



Notice of Ordinary Meeting

An Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Thursday 24 September 2020 commencing at 9.00 am.**

Business

1. Australian National Anthem
2. Acknowledgement of Country
3. Apologies
4. Confirmation of Minutes
5. Declarations of Interest and Reportable Political Donations
6. Deputations
7. Mayoral Minutes
8. Planning and Environmental Health Division Reports
9. Corporate and Community Division Reports
10. Civil Services Division Reports
11. Notices of Motion
12. Advisory Committee Minutes
13. Reports from Councillors on Attendance on Council's behalf
14. Confidential Session

Paul Hickey
General Manager

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

Due to COVID-19 - Social distancing and seat limits apply in the Public Gallery. Please call Sandra Bailey on 6686 1273 to book a seat.

**You may access this meeting via our Live Streaming link
*ballina.nsw.gov.au/agendas-and-minutes***

Deputations to Council – Guidelines

- Deputations by members of the public may be made at Council meetings on matters included in the business paper.
- Deputations are limited to one speaker in the affirmative and one speaker in opposition.
- Deputations, per person, will be limited to a maximum of two items on the agenda.
- Requests to speak must be lodged in writing or by phone with the General Manager by noon on the day preceding the meeting.
- Deputations are given five minutes to address Council.
- Deputations on the same matter will be listed together with the opposition first and the speaker in affirmative second.
- Members of the public are advised that any documents tabled or given to Councillors during the meeting become Council documents and access may be given to members of the public in accordance with the requirements of the Government Information (Public Access) Act 2009.
- The use of powerpoint presentations and overhead projectors is permitted as part of the deputation, provided that the speaker has made prior arrangements with the General Manager's Office at the time of booking their deputation. The setup time for equipment is to be included in the total time of five minutes allocated for the deputation.
- To avoid conflicts of interest, real or perceived, deputations will not be accepted from:
 - Tenderers during a public tender or request for quotation
 - Persons or representatives from organisations seeking financial support from Council that involves an expression of interest
 - Consultants who are engaged by Council on the matter the subject of the deputation.

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

- A public question time has been set aside during the Ordinary meetings of the Council. The Ordinary meeting will be adjourned from 12.45 pm for Public Question Time. If the meeting does not extend to 12.45 pm Public Question Time will be held after the meeting closes.
- The period for the public question time is set at a maximum of 15 minutes.
- Questions are to be addressed to the Chairperson. The period is set aside for questions not statements.
- Questions may be on any topic, not restricted to matters on the Ordinary meeting agenda.
- The Chairperson will manage the questions from the gallery to give each person with a question, a "turn".
- People with multiple questions will be able to ask just one question before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, multiple questions can be invited and considered.
- Recording of the questions will not be verbatim and will not form part of the minutes of the Ordinary meeting.
- The standard rules of behaviour in the Chamber will apply.
- Questions may be asked from the position in the public gallery.

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- Council accepts no liability for any damage that may result from defamatory comments made by persons attending meetings. All liability will rest with the individual who made the comments.
- This meeting must not be recorded by others without the prior written consent of the Council in accordance with Council's Code of Meeting Practice.

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1. Australian National Anthem
 2. Acknowledgement of Country
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-

1. Australian National Anthem

The National Anthem will be played.

2. Acknowledgement of Country

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

3. Apologies

4. Confirmation of Minutes

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 August 2020 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 August 2020.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

Nil Items

8.1 **Lennox Head Community Market**

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

8.1 **Lennox Head Community Market**

Delivery Program

Strategic Planning

Objective

To present options for the location of the Lennox Head Community Market.

Background

Council considered a report at the October 2019 Ordinary meeting relating to the Lennox Head Community Market. A copy of the October 2019 report is provided as Attachment 1. The report related to the withdrawal of the Westpac Rescue Helicopter Service from the management of the market. The Council resolved as follows:

- 1. That Council receive a report once the summer period has concluded and the public exhibition of the Lake Ainsworth Coastal Management Program has occurred regarding the relocation of the Lennox Head Community Market to the Lake Ainsworth Precinct. The report is to include an assessment of the condition of the Lake Ainsworth improvement works following the summer period and the outcomes of the Coastal Management Program process.*
- 2. That Council invite the current market site manager, Mr Mike Stack, to enter into a short term licence to continue the Lennox Head Community Market at the Williams Reserve site for a period of six months. This is to provide for continuity of the operation of the market whilst market location, planning and land management matters and market management arrangements are further considered by Council.*

On 12 August 2020 Councillors received a briefing on options for the location of the market.

The purpose of this report is to respond to point one of the above resolution and present options for the Council's consideration, with respect to the location of the Lennox Head Community Market and particularly the concept of relocating the market to the Lake Ainsworth Precinct.

Key Issues

- Suitable locations for community markets
- Environmental impacts
- Planning approval pathway

Information

Condition of the Lake Precinct

8.1 Lennox Head Community Market

Staff undertook an inspection of the Lake Ainsworth Precinct, including the condition of the turf and landscaping works, on 19 May 2020.

Whilst the turf species are now established, the environmental conditions of the site are such that the management of wear-and-tear will likely be an ongoing issue. This is due, in particular, to the sandy soils, variable shade, limited irrigation and heavy foot traffic.

The fragility of the surface was recently demonstrated when an Essential Energy vehicle left the hard surface path causing deep furrowing and damage to the grassed surface (due largely to the soft sandy subsoils). Photos of this damage are provided in Attachment 2.

Council's Open Spaces staff are concerned that the relocation of the markets to the Lake Ainsworth Precinct may impact significantly on the condition of the reserve, due to the potential for increased wear and tear and vehicle damage (should such access be provided).

Planning Considerations

The Lake Ainsworth Coastal Management Plan (CMP) (adopted by Council in March 2020) notes that, due to the sensitivity of the lake environment, it is appropriate that proposals for events within the lake precinct be subject to an appropriate level of environmental assessment.

