



## **Notice of Environmental & Sustainability Committee Meeting**

Notice is hereby given that a Environmental & Sustainability Committee Meeting will be held in the Ballina Shire Council Chambers, Cnr Cherry & Tamar Streets, Ballina on **Tuesday 17 July 2012 commencing at 4.00pm.**

### **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 underneath.

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**

## **4.1 Cumbalum Precinct A Planning Proposal**

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### **4. Committee Reports**

#### **4.1 Cumbalum Precinct A Planning Proposal**

**Delivery Program** Strategic Planning

**Objective** To report on the submissions received in response to the public exhibition of the Cumbalum Precinct A Planning Proposal and seek direction with respect to the progress of the planning proposal.

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#### **Background**

Council has been engaged in the consideration of the Cumbalum Precinct A Planning Proposal since mid 2007. In November 2011, Council resolved to exhibit the planning proposal for public comment [Minute No. 241111/8]. In response to Council's resolution, the Cumbalum Precinct A Planning Proposal was publicly exhibited for a period of 78 days from 12 January 2012 to 30 March 2012. The initial 42 day exhibition period was extended by resolution of the Council for a further 36 days (to the end of March 2012).

Additional consultation activities undertaken during the exhibition period included the following:

- Public information session held at the Lennox Head Cultural and Community Centre on Saturday 10 March (attended by an estimated 180 people)
- Landholder briefing sessions held during the evening of 25 January 2012 at Council's Customer Service Centre
- "Drop in" session with Council's strategic planning and engineering staff held at Council's Customer Service Centre from 3pm to 7pm on 29 February 2012 and
- Numerous meetings on request with Council staff.

By way of broader background to this matter, the key milestones in the subject planning proposal process are outlined below:

- August 2007 - Council resolved to commence the rezoning process, in accordance with (then) s54 of the Environmental Planning and Assessment Act 1979. At that time any technical documentation that had been prepared by the proponents had not been submitted to Council.
- May 2008 - Proponents (represented by consultancy Ardill Payne & Partners) submitted technical documents supporting their rezoning request;
- December 2008 - GHD (on Council's behalf) completed first round peer review of technical documents;
- February 2010 - Proponents lodged revised technical documents in response to Council's/GHD's peer review;

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- April 2010 - GHD (on Council's behalf) completed second round peer review of technical documents. A number of matters were identified as requiring further consideration.
- July 2010 - Proponents lodged additional information relating to slope stability, acid sulfate soils, stormwater and road traffic noise.
- Information relating to the proposed stormwater treatment and disposal strategy was the subject of further discussion between the proponents, Council and the (then) NSW Department of Environment and Climate Change. The outcome of these discussions was that further information was prepared by the proponent relating to the potential impacts of increased stormwater flows on adjacent downstream private landholdings and on the Ballina Nature Reserve and adjacent SEPP14 wetlands. This information went through several rounds of review and revision. These revised reports, along with additional information relating to road noise impacts, were finalised and submitted to Council in August 2011.
- October 2011 - finalisation of Local Environmental Study by GHD (on Council's behalf).
- November 2011 - Report to Ordinary Meeting of the Council. Council resolved to publicly exhibit the planning proposal.

Further background to this matter is provided in the report presented to Council its November 2011 Ordinary Meeting (Item 9.1).

### **Key Issues**

- Strategic land use planning
- Long-term supply of residential zoned land
- Growth management
- Infrastructure delivery
- Environmental constraints
- Affordable housing

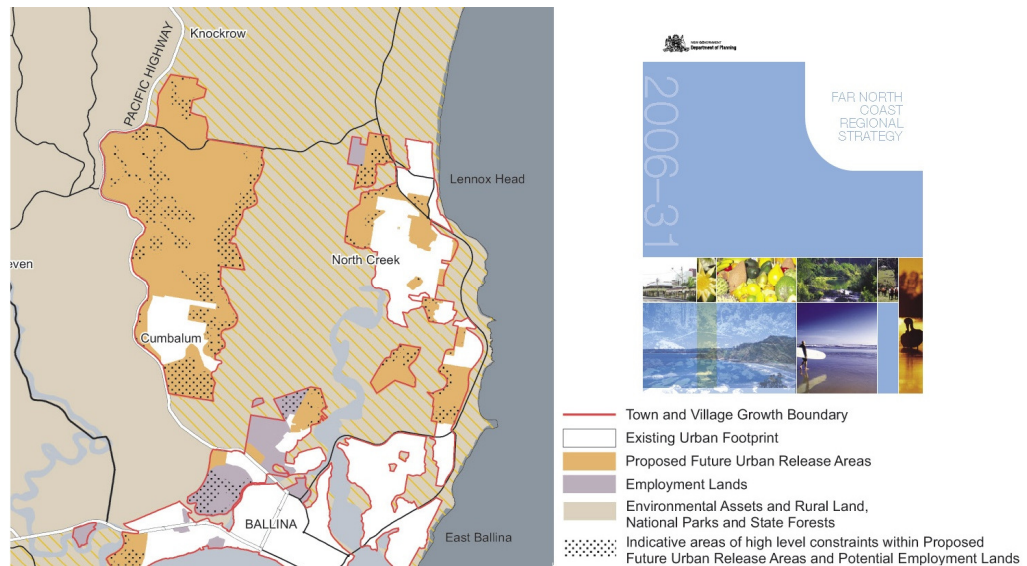
### **Information**

#### *Planning Context*

Far North Coast Regional Strategy (FNCRS-2006)

The Far North Coast Regional Strategy (FNCRS) provides the regional framework for the consideration of the rezoning of land for urban purposes in Ballina Shire. The FNCRS identifies the subject land as a 'Proposed Future Urban Release Area' within the 'Town & Village Growth Boundary' for Ballina Shire (refer Town and Village Growth Boundary Map - Sheet 3, excerpt as follows).

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Of these areas the Strategy states:

'Not all land identified within the Town and Village Growth Boundary can be developed for urban uses. All sites will be subject to more detailed investigations to determine capability and future yield. Land that is subject to significant natural hazard and/or environmental constraints will be excluded from development'.

The investigation of the subject land for future urban development through the statutory rezoning (planning proposal) process is consistent with the regional planning framework.

Ballina LEP 1987

The subject land is currently zoned 1(d) Rural (Urban Investigation) under the terms of the Ballina Local Environmental Plan 1987. The primary zone objectives are:

- a) *to identify land which may be needed in the future and will be thoroughly investigated with respect to its suitability or otherwise for urban land uses and the environmental consequences associated with the land's release for urban purposes;*
- b) *to regulate the subdivision and use of land so as to prohibit development which could prejudice the possible future release of land within this zone for urban purposes; and*
- c) *to ensure that the release of land for urban purposes, by rezoning, shall not take place unless –*
  - i. *urban structure planning has been completed by Council;*
  - ii. *the Council reviews urban suitability investigations for individual planning units, and detailed land use allocations for each planning unit have been determined by the Council;*
  - iii. *sufficient demand exists for the release of urban land; and*
  - iv. *appropriate urban infrastructure and facilities are available to the land or can be provided to the land in a manner which does not create an unreasonable or uneconomic demand, or both, for the provision or extension of such services.*

With respect to the matters described in subclause c, the following is noted:

- i. Urban structure planning was undertaken by Council via the preparation and adoption (in 2006) of the Cumbalum Structure Plan;
- ii. The review of urban suitability investigations is the purpose of the Local Environmental Study prepared for the area;
- iii. Council seeks to ensure that there is an adequate "buffer" of zoned land available for development to facilitate housing choice, provide competition in the land development market and potentially improve housing affordability.

The proponents are seeking the rezoning of Cumbalum Precinct A due to staging and servicing considerations. It is noted that while Ballina Shire is currently reasonably well supplied with undeveloped residential zoned land (having in the order of 300 hectares of vacant residential zoned land), recent land development rates have been modest due to a number of factors including infrastructure limitations and the financial failure of a number of land development companies.

From this perspective, there appears to be sufficient residential demand in the short to medium term, relative to the real supply of development-ready sites, to support the rezoning of additional land in Cumbalum Precinct A.

- iv. The subject of the adequacy of infrastructure and facilities is addressed elsewhere in this report.

### Ballina Urban Land Release Strategy 2000 (ULRS-2000)

The Ballina Urban Land Release Strategy 2000 (ULRS) provides the Department of Planning and Infrastructure endorsed urban land release strategy for the Ballina local government area. It has been prepared in accordance with the provisions of clause 38 of the North Coast Regional Environmental Plan 1988 (the REP). The land release program contained within the Strategy has been agreed with the former Department of Infrastructure Planning and Natural Resources as required by subclause 38(3) of the REP.

The strategic approach adopted in the ULRS relates to the following:

- ongoing commitment to Council's existing zoning strategy;
- providing an adequate land supply for various market segments;
- achieving and maintaining reasonable developer competition in the marketplace;
- ensuring the timely and economic provision of services;
- masterplanned rezoning followed by staged subdivision release; and
- planning over a 5-20 year timeframe.

The ULRS identified rezoning investigations of the subject land to commence in the medium term (ie within 5-10 years of the year 2000). Work undertaken by Council to date is consistent with this timeframe.

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### Cumbalum Structure Plan (2006)

The objectives of the 1(d) zone under the Ballina LEP 1987 include a requirement that Council prepare an urban structure plan prior to the consideration of the land for rezoning to permit urban development. Accordingly, Council prepared the Cumbalum Structure Plan (CSP), which involved a broad assessment of the environmental capabilities of the land and consultation with landholders, agencies and the broader community.

The preparation of the CSP, by Council, took into consideration the presence of environmental constraints, natural and cultural values and urban design. A key feature of the CSP is the identification of a number of development principles, encapsulating best practice guidelines for urban development in the region. Rezoning and development proposals should demonstrate consistency with these development principles.

The CSP was adopted by Council in July 2006. A key element of the CSP, which arose from the broad land use suitability investigations undertaken, is that future development of the Cumbalum Ridge should occur as two (possibly three) distinct 'development nodes' or villages. In the planning context, these villages are represented as Cumbalum Precinct A and Precinct B of the Structure Plan (with the possibility of Precinct C in the longer-term). This approach is also consistent with the 'Region of Villages' settlement hierarchy outlined in the FNCRS.

It is noted that Council received strong endorsement from the then Department of Planning and other State Government agencies for the approach and framework delivered by the CSP, particularly in relation to the use of precincts/villages as the basis for the plan, for the consideration of visual and social amenity and the relationship of the plan with the regional planning context.

The consideration of the subject land for rezoning to permit urban development is consistent with the Cumbalum Structure Plan.

### *Submissions*

To assist the Council, the submissions received during the prolonged public exhibition period have been divided into the following categories:

- public submissions - submissions received from members of the public;
- landholder submissions - submissions received from persons (or their representatives) that have an interest in the land that is the subject of the planning proposal; and
- Government agency submissions

Following the summary of the submissions, this report provides further information regarding the matters raised in the submissions.



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### *Public submissions*

Twenty-nine submissions relating to Cumbalum Precinct A were received from members of the public during the public exhibition period. Thirteen submissions (45%) expressed *support* for the Precinct A planning proposal and sixteen submissions (55%) expressed *opposition*. A number of the submissions related comments to both the Precinct A and the Precinct B planning proposals. To assist in reporting these matters, the public submissions have been divided and distributed to Councillors under separate cover as follows:

- **Attachment 1** - submissions relating to Precinct A only;
- **Attachment 2** - submissions relating to Precinct B only;
- **Attachment 3** - submissions relating to Precinct A and B.

It is noted that of the submissions expressing *support* for the Precinct A planning proposal, three submissions related comments only to Precinct A and ten related comments to both Precinct A and Precinct B.

It is also noted that of the submissions expressing *opposition* to the Precinct A planning proposal, one submission related comments only to Precinct A and fifteen related comments to both Precinct A and Precinct B.

Issues most frequently cited in *support* of the Precinct A planning proposal include the following:

- promoting economic development (9 submissions)
- housing affordability (6 submissions)
- stimulating employment (4 submissions)
- reducing land supply pressures on the coast (3 submissions)
- consistency with Council policy (2 submissions)
- additional services & facilities to be provided in association with future development (2 submissions)

Issues most frequently cited in *opposition* to the Precinct A planning proposal include the following:

- population pressure / over-development / impacts on existing amenity / social impacts (10 submissions)
- flooding and drainage impacts (9 submissions)
- public infrastructure costs and implications (9 submissions)
- impacts on Lennox Head (8 submissions)
- impacts on Ross Lane (8 submissions)
- impacts on flora and fauna (5 submissions)
- impacts on agricultural land (4 submissions)
- density of development (4 submissions)

The issues raised in the public submissions (outlined above) are addressed in further detail elsewhere in this report.

### *Landholder / site-specific submissions*

A number of submissions were received from landholders within Precinct A. These submissions provide site-specific information and/or represent the views of those landholders having a direct interest in the planning proposal, and so are presented separately here for the Council's consideration. The landholder submissions have been distributed to Councillors under separate cover as **Attachment 4**.

The landholder submissions received include the following:

- Beddoes - landholder in the residual area of Precinct A not the subject of the local environmental study;
- Potter - landholder in the residual area of Precinct A not the subject of the local environmental study;
- Johnstone - landholder in the residual area of Precinct A not the subject of the local environmental study;
- Precinct A proponents - Consultant submission prepared by Ardill Payne & Partners, and two submissions received from members of the Sheather Family, landholders within Precinct A.

### Beddoes

Mr Beddoes is landholder of Lot 1 DP 771794, Sandy Flat Road, located to the east of the proposed urban zoning in Precinct A.

The subject landholding was originally included in the planning proposal study area, however technical information required to assess the development capabilities of the land has not been provided. In the preparation of the Local Environmental Study, Council sought to facilitate landholders providing this information, however these attempts were not supported. Consequently, these landholders (which also include the Potter, Johnstone and Thomson landholdings) were not included in the LES study area, and consequently the land was not included in the recommended zoning plan. The land was included, however, in the proposed Strategic Urban Growth Area map under Council's Draft Ballina LEP 2011 and is identified as having potential for urban development in Council's draft Growth Management Strategy. This is to allow future consideration of the urban potential of the land, in due course.

Two of the submissions received from Mr Beddoes raise concerns regarding the Precinct A Planning Proposal relating primarily to stormwater management issues. A separate submission also provides views regarding the development of the Ballina Heights subdivision, which has been included here to provide context to Mr Beddoes planning proposal submissions.

Stormwater impacts associated with the proposal are considered further elsewhere in this report.

### Potter

Mr and Mrs Potter are landholders of Lot 1 DP880178, Sandy Flat Road, located to the east of the proposed urban zoning in Precinct A.

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As noted above, in relation to the Beddoes submission, information in support of the urban investigation of this property has not been provided to support the preparation of the Local Environmental Study. Consequently, the land is proposed to be identified as warranting investigation for future urban development in Council's urban planning framework documents.

The submission received from the Potter family raises a number of concerns regarding the planning proposal. These concerns include:

- Stormwater management issues; and
- Flora and fauna impacts and viability of proposed mitigation strategies.

Stormwater impacts associated with the proposal are considered further elsewhere in this report.

In relation to the viability of proposed flora and fauna impact mitigation strategies, it is noted that the purpose of the rezoning process is to determine the broader impact of the urban development of the land. The development consent process will refine many of the features of the proposal currently before the Council, with respect to detailed mitigation strategies. It is not intended that the rezoning process be comprehensive or conclusive with respect to mitigation measures to be employed in association with future development proposals. These matters will be considered further at development assessment stage when a greater level of design detail is available.

### Johnstone

Mr and Mrs Johnstone are landholders of Lot 2 DP 880178, Sandy Flat Road, located to the east of the proposed urban zoning in Precinct A.

As noted above, in relation to the Beddoes and Potter submissions, information in support of the urban investigation of this property has not been provided to support the preparation of the Local Environmental Study. Consequently, the land is proposed to be identified as warranting investigation for future urban development in Council's urban planning framework documents.

The submissions received from the Johnstone family raises a number of concerns regarding the planning proposal. These concerns include:

- impacts of development on the loss of agricultural land;
- impacts on flora and fauna; and
- hydrological impacts (relating to stormwater management).

Information relating to the matters raised above are addressed further elsewhere in this report.

### Proponents for Precinct A

The following submissions were received representing the development interests of Precinct A landholders:

- Ardill Payne & Partners;
- Joy Sheather, landholder of Lot 2 DP 1171927; and

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- Michael Sheather, member of Sheather family.

The submission received from Ardill Payne & Partners, on behalf of landholders, relates to three key matters, namely:

- road Noise;
- stormwater Management; and
- proposed lot size standards.

The matters raised in the Ardill Payne & Partners submission are discussed further elsewhere in this report.

The submission received from Mrs Sheather (Precinct A landholder) includes a signed petition in support of the Precinct A planning proposal. It is noted that Mrs Sheather lodged an additional signed petition in opposition to the Precinct B planning proposal. This second petition is provided in association with the Precinct B planning proposal which is reported separately in this Business Paper.

The submission received from Mr Sheather (member of landholder family) comprises a general submission in support for the Precinct A planning proposal.

### *Government agency submissions*

Submissions to the Precinct A planning proposal were received from the following Government agencies:

- NSW Rural Fire Service.
- NSW Office of Environment and Heritage.
- NSW Department of Transport - Roads & Maritime Services.
- NSW Department of Education & Communities.
- NSW Department of Primary Industries, Fisheries.
- NSW Department of Primary Industries, Catchments & Lands.
- NSW Department of Finance & Services and Housing NSW.
- NSW State Emergency Service.
- Rous Water.

A number of issues raised by the agency's submissions related to one or both of the Cumbalum planning proposals. The Government agency submissions have been distributed to Councillors under separate cover as **Attachment 5**. The matters raised by these agencies, that relate to the Precinct A planning proposal, are outlined and addressed in the following table.

<b>Agency / Issue</b>	<b>Response</b>
<b>NSW Department of Primary Industries</b>	
Raises concerns with potential impacts of stormwater management measures on fisheries habitat, noting that stormwater management issues were unresolved at the time of the exhibition.	Stormwater management issues are addressed in detail elsewhere in this report.

