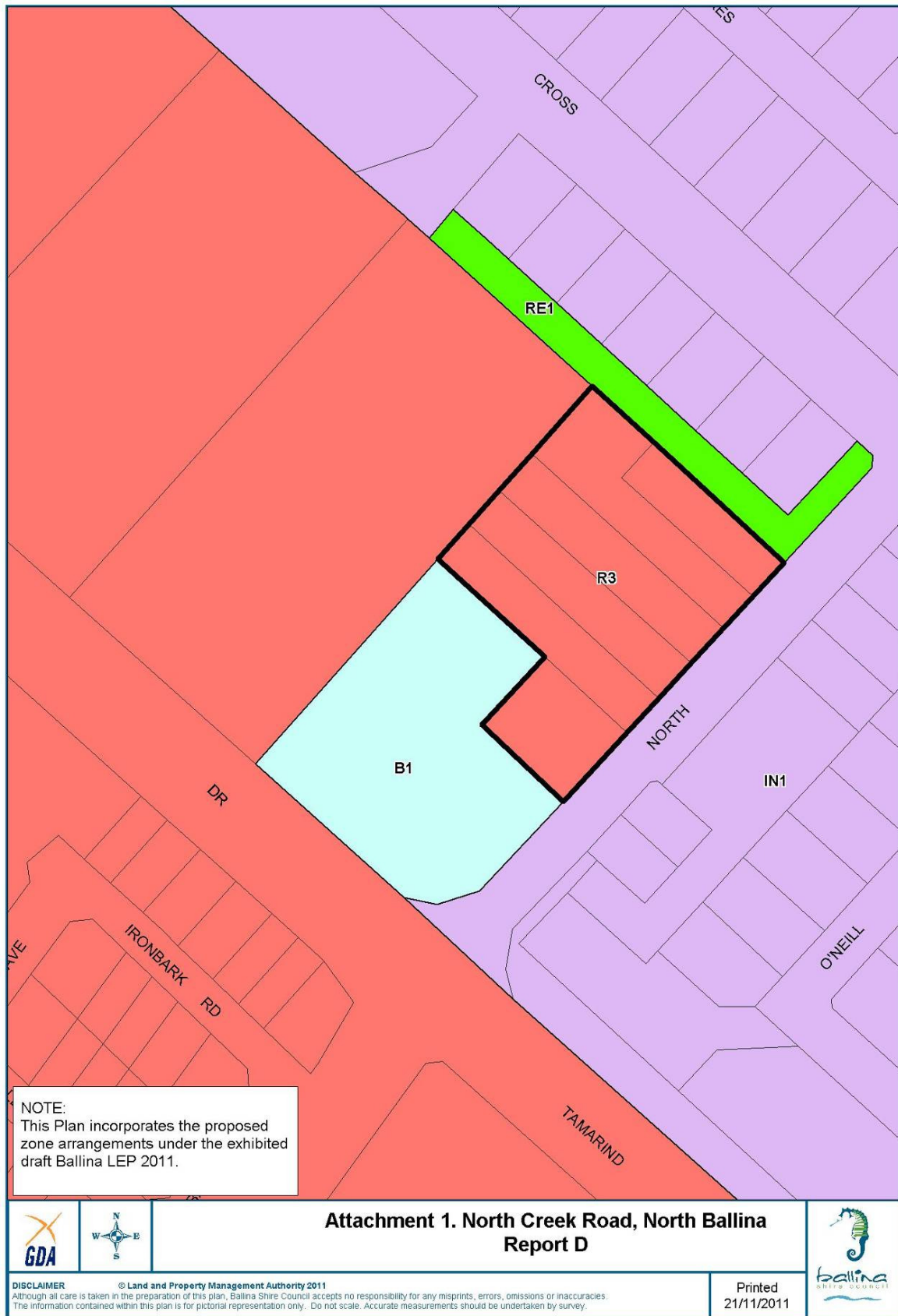
### **RECOMMENDATIONS**

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 2011.

### **Attachment(s)**

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

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





4.6 **Report F - Brighton Street and Easton Place, East Ballina**

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

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**Background and Information**

The Draft Ballina Local Environmental Plan 2011 (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 800m<sup>2</sup>.

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.