The land is zoned 7(f) Environmental Protection (Coastal Lands) Zone under the terms of the Ballina Local Environmental Plan 1987 (BLEP 1987).

A "market" is an innominate use under the BLEP 1987 and is prohibited in the zone, by virtue of falling within the category of 'any other use', which is prohibited under the 7(f) zone land use table.

It is understood that the markets had originally commenced at Lake Ainsworth in 1981 and had operated for many years (following the introduction of the Ballina LEP 1987) until they were relocated to Williams Reserve (in 2013). A return to the lake precinct would require development consent.

One option is to seek to amend the 1987 LEP to permit markets in the lake precinct and then seek development consent. This may be problematic as it involves a change to the 7(f) Environmental Protection (Coastal Lands) zone, being one of the areas subject to the deferred matters decision by the then Minister for Planning when the 2012 LEP was implemented.

Provision for markets as exempt and complying development (under State Environmental Planning Policy - Exempt and Complying Development Codes 2008) does not apply in this case by virtue of the zoning of the land.

Clause 41 of the BLEP 1987 (Temporary use of land) provides for the approval of low-impact activity on any land subject to the satisfaction of the following:

41 Temporary use of land

- (1) *The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*
- (2) *Despite any other provision of this plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.*
- (3) *Development consent must not be granted unless the consent authority is satisfied that—*
 - (a) *the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this plan and any other applicable environmental planning instrument, and*
 - (b) *the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
 - (c) *the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and*
 - (d) *at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (4) *Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*
- (5) *Subclause (3)(d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

Notwithstanding, it is important to note that subclause 41(3)(b) is likely to be hard to satisfy, in that the consent authority must be satisfied that *“the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood”* (emphasis added).

Further, due to the zoning of the land any such approval would be subject to Clause 31 of the BLEP 1987:

32 Development within Zone No 7 (f)

The council must not consent to the carrying out of development within Zone No 7 (f) for any purpose unless it has taken into consideration

- (a) *whether any environmental issues are involved in, or raised by, the proposed development, and*
- (b) *if so, whether adequate safeguards and rehabilitation measures have been, or will be, made to protect the environment, and*
- (c) *whether the development complies with the objectives of Zone No 7 (f) as set out in the Table to clause 9.*

8.1 Lennox Head Community Market

Consequently, whilst the temporary use of land clause may technically provide a mechanism by which Council could consider the approval of a market on the land, Council would need to be satisfied that the activity would have no impacts on neighbouring land or the amenity of the neighborhood and that the works or activity would not have a significant environmental impact.

It is anticipated that environmental impacts associated with a market at the site may potentially include:

- Erosion from foot traffic and vehicle access (through degradation of ground covers) and associated water quality impacts.
- Vehicle contaminants (such as oil and tire wear) entering the environment.
- Food and packaging waste entering the natural environment.
- Neighborhood amenity impacts associated with increased vehicles and parking.

There is also potential conflict with site users in that the recreational space on the lake foreshore would not be available for general recreation purposes during a market.

Some of these impacts may be able to be mitigated through management measures, however others may require the application of additional resources (such as through increased maintenance and/or additional civil works). Some impacts may not be able to be satisfactory mitigated.

Due to the above, the staff advice is that securing a development consent for a market within the Lake Ainsworth Precinct will prove challenging (at best) and that ongoing maintenance and/or civil works would likely be required to mitigate potential impacts to landscaping and the environment.

Having regard to the potential impacts, it is recommended that should Council wish to proceed with the relocation of the market to the Lake Ainsworth site, that this be done on a trial basis with the impacts of the market assessed to enable the use of site to be discontinued if the impacts are considered unacceptable by Council.

To progress this option, Council will need to prepare a development application. The preparation of such an application will likely require external consultant resources. It is difficult to estimate timing for completion and determination of an application due to the complexities of the issues.

Williams Reserve Site

The Lennox Head Community Market has operated at Williams Reserve since 2013 up until the imposition of Covid-19 social distancing restrictions. The market was at that time being managed on the basis of a temporary license, following withdrawal of the Westpac Rescue Helicopter Service from the management of the market.

A review of Council's records indicate that the market did not appear to have obtained development consent at Williams Reserve when it was relocated. Further, the size of the market (in terms of number/area of market stalls) places it outside of the exempt and complying development criteria for community events.

8.1 Lennox Head Community Market

Notwithstanding, the land is zoned RE1 Public Recreation under the Ballina LEP 2012 and 'markets' are a permissible land use in the zone.

As outlined in the October 2019 Council report relating to the Lennox Head Community Market, the Williams Reserve site appears to have limitations, in terms of the site's suitability, including:

- strong southerly winds have caused market stall tents and temporary structures to be blown about, presenting risks to public safety and infrastructure.
- issues with access to power supply and public amenities add costs to the operation of the market.
- exposure to the elements (wind and lack of shade) mean the site does not enjoy the level of amenity enjoyed by other north coast markets.

These issues limit the viability of Williams Reserve as a suitable market site. Notwithstanding, this site has been utilised for the market for some time now and is available for continuation of a community market in Lennox Head.

However, the continued operation of the market on Williams Reserve would require either development consent to be obtained or the number of market stalls limited (to approximately 30 stalls) in order to meet the exempt and complying development criteria for community events not requiring development consent.

Other Sites

In addition to the sites outlined above, consideration has been given to the area of land around Byron Bay Road and Ross Lane on the outskirts of the village. This option has not been pursued further at this stage due to the land being in private ownership.

Use of this land would necessitate negotiations regarding land tenure with the owner of the land and various issues would require more detailed investigation such as site access, provision of utilities and amenities and agricultural use of the land.

An option involving the closure of the Lennox Head main street has also been considered. The need for traffic control for such an option would involve costs in the order of \$1,300 per road closure, which is considered prohibitive to a monthly event. Further, a market in this area would be disrupted in the short term by the implementation of the Lennox Village Centre upgrade works.