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<b>Agency / Issue</b>	<b>Response</b>
Raises concerns relating to the location and maintenance of stormwater management devices and sewerage pump stations.	These matters are more appropriately addressed at development assessment stage.
Refers to DPI Fisheries guidelines which recommend 50-100m development buffers to wetland areas.	It is noted that the proposed urban footprint is located approximately 420m, at its nearest point, from mapped SEPP 14 Wetlands that extend from the Ballina Nature Reserve onto adjacent private land.
<b>NSW Department of Education &amp; Communities</b>	
Advises that on the basis of the Department's assessment, additional public school site and/or infrastructure is not required.	Noted.
<b>NSW Roads &amp; Maritime Services</b>	
Notes that the designs of future works at the Ross Lane and Cumbalum interchanges do not include the duplication of the lanes or roundabouts. Advises that these upgrade works will be required at appropriate staging in association with any future development.	Noted. Infrastructure delivery matters are addressed elsewhere in this report.
Notes that some future residential lots may be affected by road noise. Advises that any mitigation measures to limit the impact of Pacific Highway road noise is the responsibility of the proponent.	Noted. Road noise issues are addressed elsewhere in this report.
<b>Rous Water</b>	
Raises a number of matters relating to the transfer of a number of existing Rous Water retail customers to become customers of Ballina Shire Council in association with planned water supply augmentation works.	Noted. This matter can be considered further at the development application stage.
<b>Office of Environment &amp; Heritage</b>	
Supports the zone plan, but would not support stormwater infrastructure being placed in environmental protection zones.	It is noted that the Ardill Payne & Partners proposal has included, and continues to propose the location of stormwater infrastructure in the proposed E2 Environmental Protection Zone. However, this proposal is not supported by the accompanying LES or by this report. Notwithstanding, sufficient land has been identified to accommodate stormwater infrastructure outside the proposed environmental protection zone.
Strongly supports the proposal to zone the	Noted. This site is that

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<b>Agency / Issue</b>	<b>Response</b>
sensitive sand rise which contains the Aboriginal Object site Sheather 1 as E2.	identified (and referred to above) by Ardill Payne & Partners as a stormwater infiltration site. The draft instrument proposes to zone the land E2 and on this basis not permit stormwater infrastructure.
Recommends that the design of the proposed link road connecting Precincts A and B ensures the road remains trafficable during major flood events.	This matter can be considered further at development application stage and in association with the design and construction of the link road.
Strongly recommends that Council be assured that the proposed setback from the Pacific Highway for any development on the western side of the proposed precinct is sufficient to ameliorate noise levels now and in future so that 'standard' construction measures will be adequate to provide internal and external living areas that meet noise standards.	This matter is addressed elsewhere in this report. It is noted, however, that the planning proposal, as exhibited provides adequate separation from road noise to require only standard dwelling construction techniques within land proposed for residential zoning.
<p>With respect to the Ballina Nature Reserve, OEH:</p> <ol style="list-style-type: none"> <li>1. Notes that best practice Water Sensitive Urban Design within the site may adequately prevent adverse hydraulic impact on downstream properties including Ballina Nature Reserve.</li> <li>2. Requests that Council consider whether a commitment to managing weed proliferation in Ballina Nature Reserve due to reduced water quality could be incorporated into future development consents.</li> </ol>	<p>Noted</p> <p>Noted. This matter can be considered further at development assessment stage.</p>
<b>NSW Rural Fire Service</b>	
Raises no objection to the planning proposal proceeding but makes note of a number of matters to be considered in relation to the future development of the land.	The matters raised will be considered further at development assessment stage.
<b>NSW Department of Primary Industries, Catchments and Lands</b>	
Notes several matters relating to the possible closure of Crown road reserves in association with future development.	This matter can be considered further at development assessment stage.
<b>NSW Department of Finance &amp; Services and Housing NSW</b>	
This combined Government agency submission provides information relating to affordable housing in Ballina Shire.	The information provided does not relate directly to the planning proposal.

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An acknowledgement letter was received from SES, however, no submission was received.

### *Key issues*

#### Population Pressure / Social Impacts and Impacts on Lennox Head

As noted above, a number of the submissions refer to the potential impacts of population growth on the existing amenity of Ballina Shire. Concerns are raised that future development would result in over-population leading to negative social impacts and the congestion of public facilities, including beaches and parking facilities. A number of the submissions made such comments specifically in relation to the urban area of Lennox Head.

With respect to pressure on public facilities, it is noted that population growth that would be facilitated by this planning proposal is anticipated to occur progressively over at least a 15 to 20+ year timeframe. This period should allow the level of public services and facilities to expand to accommodate the projected population. It is noted, in this regard, that any future development in the Cumbalum Release Area will make financial contributions to Council towards regional and district sporting and community facilities. Further, the potentially expanded rate base may also provide further opportunities with respect to the range and standard of public facilities available within Ballina Shire over the longer term.

Predictions of adverse social impacts associated with increasing population are difficult to support given the range of factors at play in social change. Notwithstanding, with respect to the perspective of population growth as a negative in itself, it is noted that the current policies of State and Federal Governments facilitate continued population growth in Australia and the State of New South Wales. The challenge for Ballina Shire is how to respond to population growth occurring in the community more generally. In this respect, restricting population growth could also have its own set of adverse social impacts, associated with housing (un)affordability and increased social inequality.

Further, the existing structure of economic development and employment in Ballina Shire (and the North Coast Region more broadly) is to a large extent reliant on the strength of the construction and building industry. In the absence of a ready transition to a different economic foundation, a sharp restriction of development opportunities could result in a difficult and costly adjustment to the structure of industry, investment and employment in Ballina Shire, with its own set of adverse social implications.

#### Impacts on Ross Lane

Comments regarding the impact of the planning proposal on Ross Lane are made in submissions that refer to both Precinct A and B. Due to the higher level of relatedness of Precinct B to Ross Lane these comments are taken to relate primarily to the Precinct B planning proposal which is the subject of a separate report in this Business Paper.

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### Flora and Fauna impacts

A number of the submissions raised concerns regarding the potential impact of development on flora and fauna present on the land and adjacent wetlands. Flora and fauna impacts have been the subject of detailed considerations during the preparation of the Local Environmental Study. These considerations, including buffering from key habitat areas, were factors carefully considered in the determination of the proposed zoning of the land. Further, considerations of stormwater related impacts have assessed potential flora and fauna impacts on downstream environments. It is noted that the submission received from the NSW Office of Environment and Heritage include the following:

*"The 'Flora and Fauna Assessment Proposed Rezone of Precinct A Pacific Highway Cumbalum' dated February 2010 and the addendum dated June 2010 have been reviewed by OEH against the draft zone plan. It is noted that almost all areas supporting high conservation values have been placed in an E2, E3 or RU2 zone; that is, not within the developable footprint. Although some individual plants of Hairy Joint Grass are in areas zoned for residential uses there appear to be sufficient numbers and habitat retained in areas zoned for non-urban uses to ensure that the species is maintained in the landscape. The zone plan is supported."*

Consequently, it is suggested that flora and fauna matters have been the subject of detailed assessment in the preparation of the subject planning proposal. The proposed zoning arrangement reflects the known ecological considerations relevant to the Precinct A area.

### Impacts on Agricultural Land

A number of the submissions noted that the subject land is identified in the NSW Government's Northern Rivers Farmland Protection Project as comprising 'Regionally Significant Farmland'. However, the Farmland Protection Project makes specific exemptions, from the development restrictions that otherwise apply to State and Regional Farmland, for land identified by councils in their local growth management strategies. As the land within the Cumbalum Urban Release Area is identified in Council's growth management framework, the restrictions on the development of 'regional farmland' do not apply in this case.

Notwithstanding the above, an assessment of agricultural values was undertaken as part of the Local Environmental Study of the subject land. This assessment concluded that the subject land had limited agricultural value due to *'unfavourable topography and soil type, issues of practical land use management, and ultimately low long-term enterprise sustainability'*. Consequently, the agricultural value of the land is not identified as a significant constraint to the development of the land.

### Density of Development

A number of the submissions raised concerns with the amount of proposed 'medium density' development shown on the exhibited plans. Importantly, the nomination of the least constrained land for medium density zoning is a response to the structure of the standard instrument LEP. Only 'dwelling houses' and 'secondary dwellings' (granny flats) are permissible within the R2



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Low Density Zone. A broader range of development types (including medium density dwellings, neighbourhood shops, community facilities and a limited range of other non-residential land uses) are permissible in the R3 Medium Density Zone. As detailed design and lot configuration is not known at this stage, the medium density zoning has been applied to the least constrained land to provide flexibility in housing outcomes at subdivision stage.

It is noted that under the standard instrument LEP, the 'zone map' (LZN) regulates the range of residential development types permissible, whereas a separate 'minimum lot size map' (LSZ) stipulates the minimum lot size standard that applies on the land. In the case of Cumbalum Precinct A, 450m<sup>2</sup> has been nominated as the minimum lot size standard in the R3 Medium Density zone. Notwithstanding, it is anticipated that future subdivision will utilise a range of lot sizes and configurations to align the development to demand in the marketplace.

Further, the NSW Government's Far North Coast Regional Strategy 'density target' for local councils seeks to achieve a development mix of 60% single dwellings and 40% multi-unit dwellings. In support of this State Government objective, Council's draft Ballina Shire Growth Management Strategy includes an objective that future 'greenfield' developments should achieve a gross neighbourhood dwelling density of 15 dwellings per hectare, to maximise the efficient development of scarce land resources and to minimise urban sprawl. The achievement of this target will require the development of a mixture of low and medium density development types in new residential estates.

The submission by the planning consultants for Precinct A, Ardill Payne & Partners, requests that Council allow the creation of 'smaller rural residential style allotments' on the residual parcels of the precinct that are proposed for zoning as E2 Environmental Protection Zone and E3 Environmental Management Zone. It is noted that the creation of residual allotments associated with residential subdivision, under the terms of the standard instrument LEP, is problematic. Council continues to pursue this matter with the Department of Planning and Infrastructure to come to a logical and efficient outcome.

It is acknowledged that the creation of small rural residential style allotments on the edge of the residential footprint in new release areas may have advantages associated with providing the consolidation of environmental management areas into a small number of landholdings which enjoy dwelling entitlements, thus providing land management 'ownership' and oversight.

Despite this, it is noted that rural residential subdivision has not been permissible in Ballina Shire since 1996. The potential for adverse outcomes to arise with such development and for wider opportunity for this style of land use, suggests that further consideration from an in-principle policy position is warranted. Consequently, it is recommended that the request from Ardill Payne & Partners to permit smaller rural residential style allotments within the residue parcels of the land be declined, at this time. As a separate process Council may consider whether such an approach, for residual parcels in greenfield release areas generally, should be enabled via development of a policy position of the Council. Such a process could consider matters such as the following:

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- Access and interface issues (including potential for land use conflict) associated with adjacent residential development;
- Appropriate allotment size and configuration to achieve effective and efficient land use management of environmental assets, located on residual parcels; and
- Appropriate ownership arrangements based on criteria to identify where such land parcels would ideally be placed in public ownership (Council or Crown), private ownership or other arrangement (such as community title).

Details regarding the above matters are currently unknown, with respect to the Precinct A planning proposal (and may not be known until the residential subdivision components are better advanced). Given this and in the absence of a clear policy position on the matter, the rural residential style lots proposed are not recommended at this time. Council may wish to further consider this matter from a policy perspective as a part of its Growth Management Strategy.

### Stormwater Management

As previously reported to Council, stormwater management matters have been the subject of detailed and lengthy deliberations involving Council staff (and Council's consultants), landholders, the Precinct A proponents and the (now) NSW Office of Environment and Heritage. Stormwater issues relating to this planning proposal can be divided into on-site and off-site issues. These are outlined further below.

### On-site Stormwater Issues

The proponents for Precinct A have included in their submission to the Council as part of the public exhibition, additional information relating to stormwater management issues.

It is noted that the Precinct A proponents have nominated in their previous submissions to Council, and continue to nominate in their latest submission, the location of stormwater treatment devices in two sensitive locations, namely:

- an existing farm dam that has vegetation comprising an Endangered Ecological Community (referred to as *EEC1* in the accompanying documentation); and
- a ridge of sand identified as a potential Aboriginal Archaeological Site (referred to as *Infiltration Area B2* in the accompanying documentation).

Council's concerns regarding this matter were reflected in the exhibited planning proposal by setting aside sufficient land to accommodate stormwater infrastructure outside these sensitive areas. In relation to the area referred to as 'EEC1', Council previously raised concerns with the proposal to use this area as a stormwater detention device due to potential ecological impacts and maintenance difficulties. With respect to this matter, Council's engineers have advised as follows:

*"The APP report has not addressed our previous concerns regarding the ongoing maintenance difficulties associated with having stormwater treatment areas located within the EEC. We previously requested that all detention should be located upstream of the EEC as it is unlikely that Council will be able to undertake any maintenance*

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*activities within the EEC areas in the future. The detention modelling in the revised APP report still includes provision of a significant volume of detention within area EEC1. All detention and treatment devices for the development shall need to be located outside the environmentally sensitive areas to ensure Council has access for maintenance purposes in the future.*

*In addition to this issue, EEC1 in its existing state already provides detention capacity that benefits the downstream properties. Given that this has been in place at the site for a considerable amount of time the volume of detention already provided by the existing berm should be considered the existing base case in regards to the detention volume requirements associated with any development of the site. This further supports the requirement that the area surrounding EEC1 be zoned RU2 for the purpose of providing stormwater detention and treatment devices.*

With respect to the 'sand ridge' that comprises a potential Aboriginal archaeological site, the proponent has previously provided written support from the JALI Local Aboriginal Land Council for the 'capping' of the area with 'geo-textile fabric' and fill material and the construction of contour banks to facilitate surface infiltration. With respect to this aspect of the proposal the following comments from Council's engineers are noted.

*The report has also only provided limited additional information to justify the infiltration capacity of the proposed infiltration area B2. It confirms that the groundwater, even in the elevated area where P20 is located, is very close to the surface and therefore has questionable infiltration capacity during wet periods. The surface level at P20 is RL 3.65m AHD with the water logger data (limited data available) indicating groundwater levels ranging from 3.0m to 3.6m AHD. The report refers to an infiltration area at or above natural surface which will be created via bunding at this location. Given that the infiltration capacity of this area is questionable, particularly during wet periods, any allowance for detention at this location would need to be based on the construction of a formalised basin on the surface of the site. The concept of infiltrating stormwater from the development is supported however the detention requirements need to be provide via a formalised basin on the surface. Whilst this would satisfy the engineering requirements of the development it may not be a desirable outcome given the historic significance of the Aboriginal site."*

With respect to the potential Aboriginal archaeological significance of that site, Council's Cultural Development Officer advises as follows:

*The potential significance of this site has been emphasised by Everick's Cultural Heritage Assessment (January 2010) and by Council's own Aboriginal Cultural Heritage mapping process (2011). Notwithstanding the option posed to 'cap' the sand ridge, a comprehensive impact assessment has not been provided documenting how this option may/does not pose harm to the site. This step must be undertaken not only to determine whether any is harm posed, but also whether an Aboriginal Heritage Impact Permit (AHIP) would be required to proceed with this action. These steps are a*

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*requirement of the National Parks and Wildlife Act and regulations regarding the management of Aboriginal cultural heritage sites.*

Due to the sensitive nature of these areas they have both been nominated, in the exhibited planning proposal, for zoning as E2 Environmental Protection Zone. The E2 zoning would preclude the use of the land for stormwater treatment under the terms of the draft Ballina Local Environmental Plan 2011. It is noted that the submission from the Office of Environment and Heritage strongly supports the proposed zoning of the sand rise that comprises a potential Aboriginal archaeological site as E2 Environmental Protection Zone, and that stormwater infrastructure not be permissible within the E2 Zone. In light of the above, it is recommended that the planning proposal, with respect to this matter, be unchanged.

Having regard for the above, Council's Civil Services Group has assessed the proposal and is satisfied that sufficient land is available to accommodate conventional urban stormwater management measures that do not rely on the use of the two sensitive areas referred to above, subject to detailed considerations at development application stage.

### Off-site Stormwater Issues

The off-site, or 'down-stream', stormwater issues associated with the subject planning proposal are complicated by the following factors:

- Conventional stormwater management practice focuses on the 'conveyance' of stormwater - that is on achieving post-development flow rates that are consistent with pre-development. This conventional focus is based on the assumption that receiving waters are free-draining;
- The subject locality has naturally elevated groundwater levels, emanating from Ballina Nature Reserve and adjoining wetlands;
- Groundwater levels in and around Ballina Nature Reserve have been rising, and are expected to continue to rise over time, due in part to the lack of maintenance of the man-made drainage network within the Nature Reserve;
- The potential for sea-level rise to increase groundwater levels in the area over time, particularly during high tide events. This may have implications for the design levels of stormwater outlets; and
- The presence of private properties located between the subject land and the Ballina Nature Reserve.

Four private properties are located downstream of Precinct A, adjacent to the Ballina Nature Reserve. These are shown on the map provided as **Attachment 6** of this report.

It is noted that the submissions received from both the NSW Office of Environment and Heritage (OEH) and Department of Primary Industries (DPI), Fisheries acknowledge drainage issues in and around the Ballina Nature Reserve as a key factor in the drainage dynamics of the locality. The OEH states:

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*'It is noted that the water levels in BNR are dictated to a larger extent by tides in North Creek than by inflows from the local catchments. The tides restrict outflows and thus the inflow due to runoff from local catchments cannot move rapidly through the Nature Reserve. For this reason increased flood levels in the North Creek floodplain due to climate change, sea level rise in particular, may have a larger impact on the hydrology of the Nature Reserve in the longer term.'*

Further, the Department of Primary Industries (DPI), Fisheries submission advised as follows:

*'DPI Fisheries can accept the assertion in the assessment documentation that the rising groundwater levels are attributable to the lack of maintenance of the constructed drainage network within the Nature Reserve. DPI Fisheries highlights though, that objectives of the Ballina Nature Reserve Plan of Management do not appear to accommodate ongoing maintenance of the constructed drainage network now located within the Reserve. Rather two objectives seek to:*

- "Conserve the diversity of habitat types within the Reserve, with particular emphasis on the protection of the wetland habitat"; and*
- "seek to maintain a hydrological regime in the Reserve that maintains Reserve ecosystems".*

It would appear that in effect the Ballina Nature Reserve is reverting to its pre-settlement wetland condition as the man-made drainage network becomes increasingly silted. It is noted that this may result in increased periods of inundation for landholdings adjoining the nature reserve, regardless of the development outcome for the land.

With respect to the impact of the proposal on the downstream ecology of the Ballina Nature Reserve and adjoining SEPP14 wetlands, the Office of Environment and Heritage notes in its submission:

*'The modelling approach for Precinct A, using DRAINS software to determine stormwater discharges, is considered appropriate. It reflected the changes in increased impervious area due to urbanisation and resulted in shorter response time and increased discharges from the sites. The modelling indicates that the post development discharges can be attenuated to pre development state by employing best practice Water Sensitive Urban Design within the site and this may be enough to prevent adverse hydraulic impact on downstream properties including BNR.'*

The above comments suggest that OEH is satisfied the assessments to date and the (future) development assessment process should provide sufficient protections for downstream plant ecology. The above position also aligns with that provided by Council's consultants GHD, responsible for the preparation of the Precinct A Local Environmental Study.

It is noted that officers of the OEH have previously advised that Council should keep in mind the purpose of the Ballina Nature Reserve which relates to the need to protect the broad representation of wetland species. The OEH officers advised that distributional change within the reserve should not be considered a problem in itself, provided this broader representation of wetland

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species is maintained. This advice appears consistent with the broader position of the State Government with respect to discontinuing maintenance of the man-made drainage network within the reserve which itself is likely leading to changes in species distribution.