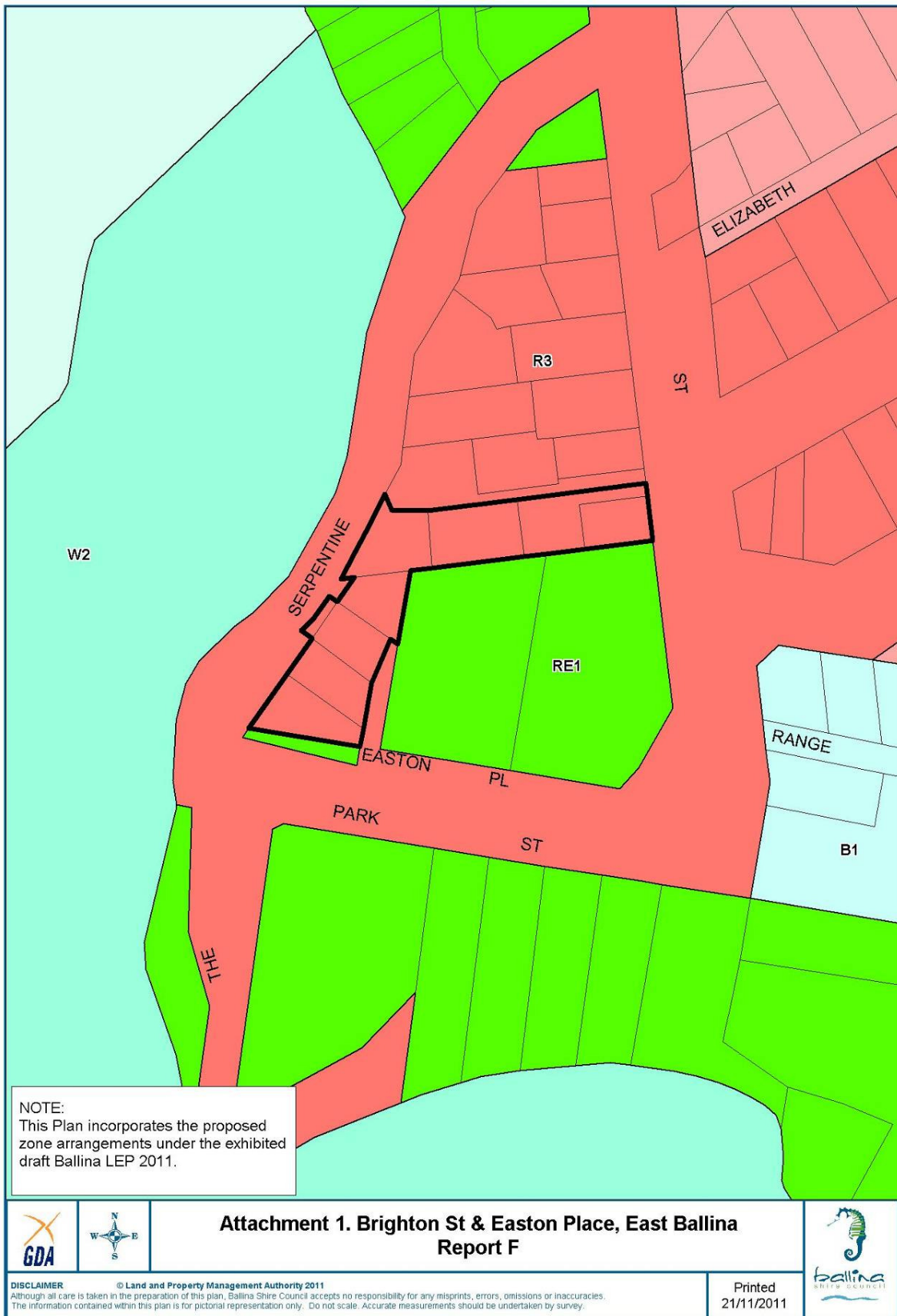
**RECOMMENDATIONS**

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 2011.

**Attachment(s)**

1. Brighton Street and Easton Place, East Ballina.

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



4.7 **Report G - Oakland Avenue West Ballina**

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

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**Background and Information**

The Draft Ballina Local Environmental Plan 2011 (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 600m<sup>2</sup>. Minimum lot standards have been established with regard for the current planning provisions applicable to the land.

## 4.7 Report G - Oakland Avenue West Ballina

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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 2011.

### **Attachment(s)**

1. Oakland Avenue, West Ballina.

Attachment 1. Oakland Avenue, West Ballina.



4.8 **Report H - Camoola Avenue, Ballina**

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

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**Background and Information**

The Draft Ballina Local Environmental Plan 2011 (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 800m<sup>2</sup>.

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 2011.

**Attachment(s)**

1. Camoola Avenue, Ballina.



Attachment 1. Camoola Avenue, Ballina