Management Arrangements

In accordance with point two of the Council's October 2019 resolution, the site manager of the Lennox Head Community Market (Mr Mike Stack) was invited to enter into a short-term license for the continued operation of the market at Williams Reserve (for the period November 2019 – April 2020).

The market continued to operate on this basis until the imposition of the Covid-19 social distancing restrictions.

8.1 Lennox Head Community Market

Further to the above, in light of the changed circumstances associated with the Lennox Head Community Market, it is recommended that the management of the market (regardless of location) be put to a competitive Expression of Interest (EOI) process.

Sustainability Considerations

- **Environment**
Potential environmental impacts associated with the community market would be assessed as part of the development assessment process.
- **Social**
The provision for community markets benefit the social wellbeing and cohesion of the community through opportunities for social interaction and local commerce.
- **Economic**
Community markets have positive impacts for local economic development by encouraging local commerce.

Legal / Resource / Financial Implications

The planning related legal matters relating to the operation of a community market at the sites the subject of this report are addressed in the body of this report.

The options presented can be progressed under existing resources.

Consultation

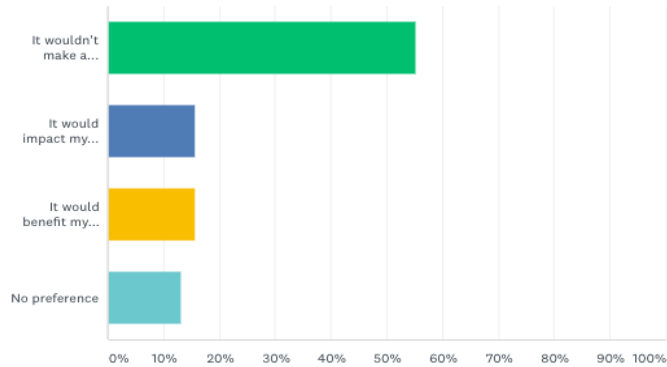
This matter has not been the subject of specific community consultation activity by Council.

However, the Lennox Head Chamber of Commerce recently undertook a survey of Lennox Head main street businesses in relation to the Lennox Village Vision project, which included a question regarding the perceived economic impact of relocating the market to an out of centre location. The responses received to this question are provided below for Councillors' information.

8.1 Lennox Head Community Market

Community Markets. Would relocating the community markets (currently in Williams Reserve) to a location further away from town centre be positive or negative for your business?

Answered: 38 Skipped: 0



ANSWER CHOICES	RESPONSES
It wouldn't make a difference to my business if the markets were relocated	55.26% 21
It would impact my business negatively if the markets were relocated	15.79% 6
It would benefit my business positively if the markets were relocated	15.79% 6
No preference	13.16% 5
TOTAL	38

Of the 38 businesses that responded, the majority perceived a neutral outcome (21 businesses or 55%), with an equal number (six businesses or 15.8%) perceiving a positive or a negative impact.

Options

Overall the provision of a location for the Lennox Head market involves a number of complexities. In particular, the suitability of sites, costs and planning requirements are key considerations.

With respect to the way forward, there are essentially two overarching matters to consider being the location of the market and the method for appointment of a market manager (undertaking an EOI process).

The options below have been formed on the basis that an EOI would be undertaken and that the primary choice for the site is between the Lake Ainsworth foreshore and Williams Reserve.

Options 1 and 2 can be varied to remove the implementation of an EOI process in favour of direct appointment (noting Council is not in receipt of a detailed proposal for operation of the market having regard for the content of this report). This is not recommended as an EOI provides an opportunity to receive and consider proposals for the operation of the market by different parties.

Alternative sites could also be pursued by Council. If this approach is preferred, it is recommended that Council defers a decision on the location in favour of further reporting relating to alternative sites. This option is not recommended for the reasons outlined in this report in relation to other site options considered.

Option 1 – Expression of Interest process for management of market at Lake Ainsworth site.

8.1 Lennox Head Community Market

Council could proceed to commence an open competitive Expression of Interest process for the management of the Lennox Head Community Market at the Lake Ainsworth site, followed by the preparation and lodgment of a development application for the market as a temporary use.

This option is presented should Council wish to proceed with the relocation of the Lennox Head Community Market to the Lake Ainsworth precinct.

This option would involve Council inviting EOIs for the management / operation of the market at the Lake Ainsworth site, incorporating the caveats outlined in the body of this report.

The EOIs would then be assessed by staff, with the outcomes of the assessment presented to Council for the appointment of the market manager.

Following the appointment of a market manager, staff would arrange for the preparation of a development application (in consultation with the appointed market manager) for the market as a temporary use for lodgment and determination.

This option is not recommended, on the basis of the potential impacts the market may have on the landscaping and natural environment of the lake precinct and on the amenity of the neighbourhood, as detailed in the body of this report.

There is also no certainty for those engaging in an EOI that approval for the market will ultimately be granted.

Alternatively, Council could seek consent for a market first and then seek EOIs.

The disadvantage of this approach is that the form of the market would not be informed by market operators in advance of a development application.

Option 2 - Expression of Interest process for management of market at Williams Reserve.

Council could proceed to commence an open competitive EOI process for the management of the Lennox Head Community Market at Williams Reserve.

This option is presented should Council wish to continue the Lennox Head Community Market at Williams Reserve.

This option would involve Council inviting EOIs for the management / operation of the market at Williams Reserve. The EOIs would then be assessed by staff, with the outcomes of the assessment presented to Council for the appointment of the market manager.

Following the appointment of a market manager, staff would arrange for the preparation of a development application (in consultation with the appointed market manager) for lodgment and determination.

Under this option, subject to the appointed market manager's agreement, the market may occur initially at a smaller scale under the exempt and complying development provisions while development consent is being obtained for the full-scale market.

8.1 Lennox Head Community Market

This option is recommended on the basis that the site has been demonstrated as being able to accommodate the markets and a clear planning pathway is available for an interim (more immediate) use of the site.