Contrasting with the above, Council's Environmental Scientist provides an alternative view, noting:

*A significant threat to environmental integrity of [the downstream] HCV ecosystems is stormwater discharge arising from the adjacent urban zoned land. The predicted adverse impacts result from altering the existing hydrology of the catchment by altering wetting and drying hydroperiods, frequency of inundation, and altering groundwater levels etc.*

*It is for these reasons that the "Alteration to the natural flow regimes of rivers, streams, floodplains & wetlands" is listed as a key threatening process under the TSC Act (1995).*

*The proposed stormwater strategy is largely an end of source stormwater treatment train that will increase the frequency and volume of stormwater entering the subject EECs. The long-term impact on the receiving vegetation communities is unknown, however, it would be expected that the changes in hydrology will lead to increased die back of the existing forested wetland communities and likely changes to the species composition of the Freshwater wetland EEC. The impact of increased storm water on native forested wetlands is evident in other historical developments around East Ballina (i.e. Chickiba Wetland).*

Aside from potential ecological impacts associated with increased stormwater volumes, the following comments from Council's Civil Services Group staff regarding potential nuisance impacts on neighbouring private properties are significant.

*"Whilst I am satisfied that, if zoned as per the above recommendations, any future development of Precinct A would be able to provide a suitable treatment train to meet the requirements of Council's DCP Chapter 13 [Stormwater Management] that there will be no net increase in the average annual load of stormwater pollutants and peak discharge flow rates above that occurring under the existing conditions, I cannot state with certainty that the development will not affect the level of flooding being experienced by the downstream properties. Whilst the provision of a suitable drainage and detention system will not increase the peak flow rates from the development, these systems will extend the time over which stormwater is discharged from the site therefore potentially altering the hydrology of the catchment through the downstream properties. This would not have a significant impact on the properties downstream of the development if these properties were serviced by a drainage system with a high conveyance capacity. Unfortunately, the drainage system servicing these properties has limited conveyance capacity which appears to be reducing with time due to a lack of maintenance of the downstream drainage systems within the Ballina Nature Reserve.*

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*The residents downstream of the Precinct A catchment have expressed concerns that stormwater from the proposed development will exacerbate the existing nuisance flooding issues they are experiencing on parts of their properties. They have suggested that the drainage systems within the downstream wetland areas owned by Council and NSW National Parks & Wildlife are no longer maintained to the same extent they were only a few decades ago. DPI Fisheries has stated in writing that it accepts the assertion that rising groundwater levels in the area are attributable to the reduction in maintenance of the drainage system within the Ballina Nature Reserve. The Management Plan for the Nature Reserve does not appear to accommodate the ongoing maintenance of the drainage network located within the Reserve. Rather, it states that maintenance will only be undertaken as necessary to conserve the wetland habitat and ecosystems. It is therefore likely that properties between Precinct A and the Nature Reserve will experience increased flooding in the future due to a reduction in the conveyance capacity of the downstream drainage systems.*

*In addition to these issues the Office of Environment & Heritage has suggested that the water levels in the Nature Reserve are dictated, to a large extent, by tides in North Creek and are anticipated to increase due to sea level rise in the future. They state that the drainage capacity through the Nature Reserve is anticipated to be reduced in the future due to the effects of sea level rise.*

*The hydrology of this entire catchment is very complex to model given the influence of tidal effects, sea level rise, groundwater flows and the conveyance capacity of the downstream Ballina Nature Reserve. Whilst the proposed rezoning application is consistent with contemporary stormwater design standards and the stormwater design requirements of Council's DCP the approval of such a development within the eastern catchment of Precinct A will alter the hydrology within this catchment. Whilst this will not involve an increase in the peak discharge flow rates from the development it will extend the period of time over which stormwater is discharged from the site. What affect all of these changes will have on the existing nuisance flooding issues experienced by properties downstream of the proposed development is difficult to predict. This issue was raised with representatives of Ardill Payne & Partners during previous verbal discussions however a full catchment model has not been provided...."*

The implication of the above is that, should the planning proposal proceed, and land be rezoned for urban uses, the future consent authority would need to carefully consider the potential for an increase in nuisance flooding to occur for downstream private properties. Nuisance flooding impacts here include an increase in the period of soil 'wetness' following major rainfall events and consequential longer term changes in vegetation cover and ground conditions which may impact on the continued 'enjoyment' or economic use of the land. It is noted that there could be legal implications, under civil law, for the future consent authority should such impacts be ultimately demonstrated.

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It is noted, however, that the stormwater modelling undertaken has been conservative in approach and has assumed limited upstream infiltration within the proposed development area. Consequently, a greater emphasis on stormwater infiltration higher in the urbanised catchment, at detailed development design stage, could lesson the volume of runoff and therefore reduce downstream impacts.

Uncertainty surrounding this aspect of the development proposal presents a challenge for Council. The impact of increased stormwater volume on downstream ecology is unknown and the concerns of downstream private property owners regarding this aspect of the proposal appear justified. It is unclear to what extent these impacts are occurring as a result of reduced drainage maintenance within the Ballina Nature Reserve, regardless of the development outcome for the land. Further, it is noted that any such impacts may be exacerbated by potential sea-level rise associated with climate change. Given these implications, this matter has significant implications for the options and recommendations presented in this report.

The need to have this matter addressed as a part of the planning proposal process has been communicated to the proponents on numerous occasions. Council attempted to achieve collaborative approach between the Precinct A and Precinct B proponents for a catchment-wide hydrological study, during the preparation of the Local Environmental Studies, however regrettably this was not able to be achieved.

It is noted that Council is currently involved in a project, the Newrybar Drainage and Mitigation Study, being directed by the Richmond River County Council and the NSW Office of Environment and Heritage with the assistance of Council's flooding and drainage consultants BMT WBM that may provide further information regarding this matter.

### Road Noise

The road noise assessments undertaken in association with the preparation of the planning proposal and accompanying Local Environmental Study identified road noise as an issue impacting development opportunities in the western part of Precinct A, adjacent to the Pacific Highway Ballina Bypass.

Those assessments relied largely on road noise modelling, as the Ballina Bypass was not in operation at the time. The proponent has provided an updated report with their submission that includes noise monitoring with the Ballina Bypass in operation. The results of this recent monitoring are generally consistent with the previous modelling that was undertaken to inform the planning proposal.

The road noise assessments have identified that approximately 12.3 hectares of land, that may otherwise be considered as suitable for urban development, is affected by noise levels that exceed the relevant guidelines (NSW Road Noise Policy, March 2011). Consequently, the exhibited planning proposal proposes to zone noise affected land as RU2 Rural Landscape Zone, and identify that area within Council's urban planning framework as a potential urban area, to enable the urban zoning of the land to be considered further at a later stage.



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The relevant State Government guideline criteria for external day time noise is 60dB(A) and external night time level of 55dB(A). With respect to this criteria the guideline refers to the World Health Organisation report (2009) which recommends a long-term night-time external noise level of 40dB(A) with an interim target of 55dB(A). The report notes that the interim target is only intended as an intermediate step in localised situations as *'health impacts, particularly on vulnerable groups are apparent at this noise level'*. The reports also note however that *'maximum internal noise levels below 50-55 dB(A) are unlikely to awaken people from sleep'*.

The assessment identifies that, due to the topography of the land, noise barriers would not be effective. The assessments suggest, and the submission by Ardill Payne and Partners argues, that the relevant internal noise criteria could be met via the following design responses:

- Acoustic building shell treatments involving use of appropriate building materials;
- Habitable room openings fronting, or at 90 degrees to, the road need to be closed. Consequently, cross fresh air ventilation would need to be achieved via the building design having openings for habitable rooms on frontages that are not noise affected. Alternatively, air-conditioning or mechanical ventilation would be required; and
- Building design to locate non-habitable rooms (such as garage, laundry and bathroom) adjacent to the noise source. In the case of Precinct A it is the western elevation that would be most noise affected. The proponent's submission notes: *"It is conventional and practical house design in sub-tropical areas, for the western sides/elevations of dwellings to comprise reduced openings and glazing so as to reduce potential adverse impacts from afternoon summer sun. In this respect it is also common practice to place less heat sensitive rooms...on the western side of the dwelling. This practice is consistent with the building layout principles of the Interim Guidelines and will achieve both noise and radiant heat minimise outcomes"*.

From the information submitted it would appear that with reliance on individual building acoustic treatments, the guidelines for internal noise criteria are achievable. However, Council is invited to consider whether the measures required to achieve these criteria are appropriate in the circumstances, having regard to the following:

- The noise criteria are based on the assumption of existing dwellings. The relevant guidelines also identify a number of long-term strategies to address road noise impacts including (but not limited to) *"ideally locating residential development away from major roads"*;
- Although dwelling design (through the arrangement of habitable and non-habitable rooms) may assist in reducing noise impacts, future dwellings could nonetheless require the closure of doors and windows with reliance on air-conditioning to address road noise impacts. Such an approach would not appear to represent a sustainable development outcome;

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- The enjoyment of an "outdoor lifestyle" is a common expectation for residents of the sub-tropical North Coast. The proposed mitigation measures could limit opportunities for residents in noise affected areas to have such expectations met. Consequently, if residential development was permitted in noise affected areas, Council could expect to receive representations from future homebuilders for Council to relax noise-mitigating development standards, and then subsequently receive requests from future residents for Council and the RMS to mitigate road noise impacts through civil engineering measures (which would likely be, as noted above, ineffective under the circumstances);
- The cost of the proposed mitigation measures would be borne by future home owners, possibly requiring specialised architectural advice, construction materials and additional running costs;
- Residential development may be enabled under complying development provisions, limiting the ability for the relevant noise mitigation standards to be applied. Although exemptions to the application of complying development are possible, there is no certainty such an exception could be achieved at this time as the agreement of the State Government is required.

The following comments, made in the submission received from the NSW Office of Environment and Heritage, should also be noted:

*'OEH strongly recommends that Council be assured that the proposed setback is sufficient to ameliorate noise levels now and in future so that 'standard' construction measures will be adequate to provide internal and external living areas that meet noise standards. Council should be mindful that the Pacific Highway will remain the major heavy transport route between Sydney and Brisbane. Increased freight movements, including 'B-triples', are proposed for the Pacific Highway within 20 years. The road in the vicinity of precincts A and B has a relatively steep grade, which may result in increased noise from both acceleration and compressing braking. Notwithstanding that, according to the consultant's report, trucks may comprise only 12% of the total traffic volume, heavy truck movements make up to 40-50% of the night-time traffic along the Pacific Highway.'*

Further, the revised road noise report has been reviewed by Council's Environmental Health Officers who provide the following advice:

*'As this proposal is at the rezoning stage it is considered better practice to require the lot layout and design take into account matters such as potential noise impacts and not locate residential lots in locations that will result in a loss of amenity and will require Council to burden the lots created in a way that will limit individual design options and cost future developers of those lots to address the impact.'*

On the basis of the above, it is recommended that the draft planning proposal as it relates to this matter be unchanged.

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### Infrastructure Delivery

The Cumbalum Urban Release Areas are not included in Council's Section 94 Development Contributions Plans for roads and community facilities or in Council's Section 64 Plans for Water and Sewerage. Council's Civil Services Group advises the reasons for the exclusion of the Cumbalum Urban Release Area (CURA) from these plans include the following:

- The delivery of infrastructure through Council's plans risk the network being constructed in an inefficient manner due to the potential for restrictions to be imposed by landowners (individual landowners may or may not be involved in the development to be serviced by a particular item of infrastructure). Council's recent experience in the Wollongbar Urban Expansion Area is noted;
- Council's ability to meet its obligations may be limited due to the potential for protracted negotiations with landholders;
- Council is subject to financial risk if the cost to provide the infrastructure is greater than the amount levied by the Developer Charge. It is noted that the Developer Charge is based on reference rates and site investigations undertaken well in advance of detailed design work being undertaken; and
- In the case of Section 94 Development Contributions Plans, the State Government's 'Contributions Cap' of \$20,000 per allotment limits Council's ability to adequately recoup infrastructure costs through developer contributions.

Further, Council's Engineers note in relation to water and sewer charges:

*Section 64 charges for water and sewer are primarily for contribution toward head-works and shared infrastructure that caters for demand beyond the scope of the development. Where a development needs infrastructure that only provides for the needs of the development, the provision of those assets are the responsibility of the developer. It is the responsibility of the developer to design and construct infrastructure to meet the needs of their development and Council is not in a position to understand the proposed development or needs of the development in relation to water and wastewater infrastructure prior to the submission of detailed designs and plans. As such it would be impossible for Council to incorporate fair and reasonable costing into any Developer Service Plan that would not entail unnecessary risk on either the developer and /or Council.*

*Were a Section 64 Plan to be prepared for the CURA development that incorporated all infrastructure, the developer would bear the cost of providing the infrastructure and this would reflect in the charges. Without a detailed plan of what is proposed to be included in the development Council would be forced to be unnecessarily conservative which may lead to higher charges and inefficient designs.*

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Consequently, alternative arrangements are required to ensure the land can be adequately serviced without placing an unreasonable burden on the public. Despite this matter being raised with the proponents on numerous occasions during the preparation of the planning proposals, this matter was not able to be resolved prior to the public exhibition of the planning proposal.

To address this matter, Council has sought to arrive at an alternative arrangement for securing the provision of infrastructure, during the public exhibition phase of the planning proposal. Consequently, Council has had a Voluntary Planning Agreement (VPA) prepared which sets out the following:

- Identifies infrastructure to be provided in association with the future development of the land, including arterial roads, drinking and recycled water supply, sewerage infrastructure, open spaces and community facilities;
- Identifies the parties responsible for undertaking specific works and the timing for the delivery of those works; and
- Identifies the obligations of the parties, as landholders, to allow the creation of easements and the dedication of land, to facilitate the developers' obligations.

It is noted that the VPA makes reference to the obligations of the parties to the agreement separately, as developer and as landholder, as the 'developer' involved in a particular stage of development may be obligated to deliver infrastructure located on another's landholding, that is not the subject of that stage of development. This arrangement seeks to ensure there are no impediments to the logical and efficient extension of development and supporting infrastructure.

Due to the complex nature of such agreements, the VPA is still being formulated at the time of drafting this report. Consequently, the proponents have not been in a position to review the agreement and advise whether the terms of the agreement reflect their position with respect to infrastructure delivery obligations outlined therein. It is noted that the VPA must be a voluntary 'offer' by the developer to undertake obligations contained in the agreement. However, Council is able to formulate a VPA that, subject to the proponent's agreement, can then form the voluntary offer of the proponent. If agreed to, it is considered that the VPA will satisfy the need to ensure that adequate arrangements are in place for the provision of infrastructure to service future development, without placing an inappropriate burden on the public. In the absence of such agreement, an alternative strategy would need to be found to ensure adequate arrangements are in place for the provision of infrastructure.

If acceptable to all parties (including the Council) the VPA will need to be publicly exhibited, for a period of no less than 28 days, in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*. Following the exhibition period, the VPA would be reported to the elected Council for its further consideration. These steps would need to occur before the finalisation of the planning proposal.

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### Representations by the NSW Department of Planning and Infrastructure

The NSW Department of Planning and Infrastructure has, on a number of occasions, made robust representations to Council to expedite the processing of the Cumbalum (Precinct A and Precinct B) planning proposals. Council has been at pains to convey to the Department the substantial matters, specifically infrastructure delivery and stormwater, that in Council's view must be resolved prior to the matter proceeding. It is conceivable in light of those representations that, should there be further delay in relation to this matter, the Minister may see fit to 'call-in' the Cumbalum planning proposals and have the matter resolved by an alternative authority, such as the Department of Planning and Infrastructure itself or a Joint Regional Planning Panel.

### *Summary Comments*

As outlined in the above report, Cumbalum Precinct A has comprised an important component of Council's, and the State Government's, urban growth strategy for the shire, and the region, for a considerable period. The urban suitability investigations undertaken as part of the Local Environmental Study prepared as the basis for the planning proposal have identified that parts of the precinct have physical capabilities appropriate to accommodate urban development, subject to the resolution of the following:

- Infrastructure delivery - that an appropriate mechanism is in place to provide for the efficient delivery of infrastructure to service future development without placing a burden on the public for the extension of those services;
- Ecological impacts associated with increased stormwater volumes - in particular the potential for adverse impacts to occur in the Ballina Nature Reserve and adjacent SEPP14 Wetlands; and
- Nuisance impacts associated with increased stormwater volume - relates to the potential for downstream private properties to experience nuisance flooding impacts as a result of stormwater discharge due to the development of land higher in the catchment.

In relation to infrastructure delivery, as outlined above, the Precinct A Voluntary Planning Agreement, if acceptable to the proponents and the Council, appears to provide an appropriate mechanism for securing (in a financial and legal sense) the delivery of infrastructure.

In relation to the potential for adverse ecological impacts to occur as a result of increased stormwater volume, differing perspectives have been offered by those knowledgeable in the field regarding the extent of the problem, its potential for mitigation and the stage at which a comprehensive resolution is required (rezoning vs development assessment). The views of the Office of Environment and Heritage, Council's LES consultants GHD and Council's Environmental Scientist are provided above. On the basis of the information available, it is considered that ecological matters can be adequately addressed at the development application stage in the event that the planning proposal proceeds in its exhibited form (provided that stormwater management matters are adequately addressed - see below).

Given the level of uncertainty associated with stormwater management matters, this report recommends this issue requires further consideration prior to finalising the subject planning proposal.

The matter of the potential for adverse 'nuisance' type flooding impacts to occur to downstream private properties is potentially more sensitive to change in hydrology. In this instance, relatively minor changes to soil moisture and/or vegetation type could lead to adverse 'nuisance' impacts, by constraining landowners' current use of their land for purposes such as grazing. Such changes can be seen, if determined by a court, as creating an *"unreasonable interference with the use and enjoyment of a[nother] person's land"*. Civil liabilities may apply should such impacts ultimately occur, where such an outcome was seen as inevitable as a result of the consent authority's decision. Despite the fact that such impacts do not appear, at this stage, to be inevitable, a high degree of uncertainty remains with respect to this matter, as evidenced by the comments by Council's engineers provided above. At the rezoning stage, Council needs to have a reasonable level of confidence that a solution can be found at development application stage. The advice to date, from Council's engineers, is that Council is not confident that a technical solution can be found, due to the particular circumstances of this case.

Consequently, one of the options presented below is for the rezoning to proceed but subject to Council's engineers being satisfied that stormwater management issues can be resolved adequately at development application stage.

### **Sustainability Considerations**

- **Environment**

The rezoning of land for urban purposes has environmental implications for the land and the locality.

- **Social**

The provision of additional residential development would contribute to the changing social environment of Ballina Shire and provide existing and future residents with greater housing choice. Development may also place additional demands on Council and other government and non-government organisations for the provision of social services and urban infrastructure. However, it is noted that development of this land will be consistent with Council's endorsed and established urban land release strategy.

- **Economic**

The increase in population arising from future development of the subject land may contribute to the economic development of the locality and the shire, via the additional aggregate demand in the economy, construction activity and the provision of labour resources to local businesses.

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

The rezoning of land for residential purposes would enable landowners to lodge development applications for residential subdivision and development of the land.

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As outlined in the above report, subject to this matter proceeding at this time, further consideration would need to be given, at development application stage, to the potential downstream impacts associated with increased stormwater volumes, including the potential for increased 'nuisance' flooding on downstream private properties. As noted above, there could be legal implications, under civil law, for the future consent authority should development consent be granted and adverse downstream impacts occur, as foreshadowed.

### Consultation

As outlined in the above report, this matter has been the subject of extensive consultation with landholders, government and non-government agencies and the broader community. Council has met the requirements of the *Environmental Planning and Assessment Act 1979* in carrying out its community engagement initiatives for the planning proposal.

### Options

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

1. Proceed to finalise the Precinct A planning proposal following agreement regarding infrastructure provision without further assessment of stormwater management matters.

That Council proceed to finalise the Cumbalum Precinct A Planning Proposal, subject to the proponents providing a signed Voluntary Planning Agreement (or agreement is reached on a suitable alternative mechanism) that satisfies the Council's requirements with respect to securing future infrastructure delivery obligations. This approach would also involve Council advising the proponents that Council expects that a greater level of information, relating to stormwater management, to be provided to favourably determine a development application for the residential subdivision of the land.

If this option is pursued, and a planning agreement progressed, a finalised Precinct A Voluntary Planning Agreement would be placed on public exhibition for a period of 28 days. The outcomes of the exhibition would be reported to the elected Council for further deliberation prior to finalisation of the planning proposal.

Due to the uncertainty that remains with respect to stormwater management matters, this option is not recommended.

2. Proceed to finalise the Precinct A planning proposal following agreement regarding infrastructure provision and subject to further assessment of stormwater management matters.

That Council proceed to finalise the Cumbalum Precinct A Planning Proposal, subject to the following:

- a. The proponents providing a signed Voluntary Planning Agreement (or agreement is reached on a suitable alternative mechanism) that satisfies the Council's requirements with respect to securing future infrastructure delivery obligations; and

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- b. Council's Civil Services Group advising that it is satisfied that a stormwater management system can be designed that is capable of servicing the subject land, without having an unreasonable adverse impact on downstream private properties and ecology.

This option is recommended for the following reasons:

- Cumbalum Precinct A forms a key component of Council's, and the State Government's, strategic planning framework for urban growth in the shire, and the region;
- The urban suitability investigations undertaken as part of the Local Environmental Study prepared as the basis for the planning proposal has identified that parts of the precinct have physical capabilities appropriate to accommodate urban development; and
- There remains the potential to resolve the outstanding matters outlined above within a reasonable timeframe.

3. Discontinue the processing of the Precinct A planning proposal.

That Council discontinue the planning proposal process due to matters raised in the public submissions received during the planning proposal exhibition period and on the basis that stormwater management and infrastructure provision have not be addressed sufficient to enable the rezoning of the land.

This option is not recommended for the following reasons:

- Cumbalum Precinct A forms a key component of Council's, and the State Government's, strategic planning framework for urban growth in the shire, and the region;
- The urban suitability investigations undertaken as part of the Local Environmental Study prepared as the basis for the planning proposal has identified that parts of the precinct have physical capabilities appropriate to accommodate urban development; and
- There remains the potential to resolve the outstanding matters outlined in this report within a reasonable timeframe; and
- Council has committed substantial resources over a period of five years to progress this matter to this point, consequently, maintaining the current process is seen as preferable to recommencing or restarting the process at a later date, if the Council is inclined to support the rezoning process as a matter of principle.

It is noted there is potential for the Minister for Planning and Infrastructure to become involved in the progress of the planning proposal should be Council pursue this option.



**RECOMMENDATIONS**

1. That Council proceed to finalise the Cumbalum Precinct A Planning Proposal, subject to the following:
  - a) The proponents providing a signed Voluntary Planning Agreement (or agreement is reached on a suitable alternative mechanism) that satisfies the Council's requirements with respect to securing future infrastructure delivery obligations; and
  - b) Council's Civil Services Group advising that a stormwater management system can be designed that is capable of servicing the subject land, without having an adverse impact on downstream private properties and ecology.
2. That where items 1(a) and 1(b) are not resolved in a period of three months, the matter be reported to Council for further consideration.

**Attachment(s)**

1. Public submissions relating to Precinct A only (Under separate cover)
2. Public submissions relating to Precinct B only (Under separate cover)
3. Public submissions relating to Precinct A and B (Under separate cover)
4. Landholder submissions (Under separate cover)
5. Government agency submissions (Under separate cover)
6. Map identifying downstream properties located adjacent to the Ballina Nature Reserve (Under separate cover)

## 4.2 Cumbalum Precinct B Planning Proposal

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### 4.2 Cumbalum Precinct B Planning Proposal

**Delivery Program** Strategic Planning

**Objective** To report on the submissions received in response to the public exhibition of the Cumbalum Precinct B Planning Proposal and seek direction with respect to the progress of the planning proposal.

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#### **Background**

Council has been engaged in the consideration of the Cumbalum Precinct B Planning Proposal since mid 2007. In November 2011, Council resolved to exhibit the planning proposal for public comment [Minute No. 241111/9]. In response to Council's resolution, the Cumbalum Precinct B Planning Proposal was publicly exhibited for a period of 78 days from 12 January 2012 to 30 March 2012. The initial 42 day exhibition period was extended by resolution of the Council for a further 36 days (to the end of March 2012).

Additional consultation activities undertaken during the exhibition period included the following:

- Public information session held at the Lennox Head Cultural and Community Centre on Saturday 10 March (attended by an estimated 180 people)
- Landholder briefing sessions held during the evening of 25 January 2012 at Council's Customer Service Centre
- "Drop in" session with Council's strategic planning and engineering staff held at Council's Customer Service Centre from 3pm to 7pm on 29 February 2012 and
- Numerous meetings on request with Council staff.

By way of broader background to this matter, the key milestones in the subject planning proposal process are outlined below:

- August 2007 - Council resolved to commence the rezoning process, in accordance with (then) s54 of the Environmental Planning and Assessment Act 1979. At that time any technical documentation that had been prepared by the proponents had not been submitted to Council
- April 2009 - Proponents (represented by consultancy Landpartners Pty. Ltd.) submitted technical documents supporting their rezoning request
- November 2009 - Consultants GHD (on Council's behalf) completed first round peer review of technical documents
- September 2010 - Proponents lodged revised technical documents in response to Council's/GHD's peer review
- December 2010 - GHD (on Council's behalf) completed second round peer review of technical documents. A number of matters were identified as requiring further consideration.

## 4.2 Cumbalum Precinct B Planning Proposal

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- Information relating to the proposed stormwater treatment and disposal strategy was the subject of further discussion between the proponents, Council and the (then) NSW Department of Environment and Climate Change. The outcome of these discussions was that further information was prepared by the proponent relating to the potential impacts of increased stormwater flows on adjacent downstream private landholdings and on the Ballina Nature Reserve and adjacent SEPP14 wetlands. This information went through several rounds of review and revision. Further information regarding this issue is provided below. These revised reports, along with additional information relating to Aboriginal cultural heritage matters, bushfire management, flooding and road noise impacts were finalised and submitted to Council in August 2011.
- November 2011 - Report to Ordinary Meeting of the Council. Council resolved to publicly exhibit the planning proposal.

Further background to this matter is provided in the report presented to Council at its November 2011 Ordinary Meeting (Item 9.2).

### **Key Issues**

- Strategic land use planning
- Long-term supply of residential zoned land
- Growth management
- Infrastructure delivery
- Environmental constraints
- Affordable housing

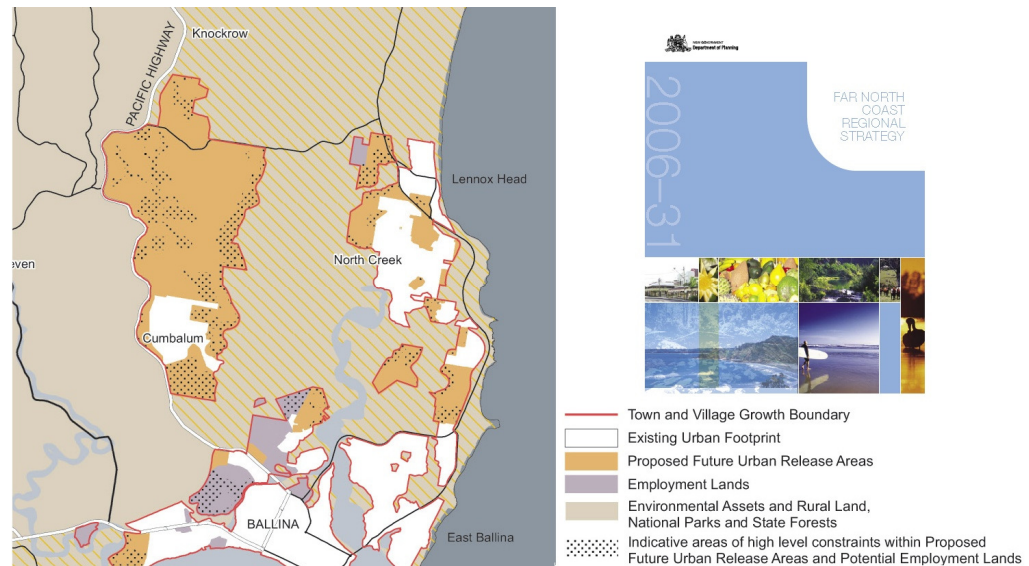
### **Information**

#### *Planning Context*

Far North Coast Regional Strategy (FNCRS-2006)

The Far North Coast Regional Strategy (FNCRS) provides the regional framework for the consideration of the rezoning of land for urban purposes in Ballina Shire. The FNCRS identifies the subject land as a 'Proposed Future Urban Release Area' within the 'Town & Village Growth Boundary' for Ballina Shire (refer Town and Village Growth Boundary Map - Sheet 3, excerpt as follows).

## 4.2 Cumbalum Precinct B Planning Proposal



Of these areas the Strategy states:

'Not all land identified within the Town and Village Growth Boundary can be developed for urban uses. All sites will be subject to more detailed investigations to determine capability and future yield. Land that is subject to significant natural hazard and/or environmental constraints will be excluded from development'.

The investigation of the subject land for future urban development through the statutory rezoning (planning proposal) process is consistent with the regional planning framework.

Ballina LEP 1987

The subject land is currently zoned 1(d) Rural (Urban Investigation) under the terms of the Ballina Local Environmental Plan 1987. The primary zone objectives are:

- a) *to identify land which may be needed in the future and will be thoroughly investigated with respect to its suitability or otherwise for urban land uses and the environmental consequences associated with the land's release for urban purposes;*
- b) *to regulate the subdivision and use of land so as to prohibit development which could prejudice the possible future release of land within this zone for urban purposes; and*
- c) *to ensure that the release of land for urban purposes, by rezoning, shall not take place unless –*
  - i. *urban structure planning has been completed by Council;*
  - ii. *the Council reviews urban suitability investigations for individual planning units, and detailed land use allocations for each planning unit have been determined by the Council;*
  - iii. *sufficient demand exists for the release of urban land; and*
  - iv. *appropriate urban infrastructure and facilities are available to the land or can be provided to the land in a manner which does not create an unreasonable or uneconomic demand, or both, for the provision or extension of such services.*

With respect to the matters described in subclause c, the following is noted:

- i. Urban structure planning was undertaken by Council via the preparation and adoption (in 2006) of the Cumbalum Structure Plan;
- ii. The review of urban suitability investigations is the purpose of the Local Environmental Study prepared for the area;
- iii. Council seeks to ensure that there is an adequate "buffer" of zoned land available for development to facilitate housing choice, provide competition in the land development market and potentially improve housing affordability.

It is noted that while Ballina Shire is currently reasonably well supplied with undeveloped residential zoned land (having in the order of 300 hectares of vacant residential zoned land), recent land development rates have been modest due to a number of factors including infrastructure limitations and the financial failure of a number of land development companies.

From this perspective, there appears to be sufficient residential demand in the short to medium term, relative to the real supply of development-ready sites, to support the rezoning of additional land in Cumbalum Precinct B.

- iv. The subject of the adequacy of infrastructure and facilities is addressed elsewhere in this report.

### Ballina Urban Land Release Strategy 2000 (ULRS-2000)

The Ballina Urban Land Release Strategy 2000 (ULRS) provides the Department of Planning and Infrastructure endorsed urban land release strategy for the Ballina local government area. It has been prepared in accordance with the provisions of clause 38 of the North Coast Regional Environmental Plan 1988 (the REP). The land release program contained within the Strategy has been agreed with the former Department of Infrastructure Planning and Natural Resources as required by subclause 38(3) of the REP.

The strategic approach adopted in the ULRS relates to the following:

- ongoing commitment to Council's existing zoning strategy;
- providing an adequate land supply for various market segments;
- achieving and maintaining reasonable developer competition in the marketplace;
- ensuring the timely and economic provision of services;
- masterplanned rezoning followed by staged subdivision release; and
- planning over a 5-20 year timeframe.

The ULRS identified rezoning investigations of the subject land to commence in the medium term (ie within 5-10 years of the year 2000). Work undertaken by Council to date is consistent with this timeframe.

## 4.2 Cumbalum Precinct B Planning Proposal

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### Cumbalum Structure Plan (2006)

The objectives of the 1(d) zone under the Ballina LEP 1987 include a requirement that Council prepare an urban structure plan prior to the consideration of the land for rezoning to permit urban development. Accordingly, Council prepared the Cumbalum Structure Plan (CSP), which involved a broad assessment of the environmental capabilities of the land and consultation with landholders, agencies and the broader community.

The preparation of the CSP, by Council, took into consideration the presence of environmental constraints, natural and cultural values and urban design. A key feature of the CSP is the identification of a number of development principles, encapsulating best practice guidelines for urban development in the region. Rezoning and development proposals should demonstrate consistency with these development principles.

The CSP was adopted by Council in July 2006. A key element of the CSP, which arose from the broad land use suitability investigations undertaken, is that future development of the Cumbalum Ridge should occur as two (possibly three) distinct 'development nodes' or villages. In the planning context, these villages are represented as Cumbalum Precinct A and Precinct B of the Structure Plan (with the possibility of Precinct C in the longer-term). This approach is also consistent with the 'Region of Villages' settlement hierarchy outlined in the FNCRS.

It is noted that Council received strong endorsement from the then Department of Planning and other State Government agencies for the approach and framework delivered by the CSP, particularly in relation to the use of precincts/villages as the basis for the plan, for the consideration of visual and social amenity and the relationship of the plan with the regional planning context.

The consideration of the subject land for rezoning to permit urban development is consistent with the Cumbalum Structure Plan.

### *Submissions*

To assist the Council, the submissions received during the prolonged public exhibition period have been divided into the following categories:

- Public submissions - submissions received from members of the public;
- Landholder submissions - submissions received from persons (or their representatives) that have an interest in the land that is the subject of the planning proposal; and
- Government agency submissions.

Following the summary of the submissions, this report provides further information regarding the matters raised in the submissions.

### *Public submissions*

Seventy-five submissions relating to Cumbalum Precinct B were received from members of the public during the public exhibition period. Fifty one submissions (68%) expressed *support* for the Precinct B planning proposal and twenty four submissions (32%) expressed *opposition*.

## 4.2 Cumbalum Precinct B Planning Proposal

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A number of the submissions related comments to both the Precinct A and the Precinct B planning proposals. To assist in reporting these matters, the public submissions have been divided and distributed to Councillors under separate cover as follows:

- **Attachment 1** - submissions relating to Precinct A only;
- **Attachment 2** - submissions relating to Precinct B only;
- **Attachment 3** - submissions relating to Precinct A and B.

It is noted that of the submissions expressing *support* for the Precinct B planning proposal, forty one submissions related comments only to Precinct B and ten related comments to both Precinct A and Precinct B.

It is also noted that of the submissions expressing *opposition* to the Precinct B planning proposal, nine submissions related comments only to Precinct B and fifteen related comments to both Precinct A and Precinct B. It is noted that a petition was also provided by one of the Precinct A development proponents, in opposition to the Precinct B planning proposal.

Issues most frequently cited in *support* of the Precinct B planning proposal include the following:

- housing affordability (35 submissions)
- promoting economic development (15 submissions)
- additional services & facilities to be provided in association with future development (10 submissions)
- stimulating employment (8 submissions)
- reducing land supply pressures on the coast (6 submissions)
- consistency with Council policy (2 submissions)

Issues most frequently cited in *opposition* to the Precinct B planning proposal include the following:

- public infrastructure costs and implications (16 submissions)
- population pressure / over-development / impacts on existing amenity / social impacts (14 submissions)
- impacts on Lennox Head (14 submissions)
- impacts on Ross Lane (13 submissions)
- flooding and drainage impacts (11 submissions)
- impacts on flora and fauna (8 submissions)
- density of development (5 submissions)
- impacts on agricultural land (4 submissions)

The issues raised in the public submissions (outlined above) are addressed in further detail elsewhere in this report.

## 4.2 Cumbalum Precinct B Planning Proposal

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### *Landholder / site-specific submissions*

A number of submissions were received from landholders within or directly adjacent to Precinct B. These submissions provide site-specific information and/or represent the views of those landholders having a direct interest in the planning proposal, and so are presented separately here for the Council's consideration. The landholder submissions have been distributed to Councillors under separate cover as **Attachment 4**.

The landholder submissions received include the following:

- Beddoes - landholder in the residual area of Precinct A, not the subject of the Precinct A planning proposal
- Berntsen - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study area
- George - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study
- Hayter - landholder adjacent to the study area
- Kaehler - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study
- Freihaut, Pitt & New Nederlands - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study area
- Knox - landholder adjacent to Precinct B
- Lavis, Lavis & Ramsay - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study
- Mead - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study
- Mearns - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study
- Miller - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study
- Morton - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study
- Planning Resolutions - representative of Precinct B proponents
- Potter - landholder in the residual area of Precinct A, not the subject of the Precinct A planning proposal
- Robinson - landholder in Precinct B, on land that is the subject of the Precinct B Local Environmental Study and
- Roads and Maritime Services - landholder of several residual parcels from the Ballina Bypass of the Pacific Highway.

### Beddoes

Mr Beddoes is landholder of Lot 1 DP 771794, Sandy Flat Road, located to the south of Precinct B and to the east of Precinct A. Mr Beddoes also made a number of submissions in relation to the Precinct A planning proposal.