There is also capacity at this site for expansion and interaction with business in the village centre.

Option 3 – Defer report to receive a briefing.

Council could defer consideration of this report receive a further Councillor briefing on this matter. This option is presented should the Council wish to receive further information on the matters set out in this report.

RECOMMENDATIONS

1. That Council proceed with an expression of interest process for the management of the Lennox Head Community Market at Williams Reserve.
2. That following the appointment of a market manager for the Lennox Head Community Market at Williams Reserve, that Council proceed to prepare and lodge a development application for the operation of the market on the land to enable the market outcome endorsed through the expression of interest process.
3. That, following the expression of interest process and appointment of a market manager, Council enables the use of Williams Reserve for a small scale market under the terms of SEPP (Exempt and Complying Development Codes) 2008.

Attachment(s)

1. October 2019 Council Report
2. Photos of damage to hard surface path

8.2 LEP Amendment Request - No.6-20 Fitzroy Street, Wardell

8.2 LEP Amendment Request - No.6-20 Fitzroy Street, Wardell

Delivery Program

Strategic Planning

Objective

To outline a proposal to amend the Ballina Local Environmental Plan 2012 to rezone land located at No. 6-20 Fitzroy Street Wardell from RU2 Rural Landscape to R3 Medium Density Residential and seek direction on the progression of the proposal.

Background

Council has received a request from Ardill Payne and Partners on behalf of the landowner to rezone No. 6-20 Fitzroy Street Wardell from RU2 Rural Landscape to R3 Medium Density Residential.

The proposal also involves a change from the 40ha minimum lot size for subdivision standard to apply an 800m² minimum lot size.

The proposed amendment enables the subdivision of the land and associated residential development.

A copy of the information submitted by the proponent in support of the LEP amendment request is contained in Attachment 2.

The subject site comprises Lots 2, 3, 4 and 5, Section 10, DP 759050 and is known as No. 6-20 Fitzroy Street, Wardell (the subject land). The subject land is designated as a Strategic Urban Growth Area (SUGA) under Council's Local Growth Management Strategy. The land is also identified as an Investigation Area – Urban Land under the State Government's North Coast Regional Plan.

In January 2016 Council adopted the Wardell Strategic Plan 2015-2035. This plan provides the planning framework and future vision for the village of Wardell and is informed by the Wardell Planning and Environmental Study (WPES).

The WPES undertook a preliminary examination of the merits of rezoning all SUGA areas located at Wardell for residential purposes. In respect to the subject land, the study ranked it as having a fair suitability for urban development, following consideration of land constraints.

The Wardell Strategic Plan 2015-2035, under Locality Objective 5 *Ensuring that future development is staged, progressive and affordable*, incorporates the following strategic action:

24. Initiate a planning proposal for the rezoning of SUGA designated properties located within or adjacent to the boundaries of Wardell Village (does not include SUGA area 1 with frontage to Pimlico Road).

This LEP amendment request is consistent with Strategic Action 24 as contained in the Wardell Strategic Plan 2015-2035.

8.2 LEP Amendment Request - No.6-20 Fitzroy Street, Wardell

The purpose of this report is to outline the amendment proposal and seek direction in relation to the further consideration and assessment of the amendment request.

Key Issues

- Merits of the proposed LEP amendment
- Processing of LEP amendment request and progression of the planning proposal

Information

The subject land comprises four lots that are square in shape, positioned in a row with common side boundaries and having an approximate frontage of 160m to both Fitzroy Street to the southeast and an unformed road (Bingal Street) to the northwest. The total combined site area is 7,385.5m².

The aerial photo in Figure 1 shows the subject land outlined in red (note the cadastre shown is not accurate in this location). The subject land is currently vacant, contains minimal vegetation and is devoid of any structures. Vehicular access to the site is via Fitzroy Street which is a constructed urban road with a bitumen seal that finishes adjacent to existing Lot 2.

Figure 1: Aerial photo – No. 6-20 Fitzroy Street, Wardell



Land Constraints

Bushfire

The subject land is designated as bushfire prone land. The proponent has submitted a Draft Strategic Bush Fire Study prepared in accordance with the provisions of *Planning for Bushfire Protection 2019* (PBP) which concludes the following:

- the proposed rezoning is appropriate in the bush fire hazard context;
- bush fire mitigation and management measures for the future development can be adequately addressed with the proposal having an ability to comply with PBP 2019; and

8.2 LEP Amendment Request - No.6-20 Fitzroy Street, Wardell

- the indicative allotment layout with proposed minimum lot sizes are considered appropriate to accommodate the Asset Protection Zones (APZs) within future subdivision, with exception of Concept Lot 1 which will require adjustment to accommodate the APZ.

Consultation with the NSW Rural Fire Service will occur post-Gateway determination. A copy of the Draft Strategic Bush Fire Study is contained within Attachment 1.

Flooding

The subject land is identified in the Ballina LEP 2012 as being subject to the 1 in 100 year flood event, being within a medium flood hazard area.

Chapter 2b – Floodplain Management of the Ballina Shire Development Control Plan (DCP) 2012 has been adopted to reflect the findings of the Ballina Floodplain Risk Management Study and Plan (2012) and preceding studies, including the Wardell and Cabbage Tree Island Floodplain Risk Management Study (2007).

Chapter 2b of the DCP permits the construction of elevated dwellings and non-filling of sites except for drainage purposes within the Wardell Village, including at the subject site.

This method of flood control ensures any future dwellings are more compatible with existing development within the village and reduces the cumulative impact of raising ground levels within an identified flood prone area.

Further impacts regarding flood hazard and mitigation measures would be required to be considered as part of the development assessment process associated with the future development of the site.

Acid Sulfate Soils

The subject land is mapped as containing part Class 2 and part Class 3 Acid Sulfate Soils (ASS). The Wardell Planning & Environmental Study identified that ASS may be an impediment to the rezoning of the land for residential purposes. The Ballina LEP 2012 contains provisions that require ASS to be addressed in relation to future development applications for the subject land.