Mr Beddoes' Precinct B submission raises the following issues:

- Concerned that the development of Precinct B will adversely impact his land through increased stormwater. Notes that drains direct water from Precinct B through his property;



## 4.2 Cumbalum Precinct B Planning Proposal

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- Questions where fill is to be found for those parts of Precinct B that are proposed to be filled;
- Notes a conflict between the proposed Precinct B habitat corridor located within Precinct A, that is nominated for other uses by Precinct A;
- Raises concerns with the proximity of proposed stormwater management devices to a Brolga nesting site adjacent to the Ballina Nature Reserve; and
- Notes that Council's strategic planning framework calls for a south to north roll out of development and questions whether there is an immediate need for the Precinct B to be rezoned at this time.

The matters raised above are considered further elsewhere in this report.

### Berntsen

Mr Berntsen is landholder of Lot 10 DP612318, Duffcys Lane, located within the proposed urban footprint within Precinct B. The Precinct B planning proposal proposes this land be zoned a mixture of E2 Environmental Protection Zone, E3 Environmental Management Zone and R3 Medium Density Residential Zone.

Mr Berntsen's submission supports the rezoning process for Precinct B.

### George

Mr and Mrs George are landholders of Lot 1 DP540904, McLeish Road, located to the north west of the proposed urban footprint within Precinct B. The Precinct B planning proposal proposes this land be zoned RU2 Rural Landscape Zone. The Local Environmental Study identifies this land as otherwise having potential to accommodate urban development except for the presence of significant road noise impacts. Consequently, the planning proposal also recommends that the land (and surrounding properties similarly affected) be identified on the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This was done to allow, should future investigations provide an appropriate resolution of this issue, for the residential envelope to be expanded accordingly.

The George's submissions raise the following issues:

- Concerned with the safety of Ross Lane, arguing that upgrading Ross Lane as proposed will only make these issues worse. Argues for the straightening of Ross Lane to provide a viable long-term solution to Ross Lane issues;
- Concerned that land on McLeish Road that is otherwise suitable for residential development has been excluded in order to 'buffer' the proposed residential zoned area from road noise; and
- Concerned that the use of McLeish Road as a future access road for residential development would have adverse impacts on existing residents, who are to enjoy no development opportunities as a result of the rezoning.

The matters raised above are considered further elsewhere in this report.

Hayter

Mr Hayter is the landholder of several lots of land adjacent to Emigrant Creek located to the west of the Ballina Bypass, in the proximity of Sandy Flat. Councillors will be aware of Mr Hayter's knowledge and involvement in floodplain management matters in Ballina Shire over a long period of time.

Mr Hayter's submissions raise concerns with the potential impact of increased fill in the floodplain, on his property and land elsewhere in the floodplain.

This matter is considered further elsewhere in this report.

Kaehler

Mr Kaehler is landholder of Lot 10 DP1173458 located within the western portion of Precinct B. The Local Environmental Study for Precinct B recommends zoning the land a mixture of E2 Environmental Protection Zone and E3 Environmental Management Zone.

Mr Kaehler's submission, prepared by SJ Connelly Pty Ltd, raises the following issues:

- Argues that the land should be excluded from the rezoning process as it is not involved in any way with the urbanisation of the adjacent land;
- Concerned that the application of the E2 Environmental Protection zone has been undertaken in an inconsistent manner with the method used in the draft Ballina LEP 2011;
- Concerned that the environmental mapping utilised in the delineation of zones is inconsistent with other mapping available for the locality;
- Concerned with the apparent weighting of environmental constraints in the delineation of zones that are proposed for the land; and
- Concerned with the nomination of the land, by the Precinct B proponents, as a 'habitat corridor'.

The matters raised above are considered further elsewhere in this report.

Freihaut, Pitt & New Nederlands

Three submissions were received relating to Lot 3 DP251148, McLeish Road located to the north west of the proposed urban footprint within Precinct B. The Precinct B Planning Proposal proposes this land be zoned RU2 Rural Landscape Zone. The Local Environmental Study identifies this land as otherwise having potential to accommodate urban development except for the presence of significant road noise impacts. Consequently, the planning proposal also recommends that the land (and surrounding properties similarly affected) be identified on the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This was done to allow, should future investigations provide an appropriate resolution of this issue, for the residential envelope to be expanded accordingly.

The submissions relating to this property raises the following issues:

## 4.2 Cumbalum Precinct B Planning Proposal

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- Requests that the land be included in the residential footprint and be zoned to permit medium density residential development;
- Concerned with the proposal to exclude the land from the residential footprint due to road noise. Argues that building construction measures can adequately ameliorate the issue. Cites other examples in Ballina Shire (e.g. Ferngrove Estate) where such a solution has been accepted by the Council;
- Argues for the straightening of Ross Lane, to improve the safety of the road, with the effect that road noise impacts on the land would also be lessened;
- Notes that ecological reports prepared to inform the LES nominated the land as an area of active 'Hairy Jointgrass Management'. [It is noted this was done when that property was in the ownership of one of the key development proponents]. The submission argues that the land should not be obligated to manage Hairy Jointgrass when no development opportunities are being provided;
- Argues that only a small part of the land is noise affected and then only marginally above the relevant noise criteria;
- Argues that Council should seek to maximise the yield of the precinct to spread infrastructure costs and thus improve affordability outcomes and to maximise the use of scarce land resources; and
- Argues that residential development on the other side of McLeish Road would have adverse amenity impacts on the enjoyment of the land.

The matters raised above are considered further elsewhere in this report.

### Knox

Mr and Mrs Knox are landholders of Lot 2 DP633144, Ross Lane, located in the north eastern corner of the precinct, adjacent to Ross Lane. The planning proposal proposes to zone the land a mixture of E2 Environmental Protection Zone and E3 Environmental Management Zone.

The Knox's submission raises the following issues:

- Concerned that the development of Precinct B will adversely impact their land through increased stormwater and impacts of filling on the floodplain. It is noted that Deadmans Creek traverses the property and the property is regularly flooded when floodwaters cross Ross Lane; and
- Concerned with the potential amenity impacts of the proposal on their continued enjoyment of their rural lifestyle.

The matters raised above are considered further elsewhere in this report.

### Lavis, Lavis & Ramsay

Terry Lavis, Jan Lavis and Bill Ramsay are owners of Lot 2 DP553504, McLeish Road, located to the north west of the proposed urban footprint within Precinct B. The Precinct B planning proposal proposes this land be zoned RU2 Rural Landscape Zone. The Local Environmental Study identified this land as otherwise having potential to accommodate urban development except for the presence of significant road noise impacts. Consequently, the

## 4.2 Cumbalum Precinct B Planning Proposal

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planning proposal also recommends that the land (and surrounding properties similarly affected) be identified on the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This was done to allow, should future investigations provide an appropriate resolution of this issue, for the residential envelope to be expanded accordingly.

The submission relating to this property raises the following issues:

- Requests that the land be included in the residential footprint and be zoned to permit low and medium density residential development;
- Concerned with the proposal to exclude the land from the residential footprint due to road noise;
- Argues against the proposed upgrading of Ross Lane to accommodate future development, particularly the proposal to widen Ross Lane to four lanes on its existing alignment, due to road safety concerns and the need for land resumptions;
- Argues for the straightening of Ross Lane, to improve the safety of the road, with the effect that road noise impacts on the land would also be lessened;
- Concerns over the effect of the rezoning on the valuation of adjacent land;
- Argues that Council's decision on the strategy for Ross Lane has not been transparent.

The matters raised above are considered further elsewhere in this report.

### Mead

Ms Mead is the landholder of Lot 3 DP 553504, McLeish Road, located to the north west of the proposed urban footprint within Precinct B. The Precinct B planning proposal proposes this land be zoned RU2 Rural Landscape Zone. The Local Environmental Study identified this land as otherwise having potential to accommodate urban development except for the presence of significant road noise impacts. Consequently, the planning proposal also recommends that the land (and surrounding properties similarly affected) be identified on the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This was done to allow, should future investigations provide an appropriate resolution of this issue, for the residential envelope to be expanded accordingly.

Ms Mead's submission raises the following issues:

- Concerned with proposed road upgrades to Ross Lane - due to potential impact on amenity of existing rural residents;
- Argues for the straightening of Ross Lane - to improve road safety and rural amenity;
- Concerned with the proposed use of McLeish Road as an access road for Precinct B - due to potential amenity impacts on existing residents;
- Requests that the land be zoned to permit residential development to occur, arguing that further testing of road noise impacts will disprove the extent of the problem;

## 4.2 Cumbalum Precinct B Planning Proposal

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The matters raised above are considered further elsewhere in this report.

### Mearns

Mr and Mrs Mearns are landholders of Lot 1 DP531233, McLeish Road, located to the north west of the proposed urban footprint within Precinct B. The Precinct B Planning Proposal proposes this land be zoned partly R3 Medium Density Residential and partly RU2 Rural Landscape Zone. The Local Environmental Study identified the part of the land proposed to be zoned RU2 as otherwise having potential to accommodate urban development except for the presence of significant road noise impacts. Consequently, the planning proposal also recommends that the land (and surrounding properties similarly affected) be identified on the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This was done to allow, should future investigations provide an appropriate resolution of this issue, for the residential envelope to be expanded accordingly.

The Mearns' submission raises the following issues:

- Concerned with road safety issues on Ross Lane - citing personal experience with two members of the family being involved, several years ago, in a serious car accident on Ross Lane;
- Concerned with the proposal to exclude parts of the land from the residential footprint due to road noise. Argues that building construction measures can adequately ameliorate the issue. Cites other examples in Ballina Shire (e.g. Ferngrove Estate) where such a solution has been accepted by the Council;
- Argues that living with road noise is a lifestyle choice and financial consideration of the buyer;
- Argues for the straightening of Ross Lane, to improve the safety of the road, with the effect that road noise impacts on the land would also be lessened;
- Concerned that Council has not provided adequate justification for the current strategy to undertake road improvements on Ross Lane on the existing alignment, as opposed to straightening the alignment; and
- Requests that all of the land parcel be included in the residential footprint and be zoned to permit medium density residential development;

The matters raised above are considered further elsewhere in this report.

### Miller

Mr and Mrs Miller are landholders of Lot 2 DP251148, McLeish Road, located to the north west of the proposed urban footprint within Precinct B. The Precinct B planning proposal proposes this land be zoned RU2 Rural Landscape Zone. The Local Environmental Study identified this land as otherwise having potential to accommodate urban development except for the presence of significant road noise impacts. Consequently, the planning proposal also recommends that the land (and surrounding properties similarly affected) be identified on the Strategic Urban Growth Area Map (under the

## 4.2 Cumbalum Precinct B Planning Proposal

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terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This was done to allow, should future investigations provide an appropriate resolution of this issue, for the residential envelope to be expanded accordingly.

The Miller's submission raises the following issues:

- Concerned with the proposal to exclude parts of the land from the residential footprint due to road noise. Argues that building construction measures can adequately ameliorate the issue. Cites other examples in Ballina Shire (e.g. Ferngrove and North Angel's Beach Estates) where such a solution has been accepted by the Council; and
- Suggests that reducing road speeds (on Ross Lane) would also reduce road noise impacts.

The matters raised above are considered further elsewhere in this report.

Morton

Mr and Mrs Morton are landholders of Lot 2 DP247535, Ross Lane, located to the north west of the proposed urban footprint within Precinct B. The Precinct B planning proposal proposes this land be zoned part E3 Environmental Management Zone and part RU2 Rural Landscape Zone. The Local Environmental Study identifies the parts of this land proposed to be zoned RU2 as otherwise having potential to accommodate urban development except for the presence of significant road noise impacts. Consequently, the planning proposal also recommends that those parts of the land (and surrounding properties similarly affected) be identified on the Strategic Urban Growth Area Map (under the terms of the BLEP 2011) and be retained as a candidate urban investigation area in Council's Local Growth Management Strategy. This was done to allow, should future investigations provide an appropriate resolution of this issue, for the residential envelope to be expanded accordingly.

The Morton's submission raises the following issues:

- Suggests that sufficient demand does not exist to justify the rezoning of additional residential land;
- Concerned with the potential impacts of development on Lennox Head; and
- Concerned regarding potential amenity impacts on them as residents in the locality.

The matters raised above are considered further elsewhere in this report.

Robinson

Dr Robinson is part owner of Lot 1 DP618742, Sandy Flat Road, located within the proposed urban footprint within Precinct B. The Precinct B planning proposal proposes this land be zoned a mixture of E2 Environmental Protection Zone, E3 Environmental Management Zone and R3 Medium Density Residential Zone.

Dr Robinson's submission supports the rezoning process for Precinct B subject to the following:

## 4.2 Cumbalum Precinct B Planning Proposal

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- That further assessment is undertaken into stormwater management matters;
- That Ross Lane is straightened and made safer for the additional traffic anticipated; and
- That companion animals are not banned in new estates.

The matters raised above are considered further elsewhere in this report.

### Planning Resolutions

Planning Resolutions Pty Ltd, acting on the behalf of the major development proponents, provided a submission to the planning proposal making a number of amendment requests based on site specific comments. These are outlined below:

- Zoning of Richard Walsh's house - the planning proposal proposes the land around the house be zoned a mixture of E2 Environmental Protection (due to the presence of littoral rainforest) and E3 Environmental Management Zone (due to visual prominence). Noting the highly modified nature of the site, the submission requests that the R3 Medium Density Zone be applied;
- Land south of Scanlan Lane - Requests that Council amend the planning proposal to zone a small ridge of land R3 Medium Density from the proposed E3 Environmental Management Zone;
- South western slope land facing Pacific Highway - Requests that an area of land that the LES has shown to be otherwise suitable for housing except for road noise impacts be included in the residential footprint;
- Land adjacent to Ross Lane - Requests that an area of land that the LES has shown to be otherwise suitable for housing except for road noise impacts be included in the residential footprint;
- North eastern slope land adjacent to Duffcys Lane - Requests that an area of land be included in the residential footprint, on the basis of the land is not sufficiently steep to be excluded from development;

Additional information regarding stormwater management and infrastructure delivery were the subject of separate communications.

The matters raised above are considered further elsewhere in this report.

### Potter

Mr and Mrs Potter are landholders of Lot 1 DP880178, Sandy Flat Road, located to the south of Precinct B and to the east of Precinct A.

The Potters' Precinct B submission raises the following issues:

- Concerned that the development of Precinct B will adversely impact their land, and the adjacent Ballina Nature Reserve, through increased stormwater. Notes that drains direct water from Precinct B through their property;
- Concerned with the proposal to fill parts of the site to enable residential development to occur;

## 4.2 Cumbalum Precinct B Planning Proposal

- Notes a conflict between the proposed Precinct B habitat corridor located within Precinct A, that is nominated for other uses by Precinct A; and
- Concerned with the costs and environmental impacts associated with infrastructure delivery to Precinct B.

The matters raised above are considered further elsewhere in this report.

### Roads and Maritime Services - landholder submission

A submission was received from NSW Roads and Maritime Services, as landholder of several residual parcels of land from the Ballina Bypass Project. The submission simply requests that *“the RMS would like to accrue any benefits of the planning proposals to both residues on the eastern side of the Bypass”*. It is noted that the land parcels referred to in the RMS submission do not, as a result of the planning proposal, enjoy any increased development opportunities or entitlements.

### Government agency submissions

Submissions to the Precinct B planning proposal were received from the following Government agencies:

- NSW Rural Fire Service.
- NSW Office of Environment and Heritage.
- NSW Department of Transport - Roads & Maritime Services.
- NSW Department of Education & Communities.
- NSW Department of Primary Industries, Fisheries.
- NSW Department of Primary Industries, Catchments & Lands.
- NSW Department of Finance & Services and Housing NSW.
- NSW State Emergency Service.
- Rous Water.

A number of issues raised by the agency's submissions related to one or both of the Cumbalum planning proposals. The Government agency submissions have been distributed to Councillors under separate cover as **Attachment 5**. The matters raised by these agencies, that relate to the Precinct B planning proposal are outlined and addressed in the following table.

Agency / Issue	Response
<b>NSW Department of Primary Industries</b>	
Raises concerns with the development of Regionally Significant Farmland and potential for rural-urban land use conflict.	It is suggested these comments by DPI are out of step with the State Government's Policy with respect to State and Regional Farmland. Land identified in Council's urban growth strategies is exempted from development restrictions imposed on mapped farmland areas.



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Agency / Issue	Response
	Assessments undertaken in association with the planning proposal have suggested that the agricultural value of the land is limited and is not a significant impediment to the development of the land.
Raises concerns with potential impacts of stormwater management measures on fisheries habitat, noting that stormwater management issues were unresolved at the time of the exhibition.	Stormwater management issues are addressed in detail elsewhere in this report.
Raises concerns relating to the location and maintenance of stormwater management devices and sewerage pump stations.	These matters are more appropriately addressed at development assessment stage.
Refers to DPI Fisheries guidelines which recommend 50-100m development buffers to wetland areas.	It is noted that the proposed urban footprint is located approximately 200m, at its nearest point, from mapped SEPP 14 Wetlands that extend from the Ballina Nature Reserve onto adjacent private land.
<b>NSW Department of Education &amp; Communities</b>	
Advises that on the basis of the Department's assessment, additional public school site and/or infrastructure will be required.	Noted. The location of a school site has been nominated by the proponent, to the north of the proposed Precinct A and B sporting fields. It is noted, however, that the particular site nominated is only partly owned by the proponents and is also now partly identified for the location of playing fields. Notwithstanding, the location of such education facilities generally in that locality would be consistent with the Department's criteria. It is anticipated that the State Government may require land dedications to facilitate future education facilities via the State contributions clause of the Ballina LEP (6.1. Arrangements for designated State public infrastructure).
<b>NSW Roads &amp; Maritime Services</b>	
Notes that the designs of future works at the Ross Lane and Cumbalum	Noted. Infrastructure delivery matters are addressed

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Agency / Issue	Response
interchanges do not include the duplication of the lanes or roundabouts. Advises that these upgrade works will be required at appropriate staging in association with any future development.	elsewhere in this report.
Notes that some future residential lots may be affected by road noise. Advises that any mitigation measures to limit the impact of Pacific Highway road noise is the responsibility of the proponent.	Noted. Road noise issues are addressed elsewhere in this report.
<b>Rous Water</b>	
Raises a number of matters relating to the transfer of a number of existing Rous Water retail customers to become customers of Ballina Shire Council in association with planned water supply augmentation works.	Noted. This matter can be considered further at the development application stage.
<b>Office of Environment &amp; Heritage</b>	
Supports the proposed zone plan. Notes that high conservation value areas and most areas supporting threatened species have been zoned either RU2 or an environmental protection zone and supports the 200m buffer to the Brolga nesting site.	Noted.
Requests that further investigation of threatened species impacts be undertaken if Council reviews areas currently proposed to be zoned RU2 Rural Landscape Zone for road noise and stormwater purposes, in the future.	Areas that are recommended to be retained as Strategic Urban Growth Areas may be subject to future urban suitability investigations, if road noise and stormwater matters can be addressed. These investigations would include threatened species assessments.
Acknowledges the work undertaken in relation to the investigation of Aboriginal cultural heritage values and supports the protection afforded to the area known as PAD2 through the application of an E2 Environmental Protection Zone.	Noted.
Recommends that the design of the proposed link road connecting Precincts A and B ensures the road remains trafficable during major flood events.	This matter can be considered further at development application stage and in association with the design and construction of the link road.
Notes the exclusion of road noise affected land from the development footprint. Strongly recommends that Council be assured that the proposed setback from Ross Lane and the Pacific Highway for any development is sufficient to ameliorate noise levels now and in future so that 'standard' construction measures will be adequate to provide internal and external	This matter is addressed elsewhere in this report. It is noted, however, that the planning proposal as exhibited provides adequate separation from road noise to require only standard dwelling construction techniques within land proposed for residential

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<b>Agency / Issue</b>	<b>Response</b>
living areas that meet noise standards.	zoning.
With respect to the Ballina Nature Reserve, OEH: 1. Notes that best practice Water Sensitive Urban Design within the site may adequately prevent adverse hydraulic impact on downstream properties including Ballina Nature Reserve. Notes that further more detailed investigation and design will be required at subdivision stage; and 2. Requests that Council consider whether a commitment to managing weed proliferation in Ballina Nature Reserve due to reduced water quality could be incorporated into future development consents.	Noted.  This matter can be considered further at development assessment stage.
<b>NSW Rural Fire Service</b>	
Raises no objection to the planning proposal proceeding but makes note of a number of matters to be considered in relation to the future development of the land.	The matters raised will be considered further at development assessment stage.
<b>NSW Department of Primary Industries, Catchments and Lands</b>	
Notes several matters relating to the possible closure of Crown road reserves in association with future development.	This matter can be considered further at development assessment stage.
<b>NSW Department of Finance &amp; Services and Housing NSW</b>	
This combined Government agency submission provides information relating to affordable housing in Ballina Shire.	The information provided does not relate directly to the planning proposal.