Land Contamination

In April 2020 the requirements for consideration of contaminated land under Clause 6 of *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55) in relation to rezoning proposals were transferred to a section 9.1 Ministerial Direction (No. 2.6). This amendment provides certainty that the likelihood of contamination is appropriately considered before the planning proposal is finalised and not necessarily before a Gateway assessment.

In accordance with the Ministerial Direction and the contaminated land planning guidelines, the proponent has submitted a Preliminary Site Investigation Report which has been reviewed by Council's Environmental Health Officer. The report concludes that the site is considered suitable for the proposed zone change from RU2 Rural Landscape to R3 Medium Density Residential.

8.2 LEP Amendment Request - No.6-20 Fitzroy Street, Wardell

Wardell Strategic Plan 2015-2035

The Wardell Strategic Plan 2015-2035 envisaged that Council would seek to initiate and prepare one planning proposal for all SUGA areas located within and adjacent to the boundaries of Wardell Village.

This would cover a total of four SUGA sites as shown by the green colour in Figure 2.

Figure 2: SUGA Areas within and adjacent to Wardell Village



It was envisaged that specialist consultant costs associated with the preparation of the planning proposal would be shared by all affected owners. During consultation associated with the Strategic Plan and Environmental Study few SUGA owners demonstrated interest in such an approach.

Whilst it is possible to defer consideration of the current LEP amendment request and proceed to prepare an alternative planning proposal covering the other designated SUGA areas, there is also merit in proceeding with the submitted request. This is because it may act as a catalyst through which interest may be stimulated amongst other SUGA owners to also submit joint or individual LEP amendment requests for their properties.

Importantly, where Council seeks to initiate an LEP amendment rather than a landowner (or group of landowners), Council would be required to meet the costs associated with the amendment including site investigations and studies as well as processing costs.

It is recommended that Council proceeds with the processing of the LEP amendment in this case.

A planning proposal outlining the proposal for submission to the Department of Planning, Industry and Environment for Gateway determination has been prepared (Attachment 1).

Sustainability Considerations

- **Environment**

Consultation with the NSW Rural Fire Service will occur post Gateway determination should the planning proposal proceed.

- **Social**

There are no significant negative social impacts anticipated as a consequence of this LEP amendment request. The proposal will provide for a slight increase in housing opportunities in Wardell. The use of the land for residential purposes will be compatible with existing adjacent residential uses.

- **Economic**

There are no significant economic impacts anticipated as a consequence of this rezoning proposal.

Legal / Resource / Financial Implications

Council's processing guidelines and adopted fees and charges for LEP amendment requests will be applied to further processing of this request. All costs associated with the processing of the application are to be met by the proponent. Processing of the amendment can be accommodated within the work program of the Strategic Planning Section.

Consultation

There has been no specific consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as the matter is in its initial phases.

Should the proposal proceed beyond Gateway determination, public exhibition and agency consultation will be undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.

Options

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

Option 1 – Council may resolve to endorse the planning proposal for submission to the Department of Planning, Industry and Environment for Gateway determination.

This is the preferred option. It is recommended that Council proceeds to lodge the planning proposal (Attachment 1) with the Department of Planning, Industry and Environment (DPIE) for Gateway determination and then proceed to public exhibition. Council would receive further reporting on the planning proposal following public exhibition.

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

8.2 LEP Amendment Request - No.6-20 Fitzroy Street, Wardell

Option 2 – Council may resolve to defer consideration of the planning proposal or broaden the area affected to incorporate additional SUGA areas.

Council may defer consideration of the planning proposal in order to undertake an inspection of the site and locality, to seek additional information and/or to obtain a more in-depth briefing of the proposal.

This approach is suggested in the event that the Council would like to examine options to advance a broader planning proposal relating to all SUGA designated properties located within and adjacent to the boundaries of Wardell Village, as detailed in Locality Objective No. 24 of the Wardell Strategic Plan 2015-2035. However, for the reasons outlined above, it is recommended that this proposed rezoning proceeds as a stand-alone amendment.

Option 3 – Council may resolve to decline to initiate the planning proposal.

It is open to the Council to decline the requested LEP amendment. Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request. If this was to occur, it is open to the proponent to exercise a right to lodge a request for a pre-Gateway determination review with the Department of Planning, Industry and Environment. Having regard to the characteristics of the site and the consistency of the proposal with the strategic planning framework for Wardell, declining to initiate the planning proposal is not recommended.

RECOMMENDATIONS

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 20/002 – No. 6-20 Fitzroy Street, Wardell) contained within Attachment 1 for submission to the Department of Planning, Industry and Environment for Gateway determination.
2. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
3. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken including public exhibition.
4. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

Attachment(s)

1. BSCPP 20/002 - Planning Proposal (Initiation/Gateway)
2. LEP Amendment Request - No. 6-20 Fitzroy Street Wardell

8.3 LEP Amendment Request - Teven Road, Teven

8.3 LEP Amendment Request - Teven Road, Teven

Delivery Program

Strategic Planning

Objective

To outline a proposal to amend the Ballina Local Environmental Plan 2012 to reinstate a dwelling entitlement on Lot 3 Section 1 DP 758964, Teven Road, Teven, and to transfer the dwelling entitlement to an aggregate of lots under the same ownership to enable a more suitable development outcome and seek direction on the progression of the proposal.

Background

Council has received a request from Sally McGarry on behalf of property owners Mr and Mrs Latham to reinstate a dwelling entitlement on Lot 3 Section 1 DP 758964, Teven Road, Teven.

The proposal also seeks to transfer the dwelling entitlement to an aggregate of lots located along Teven Road also owned by Mr and Mrs Latham by identifying the lots on the Dwelling Opportunity Reinstatement Map as a group of lots having one dwelling opportunity. The dwelling entitlement transfer will enable a more suitable development site to be available for the construction of a dwelling house.