An acknowledgement letter was received from SES, however, no submission was received.

### *Key issues*

#### Population Pressure / Social Impacts and Impacts on Lennox Head

As noted above, a number of the submissions refer to the potential impacts of population growth on the existing amenity of Ballina Shire. Concerns are raised that future development would result in over-population leading to negative social impacts and the congestion of public facilities, including beaches and parking facilities. A number of the submissions made such comments specifically in relation to the urban area of Lennox Head.

With respect to pressure on public facilities, it is noted that population growth that would be facilitated by this planning proposal is anticipated to occur progressively over at least a 15 to 20+ year timeframe. This period should allow the level of public services and facilities to expand to accommodate the projected population. It is noted, in this regard, that any future development in the Cumbalum Release Area will make financial contributions to Council

## 4.2 Cumbalum Precinct B Planning Proposal

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towards regional and district sporting and community facilities. Further, the potentially expanded rate base may also provide further opportunities with respect to the range and standard of public facilities available within Ballina Shire over the longer term.

Predictions of adverse social impacts associated with increasing population are difficult to support given the range of factors at play in social change. Notwithstanding, with respect to the perspective of population growth as a negative in itself, it is noted that the current policies of State and Federal Governments facilitate continued population growth in Australia and the State of New South Wales. The challenge for Ballina Shire is how to respond to population growth occurring in the community more generally. In this respect, restricting population growth could also have its own set of adverse social impacts, associated with housing (un)affordability and increased social inequality.

Further, the existing structure of economic development and employment in Ballina Shire (and the North Coast Region more broadly) is to a large extent reliant on the strength of the construction and building industry. In the absence of a ready transition to a different economic foundation, a sharp restriction of development opportunities could result in a difficult and costly adjustment to the structure of industry, investment and employment in Ballina Shire, with its own set of adverse social implications.

### Impacts on Ross Lane

As outlined above, a number of issues relating to Ross Lane featured strongly in the public submissions and in a number of the site specific submissions received during the public exhibition period. The key issues raised include the following:

- Safety concerns relating to the posted speed limit and alignment of existing bends;
- Concerns that the proposal to upgrade Ross Lane on its existing alignment will not adequately address safety concerns;
- Concerns with the impact of road widening and land acquisitions for properties fronting Ross Lane, many of which do not enjoy any development opportunities as a consequence of the planning proposal;
- Concerns relating to road noise impacts, which affects the development potential of some land located in proximity to Ross Lane. It is noted that road noise impacts are discussed elsewhere in this report; and
- A number of the submissions recommended straightening the western section of Ross Lane (to the north of the current alignment) as a preferred outcome, to address the above issues.

Council Civil Services Group advises that the current design capacity of Ross Lane is 16,000 vehicles per day (vpd). Traffic assessments undertaken to inform the preparation of an 'Infrastructure Delivery Plan' for the Cumbalum Urban Release Area indicated that the projected future traffic flows along Ross Lane following the ultimate development of Precinct B, are as follows:

- Ross Lane west of future link road intersection - projected at 32,900 vpd; and

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- Ross Lane east of future link road intersection - projected at 15,400-21,100 vpd.

The consequence of these projected traffic flows is that upgrade works will be required to Ross Lane to accommodate future development, primarily in the form of road widening on the existing alignment, to four lanes west of the future link road intersection. East of the future link road intersection would remain as two lanes, with some widening, on the existing alignment. This work will require some resumption of parts of properties fronting Ross Lane to accommodate additional pavement width and facilitate minor improvements to bends. A number of additional intersections along Ross Lane would be required subject to further detailed design at subdivision stage.

Detailed road design has not been undertaken at this stage, as this will occur closer to when development application assessments are undertaken and when the upgrade works are required.

With respect to the standard and safety of Ross Lane, Council's Engineers advise as follows:

*Council acknowledges the existing alignment of Ross Lane is not ideal and that future works on the existing alignment will not bring the road up to the ideal formation for a rural arterial road. Notwithstanding, an acceptable road standard can be achieved within the existing alignment, with road widening and minor improvements to bends and road surface. The option of straightening Ross Lane has been considered but not pursued further due to the following:*

- *A straightened alignment would traverse a significant number of additional properties not currently affected by Ross Lane;*
- *The cost of works would likely be significant due to the extent of earthworks and engineering works required, land acquisitions costs and the need to maintain property accesses; and*
- *A straightened alignment would negotiate a slope of in excess of 16% which is well in excess of the general requirements (~10%) for a rural arterial road.*

Infrastructure funding and delivery issues are addressed elsewhere in this report.

### Flora and Fauna Impacts

A number of the submissions raised concerns regarding the potential impact of development on flora and fauna present on the land and adjacent wetlands. Flora and fauna impacts have been the subject of detailed considerations during the preparation of the Local Environmental Study. These considerations, including buffering from key habitat areas, were factors carefully considered in the determination of the proposed zoning of the land.

The Brolga (*Grus rubicunda*), listed as 'vulnerable' under the *Threatened Species Conservation Act* (1995), has been identified nesting in the eastern part of Precinct B adjacent to the Ballina Nature Reserve. It is understood Brolgas' habitat preference is for open sedgelands with minimal tree cover. In order to mitigate adverse impacts associated with urban development, a minimum 200m buffer was applied between the urban footprint and Brolga

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nesting habitat. It is noted, however, that the total buffer distance between the Brolga nesting habitat and the edge of the proposed residential zone is approximately 400m due to the location of stormwater detention devices (open shallow basins) and planted *Melaleuca* wetlands (to facilitate the evapotranspiration of stormwater).

Notwithstanding the proposed buffering, Council's Environmental Scientist remains concerned that proposed stormwater management measures may adversely impact on the Brolga due to the alternation of hydrology and changes in land cover (from open grassland to planted *Melaleuca* wetlands).

Ecological impacts associated with stormwater management are addressed elsewhere in this report. Potential impacts on Brolga due to changes to land cover will depend, ultimately, on detailed stormwater design considerations. Consequently, it is suggested that such matters are more appropriately considered as a part of the development assessment process. It is noted an area in the order of 27 hectares has been set aside for the design of stormwater detention and evapotranspiration. It is anticipated that detailed design of this area may accommodate features that are compatible with at least parts of the area continuing to function as Brolga foraging habitat (open stormwater detention areas).

It is noted that the submission received from the NSW Office of Environment and Heritage included the following:

*"OEH has reviewed the Flora and Fauna Report 'Precinct B' Cumbalum dated June 2010, and addenda dated January and July 2011. It is noted that high conservation value areas and most areas supporting threatened species have been zoned either as RU2 or an environmental protection zone. This is supported. Should the zone of the noise-affected areas be reviewed in future, review of threatened species impacts should also be undertaken. In addition, OEH supports the provision of a sizable buffer of about 200m to the Brolga nesting site, albeit mainly due to the land being constrained by poor drainage and proposed for stormwater infrastructure. Again, if the rural zone is reviewed in future, potential impacts on threatened species should be taken into account"*

A number of the submissions received noted that habitat corridors have been nominated, in the documentation provided by the Precinct B proponent, on land that is not in the ownership or control of the proponents. Council requested information from the proponents in how such corridors were proposed to be secured, but this information has not been forthcoming. It is noted, however, that in relation to the provision of habitat corridors at this point in the process, it is sufficient to ensure that adequate space is provided for the mapped corridors to function to extent that they currently do. Should ecological rehabilitation works be identified as being required through the development assessment stage, in order to mitigate the impacts of the development, then the proponents will need to demonstrate how this is to be achieved. It is further noted that the LES has identified that significant native vegetation removal is not required to facilitate development of the subject land.

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Consequently, it is suggested that flora and fauna matters have been the subject of appropriately detailed assessment in the preparation of the subject planning proposal. The proposed zoning arrangement reflects the known ecological considerations relevant to the Precinct B area.

### Impacts on Agricultural Land

A number of the submissions note that the subject land is identified in the NSW Government's Northern Rivers Farmland Protection Project as comprising 'Regionally Significant Farmland'. Further the submission from the NSW Department of Primary Industries states that:

*Whilst the area has some constraints to agriculture, such as slope, the Department would regard this area as supporting land suitable for sustainable agricultural production and subtropical horticulture. The site is surrounded by highly productive agricultural farms, it supports fertile soil and has good access to markets. Therefore the removal of this land for urban development will further erode land available for agricultural production and the rural value of the area.*

The Northern Rivers Farmland Protection Project makes specific exemptions, from the development restrictions that otherwise apply to State and Regional Farmland, for land identified by councils in their local growth management strategies. As the land within the Cumbalum Urban Release Area is identified in Council's growth management framework, the restrictions on the development of 'regional farmland' do not apply in this case.

Notwithstanding the above, an assessment of agricultural values was undertaken as part of the Local Environmental Study of the subject land. This assessment concluded that the subject land had limited agricultural value due to:

*'unfavourable topography and soil type, issues of practical land use management, and ultimately low long-term enterprise sustainability. Collectively therefore the site is comprised of marginal agricultural land that has low value or rating for agricultural purposes. The removal of the land from agricultural production will not therefore significantly affect the production potential of the wider agricultural region'.*

Consequently, the agricultural value of the land is not identified as a significant constraint to the development of the land.

### Density of Development

A number of the submissions raise concerns with the amount of proposed 'medium density' development shown on the exhibited plans. Importantly, the nomination of the least constrained land for medium density zoning is a response to the structure of the standard instrument LEP. Only 'dwelling houses' and 'secondary dwellings' (granny flats) are permissible within the R2 Low Density Zone. A broader range of development types (including medium density dwellings, neighbourhood shops, community facilities and a limited range of other non-residential land uses) are permissible in the R3 Medium Density Zone. As detailed design and lot configuration is not known at this stage, the medium density zoning has been applied to the least constrained land to provide flexibility in housing outcomes at subdivision stage.

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It is noted that under the standard instrument LEP, the 'zone map' (LZN) regulates the range of residential development types permissible, whereas a separate 'minimum lot size map' (LSZ) stipulates the minimum lot size standard that applies on the land. In the case of Cumbalum Precinct B, 450m<sup>2</sup> has been nominated as the minimum lot size standard in the R3 Medium Density zone. Notwithstanding, it is anticipated that future subdivision will utilise a range of lot sizes and configurations to align the development to demand in the marketplace.

Further, the NSW Government's Far North Coast Regional Strategy 'density target' for local councils seeks to achieve a development mix of 60% single dwellings and 40% multi-unit dwellings. In support of this State Government objective, Council's draft Ballina Shire Growth Management Strategy includes an objective that future 'greenfield' developments should achieve a gross neighbourhood dwelling density of 15 dwellings per hectare, to maximise the efficient development of scarce land resources and to minimise urban sprawl. The achievement of this target will require the development of a mixture of low and medium density development types in new residential estates.

### Stormwater Management

As previously reported to Council, stormwater management matters have been the subject of detailed and lengthy deliberations involving Council staff (and Council's consultants), landholders, the Precinct B proponents and the (now) NSW Office of Environment and Heritage. Further, Councillors will recall that the proponents were invited to provide further information to the Council during the public exhibition period regarding stormwater management matters in order to satisfy Council's engineers that a technical solution to stormwater management is available.

Stormwater issues relating to this planning proposal can be divided into on-site and off-site issues. These are outlined further below.

### On-site Stormwater Issues

The proponents for Precinct B have included in their submission to Council as part of the public exhibition, additional information relating to stormwater management issues, prepared by Australian Wetlands Consulting Pty. Ltd. (AWC).

This additional information related partly to a request to reduce the area set aside in the exhibited planning proposal for stormwater management measures. The area originally set aside was determined by Council's LES consultants GHD utilising information provided by the proponent, but applying conservative assumptions. Following a further review of the information submitted by the proponent, requesting the area set aside for stormwater infrastructure be reduced, Council's engineers have advised as follows:

- *The AWC report recommends that the stormwater detention\infiltration\bioretention areas should only be considered at or above a height of RL 2.0m AHD. I agree with this recommendation as any basin lower than this level will potentially be permanently inundated due to high groundwater levels. If this occurs the basins will not provide the required detention capacity. The Cardno sketch submitted with the AWC report indicates that the infiltration basins will be constructed at existing*



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*surface level. All stormwater basins shall need to be filled such that the base of the basin has a minimum height of RL 2.0m AHD.*

- The AWC report also suggests that only 5.6 ha will be required to evapotranspire the additional runoff associated with the development of Catchment D. I cannot support the rationale behind the evapotranspiration calculations within the AWC report (evapotranspiration of two 1 year ARI events over a twelve month period). I believe that the GHD assessment more accurately reflects the evapotranspiration requirements of the proposed development. This assessment recommended the provision of a 17.24ha vegetated area to evapotranspire the stormwater detention associated with Catchment D. The 17.24 ha evapotranspiration area was used to create the draft zone map produced by Council dated 08/11/2011.*
- The R3 urban areas adjacent to the basins shall be required to be filled to a minimum finished level of RL 2.3m AHD in accordance with Council's Flood Level Policy. As noted above the stormwater basins shall also be required to be filled to a minimum RL of 2.0m AHD. Given the significant size of the area proposed to be filled I recommended that an assessment be undertaken to ensure that sufficient fill resources are available within the region to accommodate the proposed development.*
- The final rezoning reports to Council should re-emphasize that at DA stage Council will be seeking a treatment train which extends throughout the whole catchment including the R3 areas higher up the development. The treatment train shall need to include treatment devices within the lots, roads and public reserves.*
- Considering the above, it is recommended that the draft zone map produced by Council dated 08/11/2011 is acceptable, should the rezoning be approved, on the basis that it is confirmed that sufficient fill resources are available to accommodate the proposed fill areas.*

Having regard for the above, Council's Civil Services Group is satisfied that sufficient land has been set aside in the planning proposal to accommodate conventional urban stormwater management measures.

With respect to the volume of fill required to accommodate the above, an estimate of the volume of fill required to achieve finished levels above the 1 in 100 year flood level has been undertaken, to accommodate 14 hectares of land within the urban footprint and 7 hectares of land for stormwater detention purposes. It is noted these areas were included in flood modelling which indicated the level of impact being within acceptable levels. The fill volume required is estimated to be in the order of 137,000m<sup>3</sup> (or approximately 230,000 tonnes). An audit of mineral resources undertaken by NSW Industry & Investment (May 2011) estimates the availability of sand materials within Ballina Shire, as follows:

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Quarry	Total Estimated Resource (tonnes)	Comments as provided by NSW Industry & Investment
Pick's Pit	2,000,000	Resource (current consent) > 100,000 tonnes and life probably approximately 10 years, depending on production. Potential resource up to 2 M tonnes with extraction depth comparable to nearby operations. Worked in conjunction with Newrybar Pit.
Newrybar Pit	3,000,000	Resource (current consent) > 200,000 tonnes and life probably approximately 10 years, depending on production. Potential resource up to 3 M tonnes with extraction depth comparable to nearby operations. Worked in conjunction with Pick's Pit.
South Ballina Quarry	544,000	Quarry has mainly supplied fine sand for specialist applications such as grouting and rendering. Existing pit virtually depleted. Recent approval to develop a 544,000 tonnes resource along dune to south to supply processed sand.
Lennox Head Quarry	150,000	Resource approximately 150,000 tonnes. Life 15 years (consent), but much less at recent production rate of up to 120,000 tonnes per annum. Production variable over life. Recent proposals for intensification and expansion.

The audit indicates there is approximately 5.7 million tones of sand material available within currently operating quarries in Ballina Shire. Consequently, the fill materials required for Precinct B represents approximately 4% of the current sand resources. These figures do not include longer-term potential mineral resources or resources within the region but outside Ballina Shire. It is noted, also, that other low-lying parts of Precinct B may require the application of additional fill materials for engineering purposes, rather than for flood mitigation.

### Off-site Stormwater Issues

The off-site, or 'down-stream', stormwater issues associated with the subject planning proposal are complicated by the following factors:

- Conventional stormwater management practice focuses on the 'conveyance' of stormwater - that is on achieving post-development flow rates that are consistent with pre-development. This conventional focus is based on the assumption that receiving waters are free-draining;
- The subject locality has naturally elevated groundwater levels, emanating from Ballina Nature Reserve and adjoining wetlands;

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- Groundwater levels in and around Ballina Nature Reserve have been rising, and are expected to continue to rise over time, due in part to the lack of maintenance of the man-made drainage network within the Nature Reserve;
- The potential for sea-level rise to increase groundwater levels in the area over time, particularly during high tide events. This may have implications for the design levels of stormwater outlets; and
- The presence of private properties located between the subject land and the Ballina Nature Reserve.

Four private properties, located downstream of Precinct B adjacent to the Ballina Nature Reserve, have been identified as being particularly susceptible to changes in hydrology referred to above. These properties are shown on the map provided as **Attachment 6** of this report.

It is noted that the submissions received from both the NSW Office of Environment and Heritage (OEH) and Department of Primary Industries (DPI), Fisheries acknowledge drainage issues in and around the Ballina Nature Reserve as a key factor in the drainage dynamics of the locality. The OEH states:

*'It is noted that the water levels in BNR are dictated to a larger extent by tides in North Creek than by inflows from the local catchments. The tides restrict outflows and thus the inflow due to runoff from local catchments cannot move rapidly through the Nature Reserve. For this reason increased flood levels in the North Creek floodplain due to climate change, sea level rise in particular, may have a larger impact on the hydrology of the Nature Reserve in the longer term.'*

Further, the Department of Primary Industries (DPI), Fisheries submission advised as follows:

*'DPI Fisheries can accept the assertion in the assessment documentation that the rising groundwater levels are attributable to the lack of maintenance of the constructed drainage network within the Nature Reserve. DPI Fisheries highlights though, that objectives of the Ballina Nature Reserve Plan of Management do not appear to accommodate ongoing maintenance of the constructed drainage network now located within the Reserve. Rather two objectives seek to:*

- *"Conserve the diversity of habitat types within the Reserve, with particular emphasis on the protection of the wetland habitat"; and*
- *"seek to maintain a hydrological regime in the Reserve that maintains Reserve ecosystems".*

It would appear that in effect the Ballina Nature Reserve is reverting to its pre-settlement wetland condition as the man-made drainage network becomes increasingly silted. It is noted that this may result in increased periods of inundation for landholdings adjoining the nature reserve, regardless of the development outcome for the land.

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With respect to the impact of the proposal on the downstream ecology of the Ballina Nature Reserve and adjoining SEPP14 wetlands, the Office of Environment and Heritage notes in its submission:

*'The modelling approach for Precinct A, using DRAINS software to determine stormwater discharges, is considered appropriate. It reflected the changes in increased impervious area due to urbanisation and resulted in shorter response time and increased discharges from the sites. The modelling indicates that the post development discharges can be attenuated to pre development state by employing best practice Water Sensitive Urban Design within the site and this may be enough to prevent adverse hydraulic impact on downstream properties including BNR*

*Similarly for Precinct B, the increased stormwater flows due to the proposed development may be able to be ameliorated on-site. Further detailed investigation and design will be required at subdivision stage.'*

The above comments suggest that OEH is satisfied the assessments to date and the (future) development assessment process should provide sufficient protections for downstream plant ecology. The above position also aligns with that provided by Council's consultants GHD, responsible for the preparation of the Precinct B Local Environmental Study.

It is noted that officers of the OEH have previously advised that Council should keep in mind the purpose of the Ballina Nature Reserve which relates to the need to protect the broad representation of wetland species. The OEH officers advised that distributional change within the reserve should not be considered a problem in itself, provided this broader representation of wetland species is maintained. This advice appears consistent with the broader position of the State Government with respect to discontinuing maintenance of the man-made drainage network within the reserve which itself is likely leading to changes in species distribution.

Contrasting with the above, Council's Environmental Scientist provides an alternative view, noting:

*'A significant threat to the environmental integrity of these [downstream] HCV ecosystems is stormwater discharge arising from the adjacent urban zoned land.*

*The applicant's consultants acknowledge that unless a range of mitigation strategies are imposed, stormwater discharge from the south eastern catchment will have an adverse impact on the receiving downstream EECs and SEPP 14 Wetland. The predicted adverse impacts result from altering the existing hydrology of the catchment by altering wetting and drying hydroperiods, frequency of inundation and altering groundwater levels etc.*

*It is for these reasons that the "Alteration to the natural flow regimes of rivers, streams, floodplains & wetlands" is listed as a key threatening process under the TSC Act (1995).*

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*To mitigate against these predicted adverse ecological impacts the applicant **originally** proposed to capture and amongst other measures infiltrate/ transpire all rainfall events up to a 1 year storm event. However, the recently submitted Stormwater Investigations Report (March 2012) Australian Wetlands Consulting (AWC) now proposes to infiltrate a maximum of "two 1 year storm events per year". A full twelve months is then required to transpire these two 1 year storm events into the atmosphere. Based on the applicant's consultant, storm events of a maximum of 272mm will be treated via this process (infiltration/evapotranspiration). Given that Ballina has an average rainfall of approximately 1850mm the infiltration/ evapotranspiration field will harvest approximately 15% of the catchment's average rainfall. The changed hydrology of the catchment is considered to have increased die back of the existing forested wetland communities and likely changes to the species composition of the Freshwater wetland EEC. The impact of increased storm water on native forested wetlands is evident in other historical developments around East Ballina. (i.e. Chickiba Wetland)'.*

Aside from potential ecological impacts associated with increased stormwater volumes, the following comments from Council's Civil Services Group staff regarding potential nuisance impacts on neighbouring private properties are significant.

*"Whilst I am satisfied that, if zoned as per the above recommendations, any future development of Precinct B would be able to provide a suitable treatment train to meet the requirements of Council's DCP Chapter 13 [Stormwater Management] that there will be no net increase in the average annual load of stormwater pollutants and **peak discharge flow rates** above that occurring under the existing conditions, I cannot state with certainty that the development will not affect the level of flooding being experienced by the downstream properties. Whilst the provision of a suitable drainage and detention system will not increase the peak flow rates from the development, these systems will extend the time over which stormwater is discharged from the site therefore potentially altering the hydrology of the catchment through the downstream properties. This would not have a significant impact on the properties downstream of the development if these properties were serviced by a drainage system with a high conveyance capacity. Unfortunately, the drainage system servicing these properties has limited conveyance capacity which appears to be reducing with time due to a lack of maintenance of the downstream drainage systems within the Ballina Nature Reserve.*

*The residents downstream of the Precinct B catchment have expressed concerns that stormwater from the proposed development will exacerbate the existing nuisance flooding issues they are experiencing on parts of their properties. They have suggested that the drainage systems within the downstream wetland areas owned by Council and NSW National Parks & Wildlife are no longer maintained to the same extent they were only a few decades ago. DPI Fisheries has stated in writing that it accepts the assertion that rising groundwater levels in the area are attributable to the reduction in maintenance of the drainage system within the Ballina Nature Reserve. DPI Fisheries Management Plan for the Nature Reserve does not appear to accommodate the ongoing maintenance of the drainage network located within the Reserve. Rather, it states that maintenance will only be undertaken as necessary to conserve the*

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*wetland habitat and ecosystems. It is therefore likely that properties between Precinct B and the Nature Reserve will experience increased flooding in the future due to a reduction in the conveyance capacity of the downstream drainage systems.*

*In addition to these issues the Office of Environment & Heritage has suggested that the water levels in the Nature Reserve are dictated, to a large extent, by tides in North Creek and are anticipated to increase due to sea level rise in the future. They state that the drainage capacity through the Nature Reserve is anticipated to be reduced in the future due to the effects of sea level rise.*

*The hydrology of this entire catchment is very complex to model given the influence of tidal effects, sea level rise, groundwater flows and the conveyance capacity of the downstream Ballina Nature Reserve. Whilst the proposed rezoning application is consistent with contemporary stormwater design standards and the stormwater design requirements of Council's DCP the approval of such a development within the eastern catchment of Precinct B will alter the hydrology within this catchment. Whilst this will not involve an increase in the peak discharge flow rates from the development it will extend the period of time over which stormwater is discharged from the site. What affect all of these changes will have on the existing nuisance flooding issues experienced by properties downstream of the proposed development is difficult to predict. This issue was raised with the applicants consultants during previous verbal discussions however a full catchment model has not been provided...."*

The implication of the above is that, should the planning proposal proceed, and land be rezoned for urban purposes, the future consent authority would need to carefully consider the potential for an increase in nuisance flooding to occur for downstream private properties. Nuisance flooding impacts here include an increase in the period of soil 'wetness' following major rainfall events and consequential longer-term changes in vegetation cover and ground conditions which may impact on the continued 'enjoyment' or economic use of the land. It is noted that there could be legal implications, under civil law, for the future consent authority should such impacts be ultimately demonstrated.

It is noted, however, that the stormwater modelling undertaken has been conservative in approach and has assumed limited upstream infiltration within the proposed development area. Consequently, a greater emphasis on stormwater infiltration higher in the urbanised catchment, at detailed development design stage, could lesson the volume of runoff and therefore reduce downstream impacts.

Uncertainty surrounding this aspect of the development proposal presents a challenge for Council. The impact of increased stormwater volume on downstream ecology is unknown and the concerns of downstream private property owners regarding this aspect of the proposal appear justified. It is unclear to what extent these impacts are occurring as a result of reduced drainage maintenance within the Ballina Nature Reserve, regardless of the development outcome for the land. Further, it is noted that any such impacts may be exacerbated by potential sea-level rise associated with climate

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change. Given these implications, this matter has significant implications for the options and recommendations presented in this report.

The need to have this matter addressed as a part of the planning proposal process has been communicated to the proponents on numerous occasions. Council attempted to achieve a collaborative approach between the Precinct A and Precinct B proponents for a catchment-wide hydrological study, during the preparation of the Local Environmental Studies. However, regrettably this was not able to be achieved.

It is noted that Council is currently involved in a project, the Newrybar Drainage and Mitigation Study, being directed by the Richmond River County Council and the NSW Office of Environment and Heritage with the assistance of Council's flooding and drainage consultants BMT WBM that may provide further information regarding this matter.

### Road Noise

The road noise assessments undertaken in association with the preparation of the planning proposal and accompanying Local Environmental Study identified road noise as an issue impacting development opportunities in parts of Precinct B adjacent to Ross Lane and within proximity to the Pacific Highway Ballina Bypass.

The road noise assessment identified that approximately 38 Hectares of land, that may otherwise be considered as suitable for urban development, is affected by noise levels that exceed the relevant guidelines (NSW Road Noise Policy, March 2011). Consequently, the exhibited planning proposal proposes to zone noise affected land as RU2 Rural Landscape Zone, and identify that area within Council's urban planning framework as a potential urban area, to enable the urban zoning of the land to be considered further at a later stage.

It is noted that a number of submissions received from smaller landholders, located generally in the vicinity of McLeish Road, raise concerns regarding the implications of road noise on the development capacity of their properties. Several of these landholders presented an additional road noise assessment report. In this regard it should be noted that the ameliorative measures proposed to address road noise impacts are the same as those contained in the report prepared to inform the Local Environmental Study.

The relevant State Government guideline criteria for external day time noise is 60dB(A) and external night time level of 55dB(A). With respect to this criteria the guideline refers to the World Health Organisation report (2009) which recommends a long-term night-time external noise level of 40dB(A) with an interim target of 55dB(A). The report notes that the interim target is only intended as an intermediate step in localised situations as *'health impacts, particularly on vulnerable groups are apparent at this noise level'*. The reports also note however that *'maximum internal noise levels below 50-55 dB(A) are unlikely to awaken people from sleep'*.

The assessments suggest that the relevant internal noise criteria could be met via the following design responses:

- Acoustic building shell treatments involving use of appropriate building materials;

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- Habitable room openings fronting, or at 90 degrees to, the road need to be closed. Consequently, cross fresh air ventilation would need to be achieved via the building design having openings for habitable rooms on frontages that are not noise affected. Alternatively, air-conditioning or mechanical ventilation would be required; and
- Building design to locate non-habitable rooms (such as garage, laundry and bathroom) adjacent to the noise source.

From the information submitted it would appear that with reliance on individual building acoustic treatments, the guidelines for internal noise criteria are achievable. However, Council is invited to consider whether the measures required to achieve these criteria are appropriate in the circumstances, having regard to the following:

- The noise criteria are based on the assumption of existing dwellings. The relevant guidelines also identify a number of long-term strategies to address road noise impacts including (but not limited to) *"ideally locating residential development away from major roads"*;
- Although dwelling design (through the arrangement of habitable and non-habitable rooms) may assist in reducing noise impacts, future dwellings could nonetheless require the closure of doors and windows with reliance on air-conditioning to address road noise impacts. Such an approach would not appear to represent a sustainable development outcome;
- The enjoyment of an "outdoor lifestyle" is a common expectation for residents of the sub-tropical North Coast. The proposed mitigation measures could well limit opportunities for residents in noise affected areas to have such expectations met. Consequently, if residential development was permitted in noise affected areas, Council could expect to receive representations from future homebuilders for Council to relax noise-mitigating development standards, and then subsequently receive requests from future residents for Council and the RMS to mitigate road noise impacts through civil engineering measures (which would likely be, as noted above, ineffective under the circumstances);
- The cost of the proposed mitigation measures would be borne by future home owners, possibly requiring specialised architectural advice, construction materials and additional running costs;
- Residential development may be enabled under complying development provisions, limiting the ability for the relevant noise mitigation standards to be applied. Although exemptions to the application of complying development are possible, there is no certainty such an exception could be achieved at this time as the agreement of the State Government is required.

The following comments, made in the submission received from the NSW Office of Environment and Heritage, should also be noted:



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*'OEH strongly recommends that Council be assured that the proposed setback is sufficient to ameliorate noise levels now and in future so that 'standard' construction measures will be adequate to provide internal and external living areas that meet noise standards. Council should be mindful that the Pacific Highway will remain the major heavy transport route between Sydney and Brisbane. Increased freight movements, including 'B-triples', are proposed for the Pacific Highway within 20 years. The road in the vicinity of precincts A and B has a relatively steep grade, which may result in increased noise from both acceleration and compressing braking. Notwithstanding that, according to the consultant's report, trucks may comprise only 12% of the total traffic volume, heavy truck movements make up to 40-50% of the night-time traffic along the Pacific Highway.*

Further, the revised road noise report has been reviewed by Council's Environmental Health Officers who provide the following advice:

*"As this proposal is at the rezoning stage it is considered better practice to require the overall subdivision layout and design to take into account matters such as potential noise impacts. This would involve creating buffers and not locating residential lots in locations that will result in a loss of amenity for future dwellings and will require Council to burden any residential lots created in these locations in a way that will limit individual design options and cost future owners of those lots to address the impact individually."*

On the basis of the above, it is recommended that the draft planning proposal as it relates to this matter be unchanged.

### Infrastructure Delivery

The delivery of infrastructure to the Cumbalum Urban Release Area (CURA) is to involve several aspects, as outlined below:

- Development Contributions Plans - (s.94 plans) - future development will pay contributions towards regional sporting and community facilities and shire-wide roads contributions (currently \$15,098 per lot);
- Development Servicing Plans - (s.64 Plans) - future development will pay for sewerage headworks and contributions towards drinking and recycled water mains and reservoirs (currently \$9,411 per lot). Rous Water charges are currently an additional \$8,377 per lot; and
- Infrastructure that is otherwise to service only development within the CURA (Precinct A and Precinct B), has not been included in Council's Development Contributions Plans or Development Servicing Plans.

Council's Civil Services Group advises that the reasons for excluding infrastructure that only services the CURA from these plans include the following:

- The delivery of infrastructure through Council's plans risk the network being constructed in an inefficient manner due to the potential for restrictions to be imposed by landowners (individual landowners may or may not be involved in the development to be serviced by a particular item of infrastructure). Council's recent experience in the Wollongbar Urban Expansion Area is noted.

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- Council's ability to meet its obligations may be limited due to the potential for protracted negotiations with landholders.
- There is significant uncertainty regarding the design and cost of works to be included in the plans. It is noted that the Developer Charge is based on reference rates and site investigations undertaken well in advance of detailed design work being undertaken.
- Council is subject to financial risk if the cost to provide the infrastructure is greater than the amount levied by the Developer Charge. Due to this uncertainty any plans that are prepared would need to load this risk into the plans, which ultimately adds cost to the contribution rate; and
- In the case of Section 94 Development Contributions Plans, the State Government's 'Contributions Cap' of \$20,000 per allotment limits Council's ability to adequately recoup infrastructure costs through developer contributions.

Cost estimates prepared for Council's Civil Services Group for items of infrastructure that are required wholly to service the CURA and that have, therefore, been excluded from Council's current infrastructure plans are as follows:

- Works excluded from section 94 Development Control Plans - \$21,000 per lot and
- Works excluded from s.64 Development Servicing Plans - \$6,300 per lot.

It is noted that the total contributions that would apply if all infrastructure required to service the CURA was included in Council's s.94 plans would be in the order of \$36,098 per lot. As indicated above, this would exceed the amount that Council can levy under s.94 (due to the State Government's Cap) by between \$11,098 and \$16,098 per lot, a shortfall of approximately \$37-54 million at current estimates for all Precinct A and Precinct B infrastructure. It is noted that these figures incorporate a cost contingency but not finance costs.

Consequently, alternative arrangements (other than Development Contributions Plans and Development Servicing Plans) are required to ensure the land can be adequately serviced without placing an unreasonable burden on the public. Despite this matter being raised with the proponents on numerous occasions during the preparation of the planning proposals, this matter was not able to be resolved prior to the public exhibition of the planning proposal.

During the public exhibition period, the Precinct B proponents provided a draft Voluntary Planning Agreement (VPA) to Council to provide an alternative arrangement for securing the provision of infrastructure, at the developers' cost. This VPA has been reviewed by Council staff and legal advice obtained from Dr Lindsay Taylor of Lindsay Taylor Lawyers. A number of deficiencies with the original draft VPA were identified during this review, relating to legal drafting and the need for improved clarity with respect to the developers' obligations. Presently the VPA is being redrafted, by Dr Taylor, to address these issues.

The Voluntary Planning Agreement (VPA) sets out the following:

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- Identifies infrastructure to be provided in association with the future development of the land, including arterial roads, drinking and recycled water supply, sewerage infrastructure, open spaces and community facilities;
- Identifies the parties responsible for undertaking specific works and the timing for the delivery of those works; and
- Identifies the obligations of the parties, as landholders, to allow the creation of easements and the dedication of land, to facilitate the developers' obligations.

It is noted that the VPA makes reference to the obligations of the parties to the agreement separately, as developer and as landholder, as the 'developer' involved in a particular stage of development may be obligated to deliver infrastructure located on another's landholding, that is not the subject of that stage of development. This arrangement seeks to ensure there are no impediments to the logical and efficient extension of development and supporting infrastructure.

Due to the complex nature of such agreements, the VPA is still being formulated at the time of drafting this report. Consequently, the proponents have not been in a position to review the agreement and advise whether the terms of the agreement reflect their position with respect to infrastructure delivery obligations outlined therein. It is noted that the VPA must be a voluntary 'offer' by the developer to undertake obligations contained in the agreement. However, Council is able to formulate a VPA that, subject to the proponents' agreement, can then form the voluntary offer of the proponent. If agreed to, it is considered that the VPA will satisfy the need to ensure that adequate arrangements are in place for the provision of infrastructure to service future development, without placing an inappropriate burden on the public. In the absence of such agreement, an alternative strategy would need to be found to ensure adequate arrangements are in place for the provision of infrastructure.

If acceptable to all parties (including the Council) the VPA will need to be publicly exhibited, for a period of no less than 28 days, in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*. Following the exhibition period, the VPA would be reported to the elected Council for its further consideration. These steps would need to occur before finalisation of the planning proposal.