Attachment 1 contains a copy of the planning proposal prepared in relation to the amendment request. Attachment 2 contains a copy of the proponent's Local Environmental Plan (LEP) amendment request.

The purpose of this report is to outline the amendment proposal and to seek direction in relation to the assessment of the amendment request.

Key Issues

- Merits of proposed LEP amendment
- Processing of LEP amendment request and progression of the planning proposal

Information

The land comprises twelve vacant land parcels which are described in Table 1 and shown outlined in black in Figure 1. Lot 3 Section 1 DP 758964, the land that previously enjoyed a dwelling entitlement under Ballina LEP 1987, is shaded green.

8.3 LEP Amendment Request - Teven Road, Teven

The land is zoned RU1 Primary Production under the provisions of the Ballina Local Environmental Plan 2012 (BLEP 2012) and is subject to a minimum lot size of 40ha. The aggregation of the lots is below 40ha, having an approximate area of 2.57ha, and therefore does not receive a dwelling entitlement if consolidated under the provisions of Clause 4.2A of BLEP 2012 on the basis of land area. The land does not meet any of the other criteria under the 2012 plan to be afforded a dwelling entitlement under the plan.

The LEP amendment has been proposed on the basis that a dwelling entitlement was previously acknowledged in writing, before Council made Amendment No. 110 to the Ballina LEP 1987. That is, the proponent has requested reinstatement of an entitlement in line with Council's decision to preserve entitlements lost when Amendment No. 110 to the Ballina LEP 1987 was made.

Amendment 110, made in 2009, altered the criteria associated with dwelling entitlements and caused some entitlements previously acknowledged under certain provisions to be lost. At the time of the amendment Council resolved to restore entitlements lost as a result of the change where the entitlements had previously been acknowledged by Council in writing. The mechanism for this is the Dwelling Opportunity Reinstatement Map under the Ballina Local Environmental Plan 2012.

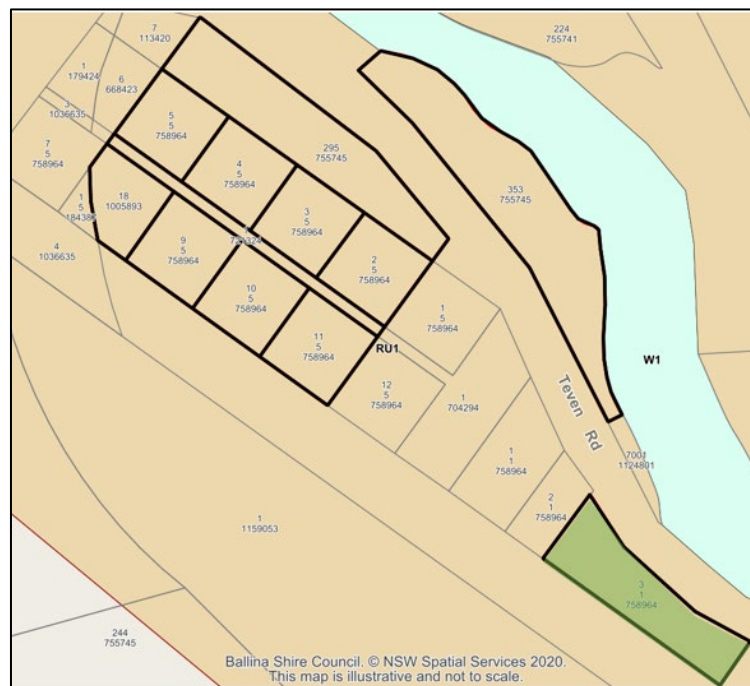


Figure 1: Locality Map

Table 1 – Details of land parcels the subject of this planning proposal

Lot	Section	DP	Area (m ²)
3	1	758964	2757
353	-	755745	5109
295	-	755745	4211
2	5	758964	1618.7
3	5	758964	1618.7

8.3 LEP Amendment Request - Teven Road, Teven

Lot	Section	DP	Area (m ²)
4	5	758964	1618.7
5	5	758964	1618.7
1	-	721324	1003
18	-	1005893	1341
9	5	758964	1619
10	5	758964	1618.7
11	5	758964	1618.7
Total Area (ha)			2.575

Dwelling Entitlement History

- Letter dated 18 July 1995

A letter from Council dated 18 July 1995 identified that Lot 3 Section 1 DP 758964 (Lot 3) had a dwelling entitlement under Clause 12 of the BLEP 1987 which could be exercised by obtaining development consent.

Clause 4.2A of BLEP 2012 and Clause 12 of BLEP 1987 contains the criteria used to determine whether a dwelling entitlement exists on a particular lot or holding.

Lot 3 does not have the minimum lot area for the erection of a dwelling house (20 to 40 ha) under the provisions of either BLEP 1987 or BLEP 2012.

Lot 3 existed prior to these LEPs, or the previous interim development provisions coming into effect, and therefore was not a lot created by development consent granted under the provisions of applicable planning instruments.

Therefore for a dwelling entitlement to exist in respect to the subject lot it must either contain a lawfully erected dwelling house which is proposed to be replaced (clause 4.2A(5)), or the land is an *existing holding*.

An existing holding is defined within Ballina LEP 2012 (clause 4.2A (7)) as follows:

existing holding means land that:

(a) in the former shire of Tintenbar:

- (i) was a holding on 12 June 1970, and
- (ii) is still held by the same owner at the time the application for development consent referred to in subclause (3) is lodged

Ballina LEP 1987 defines an existing holding as:

existing holding means:

(a) in the case of land in the former Shire of Tintenbar:

- (i) except as provided by subparagraph (ii), a lot, portion or parcel of land which has the same boundaries as it had, and is owned by the same person as it was owned by, on 12 June 1970, or

- (ii) where, on 12 June 1970, a person owned 2 or more adjoining or adjacent lots, portions or parcels of land, the aggregation of those lots, portions or parcels, provided that they are owned by the same person that they were owned by on that date

There is no current evidence which would conclusively indicate that a lawfully erected dwelling house existed on the land.