As previously communicated to the Council, it is understood that the Precinct B proponents are under significant financial pressure and are keen, therefore, to have the planning proposal proceed to finalisation as soon as possible. Consequently, they have suggested Council consider an interim arrangement whereby the developer would make an offer in writing to enter into a VPA to the Council's satisfaction and that this would be tied to the title of the land in some way. Staff have made inquiries regarding such an option and it is understood such an option is available, under the following terms:

- Section 93(1)(3) of the EP&A Act provides that a condition of consent that requires a VPA to be entered into can be imposed if an offer to enter into a VPA is made in association with a rezoning process that would enable the development application to be made; and

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- The agreement may be tied to the title of the land by way of a "Restriction as to User'.

The disadvantages of such an arrangement, compared with a VPA are as follows:

- This arrangement would defer the preparation of a VPA until development application stage;
- The Council may not be the consent authority for future development and is not, therefore, in control of the assessment outcome and so ultimately cannot guarantee the required condition of consent is imposed;
- The need to tie the agreement to the land, via in this case a Section 88B 'restriction as to user' would still involve delays. The planning proposal would not be finalised until this had been completed; and
- Being tied to the development consent process, via a condition of consent, the requirement to enter into a VPA may be subject to the judgement of a court, which may not be in the Council's interests.

Consequently, this interim option is not considered appropriate, under the present circumstances.

As outlined above, the VPA obliges future developers of the land to deliver infrastructure items in accordance with the agreement. The majority of obligations are in the form of undertaking physical works. However, upgrade costs associated with the Pacific Highway (outlined below) are proposed to be in the form of monetary obligations.

It should be noted that several aspects of infrastructure delivery are not covered by the VPA and will require further action and commitments from the Council, with respect to amending Council's Roads Contributions Plan (Roads Plan). These are set out below:

- A major item of infrastructure to be delivered via the VPA is upgrade works that will ultimately be required to the Ross Lane Interchange of the Pacific Highway. The traffic study prepared to inform the Infrastructure Delivery Plan identified the need to add additional lanes on both roundabouts and the overbridge at Ross Lane. These works are estimated to cost in the order of \$10,840,000. The traffic study indicated that the future share of future traffic accessing the highway interchange is attributable 72% to the CURA developments and 28% to 'background' shire existing population plus natural growth. Consequently, approximately \$2,173,248 of works would not be recouped, via the VPA or otherwise, from the CURA developments.
- Additionally, again in regard to the above Pacific Highway works, approximately 13.9 hectares of 'developable land' in Precinct B is owned by parties other than the major developers that are to be parties to the VPA. Consequently, a development contributions plan for this aspect of the future infrastructure would be required to levy the smaller developers within Precinct B for contributions towards these works; and

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- Land acquisition costs for road widening on Ross Lane - Council's existing Roads Plan assumes that future road widening will be achieved via land dedications undertaken in association with future development. However, under the present planning proposal a number of landholdings along Ross Lane do not enjoy any development opportunities. Consequently, land acquisition costs will need to be incorporated into the Roads Plan.

The above items will need to be incorporated into Council's relevant development contributions plans.

Staff are concerned and disappointed that infrastructure delivery matters have not been resolved prior to this point. Council has attempted throughout the planning proposal process to facilitate a resolution of this matter. Early in the process, Council held meetings with the Precinct A and Precinct B proponents, December 2006 and March-April 2007, to encourage the proponents to work together and present to Council a strategy for the delivery of infrastructure. When this was not forthcoming Council facilitated and funded the preparation of an Infrastructure Delivery Plan (IDP), finalised in June 2011, which identifies the items of infrastructure required to service future development.

It was anticipated that the IDP would form the basis of an offer, from the proponents, of a Voluntary Planning Agreement. Unfortunately, such an offer was only forthcoming from the Precinct B proponents following the Council's resolution to publicly exhibit the planning proposal. The delay in responding to this matter has meant that further delay in the processing of the subject planning proposal is unavoidable, due to statutory obligations for public exhibition processes associated with voluntary planning agreements.

### The Need for the Development

It is noted that some Councillors have previously commented, in deliberations regarding this matter, that further information regarding whether sufficient demand exists to support the rezoning of additional land at this time.

Councillors have previously been advised that Ballina Shire currently has in the order of 300 hectares of undeveloped residential zoned land, which comprises a projected supply of approximately 15 years (from 2012) assuming all the land is developed steadily over that period. These zoned land supplies include land in the Lennox Head, Wollongbar and Ballina Heights areas. Additional potential land supplies are identified in Council's growth management framework, including land in Lennox Head, Skennars Head and Cumbalum, the subject of this report, although these areas require rezoning to become available.

The addition of proposed urban zoned land in Cumbalum Precinct A would add only the equivalent of a further three years supply (assuming the total dwelling demand for Ballina Shire). The addition of land supplies in Cumbalum Precinct B would accommodate the equivalent of a further eight years supply. It is not anticipated that all of the Cumbalum Urban Release Area would be developed in 11 years, however, as a range of housing development opportunities exist in Ballina Shire, including some infill development. Notwithstanding, these figures underline the implications of over-reliance on only a small number of development opportunities to accommodate projected housing demand.

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It is noted that Council's strategic planning framework indicates a preference for a south to north roll out of development within the Cumbalum Urban Release Area, due particularly to the desire to achieve the efficient delivery of infrastructure. Notwithstanding, Council has proceeded with the subject planning proposal on the basis that it is advantageous to maintain an adequate 'buffer' of urban zoned land, provided that infrastructure delivery issues can be adequately addressed.

The reasons for maintaining an adequate land supply 'buffer' to accommodate dwelling demand include the following:

- To accommodate the 'time lags' that are inherent in the land development process due to the time required to investigate, rezone, design, approve and develop land;
- To avoid over-reliance on any one development or area, due to potential for issues to arise that may inhibit land release, such as infrastructure capacity, developer finance or approval process; and
- To maintain adequate competition in the marketplace to avoid incentives for developers to 'drip-feed' land on to the market.

Arguments against providing too numerous development opportunities include the following:

- It may compromise the efficient and cost-effective extension of infrastructure if 'leap-frogging' development occurs;
- Excessive competition may lead to low rates of development that lengthens the time new residents are without facilities that require higher levels of demand such as playing fields, community facilities and local shops.

### Representations by the NSW Department of Planning and Infrastructure

The NSW Department of Planning and Infrastructure has, on a number of occasions, made robust representations to Council to expedite the processing of the Cumbalum (Precinct A and Precinct B) planning proposals. Council has been at pains to convey to the Department the substantial matters, specifically infrastructure delivery and stormwater, that in Council's view must be resolved prior to the matters proceeding. It is conceivable in light of those representations that, should there be further delay in relation to this matter, the Minister may see fit to 'call-in' the Cumbalum planning proposals and have the matter resolved by an alternative authority, such as the Department of Planning and Infrastructure itself or a Joint Regional Planning Panel.

### Minor amendments to the plan

As outlined above, Council received a number of submissions requesting that amendments be made to the proposed zoning. Based on the submissions, a number of zoning amendments are recommended, if the Council is otherwise satisfied to proceed with the Precinct B planning proposal. The following table sets out these amendment requests received along with the Council staff response and identification of recommended changes.

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Amendment Request	Recommended change	Rationale
<p>Kaehler Request that E2 Environmental Protection Zoning be amended in a manner more consistent with the draft Ballina Shire LEP 2011.</p> <p>It is requested that the RU2 Rural Landscape Zone be applied to all cleared areas.</p>	<p>Yes</p> <p>No</p>	<p>It is proposed that the E2 zone line be amended to more closely follow the vegetation line, in a manner consistent with the draft Ballina LEP 2011.</p> <p>However, it is proposed that where land is removed from the E2 zone that the E3 Environmental Management Zone be applied. It is noted that the E3 has been applied to land adjacent to the Precinct B urban footprint in a manner consistent with the Alstonville-Wollongbar urban buffer.</p>
<p>Freihaut, Pitt &amp; New Nederlands Requests that land identified as being affected by road noise, but being otherwise unconstrained, be included in the residential zone footprint.</p>	No	<p>As noted elsewhere in this report, reliance on building treatments to mitigate road noise impacts is not considered appropriate under the circumstances.</p>
<p>Mead Requests that land identified as being affected by road noise, but being otherwise unconstrained, be included in the residential zone footprint.</p>	No	<p>As noted elsewhere in this report, reliance on building treatments to mitigate road noise impacts is not considered appropriate under the circumstances.</p>
<p>Mearns Requests that land identified as being affected by road noise, but being otherwise unconstrained, be included in the residential zone footprint.</p>	No	<p>As noted elsewhere in this report, reliance on building treatments to mitigate road noise impacts is not considered appropriate under the circumstances.</p>
<p>Miller Requests that land identified as being affected by road noise, but being otherwise unconstrained, be included in the residential zone footprint.</p>	No	<p>As noted elsewhere in this report, reliance on building treatments to mitigate road noise impacts is not considered appropriate under the circumstances.</p>
<p>Planning Resolutions Zoning of Richard Walsh's house - the planning proposal proposes the land around the house be zoned a mixture of E2 Environmental Protection (due to the presence of littoral rainforest) and E3 Environmental Management Zone (due to visual</p>	Yes	<p>Due to the highly modified nature of the vegetation the E2 may not be appropriate. Consequently, it is proposed that the Re Medium Density Residential Zone be</p>

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Amendment Request	Recommended change	Rationale
prominence). Noting the highly modified nature of the site, the submission requests that the R3 Medium Density Zone be applied.		applied, to the parts of the lot shown as being not otherwise affected by environmental constraints in the Local Environmental Study.
Land south of Scanlan Lane - Requests that Council amend the planning proposal to zone a small ridge of land R3 Medium Density from the proposed E3 Environmental Management Zone.	Yes	This area appears to have been excluded due to the straightness of the zone line. However, the zone line could logically be extended to include this area within the urban footprint. Consequently, it is recommended that a small area of land be changed from E3 Environmental Management Zone to R3 Medium Density Residential.
South western slope land facing Pacific Highway - Requests that an area of land that the LES has shown to be otherwise suitable for housing except for road noise impacts be included in the residential footprint.	No	As noted elsewhere in this report, reliance on building treatments to mitigate road noise impacts is not considered appropriate under the circumstances.
Land adjacent to Ross Lane - Requests that an area of land that the LES has shown to be otherwise suitable for housing except for road noise impacts be included in the residential footprint	No	As noted elsewhere in this report, reliance on building treatments to mitigate road noise impacts is not considered appropriate under the circumstances.
North eastern slope land adjacent to Dufficys Lane - Requests that an area of land be included in the residential footprint, on the basis of the land is not sufficiently steep to be excluded from development.	No	Contrary to the statement made in the submission, this area is within the class of slope identified in the geotechnical reports as being subject to land slip hazard.

It is noted that where zone amendments are recommended, there would be consequential amendments required to other maps in the draft Ballina LEP 2011 map set.



### *Summary Comments*

As outlined in the above report, Cumbalum Precinct B has comprised an important component of Council's, and the State Government's, urban growth strategy for the shire, and the region, for a considerable period. The urban suitability investigations undertaken as part of the Local Environmental Study prepared as the basis for the planning proposal have identified that parts of the precinct have physical capabilities appropriate to accommodate urban development, subject to the resolution of the following:

- Infrastructure delivery - that an appropriate mechanism is in place to provide for the efficient delivery of infrastructure to service future development without placing a burden on the public for the extension of those services;
- Ecological impacts associated with increased stormwater volumes - in particular the potential for adverse impacts to occur in the Ballina Nature Reserve and adjacent SEPP14 Wetlands; and
- Nuisance impacts associated with increased stormwater volume - relates to the potential for downstream private properties to experience nuisance flooding impacts as a result of stormwater discharge due to the development of land higher in the catchment.

In relation to infrastructure delivery, as outlined in the above report the Precinct B Voluntary Planning Agreement, if acceptable to the proponents and the Council, appears to provide an appropriate mechanism for securing (in a financial and legal sense) the delivery of infrastructure, subject to the proponents' agreement.

In relation to the potential for adverse ecological impacts to occur as a result of increased stormwater volume, differing perspectives have been offered by those knowledgeable in the field regarding the extent of the problem, its potential for mitigation and the stage at which a comprehensive resolution is required (rezoning vs development assessment). The views of the Office of Environment and Heritage, Council's LES consultants, GHD, and Council's Environmental Scientist are provided above. On the basis of the information available, it is considered that ecological matters can be adequately addressed at the development application stage in the event that the planning proposal proceeds in its exhibited form (provided that stormwater management related matters are adequately addressed - see below).

Given the level of uncertainty associated with stormwater management matters, this report recommends that this issue requires further consideration prior to finalising the subject planning proposal.

The matter of the potential for adverse 'nuisance' type flooding impacts to occur to downstream private properties is potentially more sensitive to change in hydrology. In this instance, relatively minor changes to soil moisture and/or vegetation type could lead to adverse 'nuisance' impacts, by constraining landowners' current use of their land for purposes such as grazing. Such changes can be seen, if determined by a court, as creating an *"unreasonable interference with the use and enjoyment of a[nother] person's land"*. Civil liabilities may apply should such impacts ultimately occur, where such an outcome was seen as inevitable as a result of the consent authority's decision. Despite the fact that such impacts do not appear, at this stage, to be inevitable, a high degree of uncertainty remains with respect to this matter, as

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evidenced by the comments by Council's engineers provided above. At the rezoning stage, Council needs to have a reasonable level of confidence that a solution can be found at development application stage. The advice to date, from Council's engineers, is that Council is not confident that a technical solution can be found, due to the particular circumstances of this case.

Consequently, one of the options presented below is for the rezoning to proceed but subject to Council's engineers being satisfied that stormwater management issues can be resolved adequately at development application stage.

### **Sustainability Considerations**

- **Environment**

The rezoning of land for urban purposes has environmental implications for the land and the locality.

- **Social**

The provision of additional residential development would contribute to the changing social environment of Ballina Shire and provide existing and future residents with greater housing choice. Development may also place additional demands on Council and other Government and non-Government organisations for the provision of social services and urban infrastructure. However, it is noted that development of this land will be consistent with Council's endorsed and established urban land release strategy.

- **Economic**

The increase in population arising from future development of the subject land may contribute to the economic development of the locality and the shire, via the additional aggregate demand in the economy, construction activity and the provision of labour resources to local businesses.

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

The rezoning of land for residential purposes would enable landowners to lodge development applications for residential subdivision and development of the land.

As outlined in the above report, subject to this matter proceeding at this time, further consideration would need to be given, at development application stage, to the potential downstream impacts associated with increased stormwater volumes, including the potential for increased 'nuisance' flooding on downstream private properties. As noted above, there could be legal implications, under civil law, for the future consent authority should development consent be granted and adverse downstream impacts occur, as foreshadowed.

### Consultation

As outlined in the above report, this matter has been the subject of extensive consultation with landholders, government and non-government agencies and the broader community. Council has met the requirements of the *Environmental Planning and Assessment Act 1979* in carrying out its community engagement initiatives for the planning proposal.

### Options

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

1. Proceed to finalise the Precinct B planning proposal following agreement regarding infrastructure provision without further assessment of stormwater management matters.

That Council proceed to finalise the Cumbalum Precinct B Planning Proposal, subject to the proponents providing a signed Voluntary Planning Agreement (or agreement is reached on an alternative suitable mechanism) that satisfies the Council's requirements with respect to securing future infrastructure delivery obligations. This approach would also involve Council advising the proponents that Council expects that a greater level of information, relating to stormwater management, to be provided to favourably determine a development application for the residential subdivision of the land.

If this option is pursued, and a planning agreement progressed, a finalised Precinct B Voluntary Planning Agreement would be placed on public exhibition for a period of 28 days. The outcomes of the exhibition will be reported to the elected Council for further deliberation prior to finalisation of the planning proposal.

Due to the uncertainty that remains with respect to stormwater management matters, this option is not recommended.

2. Proceed to finalise the Precinct B planning proposal following agreement regarding infrastructure provision and subject to further assessment of stormwater management matters.

That Council proceed to finalise the Cumbalum Precinct B Planning Proposal, subject to the following:

- a. The proponents providing a signed Voluntary Planning Agreement (or agreement is reached on a suitable alternative mechanism) that satisfies the Council's requirements with respect to securing future infrastructure delivery obligations; and
- b. Council's Civil Services Group advising that it is satisfied that a stormwater management system can be designed that is capable of servicing the subject land, without having an unreasonable adverse impact on downstream private properties and ecology.

This option is recommended for the following reasons:

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- Cumbalum Precinct B forms a key component of Council's, and the State Government's, strategic planning framework for urban growth in the shire, and the region;
  - The urban suitability investigations undertaken as part of the Local Environmental Study prepared as the basis for the planning proposal has identified that parts of the precinct have physical capabilities appropriate to accommodate urban development; and
  - There remains the potential to resolve the outstanding matters outlined above within a reasonable timeframe.
3. Discontinue the processing of the Precinct B planning proposal.

That Council discontinue the planning proposal process due to matters raised in the public submissions received during the planning proposal exhibition period and on the basis that stormwater management and infrastructure provision have not been addressed sufficient to enable the rezoning of the land.

This option is not recommended for the following reasons:

- Cumbalum Precinct B forms a key component of Council's, and the State Government's, strategic planning framework for urban growth in the shire, and the region;
- The urban suitability investigations undertaken as part of the Local Environmental Study prepared as the basis for the planning proposal has identified that parts of the precinct have physical capabilities appropriate to accommodate urban development; and
- There remains the potential to resolve the outstanding matters outlined in this report within a reasonable timeframe; and
- Council has committed substantial resources over a period of five years to progress this matter to this point, consequently, maintaining the current process is seen as preferable to recommencing or restarting the process at a later date, if the Council is inclined to support the rezoning process as a matter of principle.

It is noted there is potential for the Minister for Planning and Infrastructure to become involved in the progress of the planning proposal should be Council pursue this option.

### RECOMMENDATIONS

1. That Council proceed to finalise the Cumbalum Precinct B Planning Proposal, subject to the following:
  - a) The proponents providing a signed Voluntary Planning Agreement (or agreement is reached on a suitable alternative mechanism) that satisfies the Council's requirements with respect to securing future infrastructure delivery obligations; and
  - b) Council's Civil Services Group advising that it is satisfied that a stormwater management system can be designed that is capable of servicing the subject land, without having an unreasonable adverse impact on downstream private properties and ecology.
2. That where items 1(a) and 1(b) are not resolved in a period of three months, the matter be reported to Council for further consideration.
3. That Council amend the planning proposal in accordance with the table of minor amendments contained in this report.

### Attachment(s)

1. Public submissions relating to Precinct A only (Under separate cover)
2. Public submissions relating to Precinct B only (Under separate cover)
3. Public submissions relating to Precinct A and B (Under separate cover)
4. Landholder submissions (Under separate cover)
5. Government agency submissions (Under separate cover)
6. Map identifying downstream properties located adjacent to the Ballina Nature Reserve (Under separate cover)