The test for permitting a dwelling to be erected on an existing holding is that the land has the same boundaries, and is owned by the same person as owned the land on 12 June 1970, at the time when the development application is approved (BLEP 1987), or lodged (BLEP 2012).

In the subject case the owner of the land on 12 June 1970 was TW George and AC Cupitt. The purchase of Lot 3 by the Lathams in 1989 is considered to have terminated the existing holding status that the land would have enjoyed.

Importantly, dwelling entitlements associated with existing holdings can no longer be exercised under the terms of the 2012 LEP.

Given the above, the proponent is reliant on reinstatement of the dwelling entitlement to enable the use of the land for a dwelling.

- *Amendment No. 110 to the BLEP 1987*

At its Ordinary meeting held on 26 June 2008, Council resolved to amend the provisions of Clause 12 of the BLEP 1987 to clarify the circumstances in which properties within rural and environmental protection zones have dwelling entitlements as a result of court cases at the time highlighting the difficulties in the interpretation of the clause.

At the time it was envisaged that the review of Clause 12 of the BLEP 1987 would provide a template for the interpretation of the dwelling entitlement clause in the new comprehensive shire-wide LEP (BLEP 2012).

Council resolved at its Ordinary meeting held 22 January 2009 to adopt Amendment No. 110 to the BLEP 1987 as exhibited, and to include a schedule in the new comprehensive shire-wide Local Environmental Plan to “protect” the dwelling entitlements for rural properties which do not comply with the revised dwelling entitlement clause but for which Council has previously acknowledged an entitlement in writing.

This is reflected in the 2012 LEP by way of a notation as follows:

Subclause 3(f) preserves dwelling entitlements that were extinguished by Ballina Local Environmental Plan 1987 (Amendment No 110) but were acknowledged by the Council in writing as being preserved before that amendment was made.

The information available indicates that the entitlement was acknowledged under Clause 12 of the 1987 LEP and is suitable for reinstatement in line with Council’s 2009 resolution.

8.3 LEP Amendment Request - Teven Road, Teven

During the preparation of the 2012 LEP, landowners who had a circumstance that met the reinstatement criteria were invited to request the identification of land on the dwelling entitlement reinstatement map.

It was recognised at the time this process may not identify all situations where a reinstatement is warranted.

Given this, occasionally a landowner seeks inclusion of additional land holdings on the map in line with the 2009 resolution.

- *Letter dated 17 April 2019*

On 17 April 2019, Council wrote to the land owners in response to an enquiry regarding the presence of a dwelling entitlement on their land holdings. The letter concluded that out of the multiple allotments, the only lot that enjoys a dwelling entitlement is Lot 3 Section 1 DP 758964 as previously advised in Council's correspondence dated 18 July 1995.

- *Letter dated 17 June 2019*

In response to a further enquiry regarding lot consolidation and relocation of the existing dwelling entitlement from Lot 3 Section 1 DP 758964, Council acknowledged in correspondence dated 17 June 2019 that as no dwelling house exists on Lot 3 Section 1 DP 758964 and the current BLEP 2012 provisions do not allow for a dwelling entitlement, the landowners would need to rely upon the approach in relation to amendment 110 to the previous BLEP 1987.

It was advised that the dwelling entitlement for Lot 3 Section 1 DP 758964 would need to be reinstated in the BLEP 2012 through the Dwelling Opportunity Reinstatement Map for it to be able to be exercised.

- *Site suitability for a dwelling*

As noted in the letter dated 18 July 1995, gaining development consent for a dwelling on Lot 3 Section 1 DP 758964 would likely be difficult due to site constraints, having regard to its location in a high velocity flood area adjacent to the creek and the size and shape of the land.

The ability to satisfactorily accommodate the on-site disposal of effluent on the subject land was also noted as a potential constraint.

The aggregation of the additional eleven lots located on Teven Road has a total land area of approximately 2.57ha.

The majority of the land is considerably less constrained than Lot 3 Section 1 DP 758964 and could satisfactorily accommodate a dwelling and all other necessary infrastructure.

Any future development application will be required to address consolidation of all lots referred to in Table 1.

Copies of letters are provided at Appendix 3 of the planning proposal (refer Attachment 1 of this report).

Sustainability Considerations

- **Environment**

No significant environmental impacts are anticipated in association with the proposed LEP amendment as outlined in this report. Impacts associated with the construction of a dwelling house would be considered through the development assessment process once a preferred dwelling site has been selected.

- **Social**

There are no significant social impacts anticipated as a consequence of this LEP amendment request.

- **Economic**

There are no significant economic impacts anticipated as consequence of this LEP amendment request.

Legal / Resource / Financial Implications

Council's processing guidelines and adopted fees and charges for LEP amendment requests will be applied to the further processing of this request. All costs associated with the processing of the application are to be met by the proponent.

Processing of the amendment can be accommodated within the Strategic Planning Section's work program.

Consultation

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date as the matter is in its initial phases.

Should the matter proceed, an affirmative Gateway determination will identify consultation requirements.

Options

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

Option 1 – Council may resolve to endorse the planning proposal for submission to the Department of Planning and Environment for Gateway determination.

This is the preferred option.

It is recommended that Council proceeds to lodge the planning proposal (Attachment 1) with the Department of Planning, Industry and Environment (DPIE) for Gateway determination and then proceed to public exhibition. Council would receive further reporting on the planning proposal following public exhibition.

8.3 LEP Amendment Request - Teven Road, Teven

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

Option 2 – Council may resolve to decline to initiate the planning proposal.

It is open to the Council to decline the requested LEP amendment, although this is not recommended.

Endorsement of this option would mean that no further action would be taken by Council with respect to the processing of the request. If this was to occur, it is open to the proponent to exercise a right to lodge a request for a pre-Gateway determination review with the Department of Planning, Industry and Environment.

Option 3 – Council may resolve to defer consideration of this matter for a further report or a briefing.

Should the Council require additional information then it is appropriate that this report be deferred for an additional report or briefing.

RECOMMENDATIONS

1. That Council endorses the proposed amendments to the Ballina Local Environmental Plan 2012 as outlined in the planning proposal (BSCPP 20/001 – Teven Road, Teven) contained in Attachment 1 for submission to the Department of Planning, Industry and Environment for Gateway determination.
2. That the Department of Planning, Industry and Environment be advised that Council wishes to exercise its delegated plan making functions for this LEP amendment.
3. That upon an affirmative Gateway determination being received from the Department of Planning, Industry and Environment, the procedural steps associated with progression of the planning proposal be undertaken, including public exhibition.
4. That Council receive a further report on the matter following the completion of the public exhibition of the planning proposal.

Attachment(s)

1. BSCPP 20/001 - Planning Proposal (Initiation/Gateway)
2. Planning Proposal / LEP Amendment Request - Teven Road, Teven

8.4 LEP Amendment Request - Mitchell Close, Cumbalum

8.4 LEP Amendment Request - Mitchell Close, Cumbalum

Delivery Program

Strategic Planning

Objective

To outline a proposal to amend the Ballina LEP 2012 in relation to land at Mitchell Close, Cumbalum and seek direction on the progression of the amendment.

Background

Council has received a request to amend the Ballina Local Environmental Plan 2012 in relation to land at Mitchell Close, Cumbalum. The land is identified in real property terms as Lot 1 DP 1077982 and is owned by the Roman Catholic Church.

Figure 1 shows the location and zoning of the subject land



Figure 1: Mitchell Close LEP Amendment Request - Subject Land

The land is zoned part R3 Medium Density Residential and part RU2 Rural Landscape. The RU2 zoned area is designated as a Strategic Urban Growth Area (SUGA) under the Ballina Shire Local Growth Management Strategy and an Investigation Area – Urban Land under the State Government’s North Coast Regional Plan.

The southern part of the site, subject to the R3 zone, is part of the original Ballina Heights development that was zoned for residential purposes in the 1990s (and subsequently transferred to equivalent zonings under the BLEP 2012).

The northern part of the site, subject to the RU2 zone, forms part of the residue of land that was subject to the CURA A Planning Proposal which concluded in 2014.

8.4 LEP Amendment Request - Mitchell Close, Cumbalum

The RU2 area was omitted from CURA A residential zoning due to the presence of the following environmental constraints:

- steep slope / slope instability; and
- traffic noise (from the Pacific Highway).

Notwithstanding, the subject land was designated as a Strategic Urban Growth Area (SUGA) on the basis that the Ballina Bypass had only recently opened to traffic. At that time, it was acknowledged that observed road noise impacts may vary from modelled road noise impacts, once such an assessment was possible.

The SUGA designation provided the opportunity to revisit the matter of applying an urban zoning to the land in the event that road noise assessment demonstrates a lesser level of impact or an alternative (non-residential) use of the site is identified for further consideration.

The owner of the land has now lodged an LEP amendment request seeking application of the R3 Medium Density zone to the balance of the site. The purpose of this report is to present the planning proposal request and seek Council's direction.

Key Issues

- Road noise
- Suitability of the land for residential development

Information

Ardill Payne & Partners acting on behalf of the Roman Catholic Church has submitted an LEP amendment request seeking to have the R3 Medium Density Residential zone applied to the balance of the site (Lot 1 DP 1077982).

The planning proposal request and associated technical documents are provided as Attachment 1.

The planning proposal, as submitted, would provide for the subdivision of an additional 20 residential allotments.

The planning proposal request is supported by the following technical studies:

- Precinct A Cumbalum Urban Release Area Slope Stability Assessment dated October 2009
- Preliminary Contaminated Site Investigation - Ballina Heights Estate, dated September 2010
- Preliminary Contaminated Site Investigation - Proposed subdivision of Cumbalum Views, dated October 2016
- Road Traffic Noise Assessment dated 2020

In addition, the request acknowledges that an ecological assessment would be required to support a planning proposal, post Gateway determination, due to the presence of potential koala habitat on the northern and western parts of the site.

Many of the studies submitted in support of the proposal were those considered during the initial CURA A planning proposal process. These studies remain largely relevant as the site conditions and legislative framework that relate to those matters remain largely unchanged.

The submission does not undertake a comprehensive assessment of the land's suitability for urban development. Rather, the proponent requests application of the R3 Medium Density Residential zone applied to the whole of site, despite the following environmental constraints affecting parts of the subject land:

- Slope stability assessment indicating that approximately one third of that part of the site (western parts) having either a medium or high likelihood of slope instability and having grades in excess of 20% slope.
- Koala habitat mapping indicating the northern and western parts of the site are affected by potential Koala habitat.

Consequently, should Council support the planning proposal request, the determination of appropriate zoning should be undertaken having particular regard for the above constraints.

Notwithstanding, the key issue affecting the suitability of the subject land to accommodate urban development is road noise associated with the Pacific Highway.

Road Noise

Road noise impacts featured significantly in Council's previous deliberations regarding CURA A in December 2012 and then again in August 2013. Although the latest planning proposal request is supported by updated road noise modelling, the implications of road noise impacts on residential amenity and building requirements remain largely unchanged from that previously reported.

Land located on the western edge of CURA Precinct A adjacent to the Pacific Highway was excluded from residential rezoning (and was zoned RU2 Rural Landscape) as part of the CURA A planning proposal due to road noise. This land was retained as a SUGA to allow further consideration of the matter in the future. Land located in the vicinity of the Pacific Highway and also Ross Lane, was similarly excluded from the residential zone footprint of the Precinct B Planning Proposal.

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'.

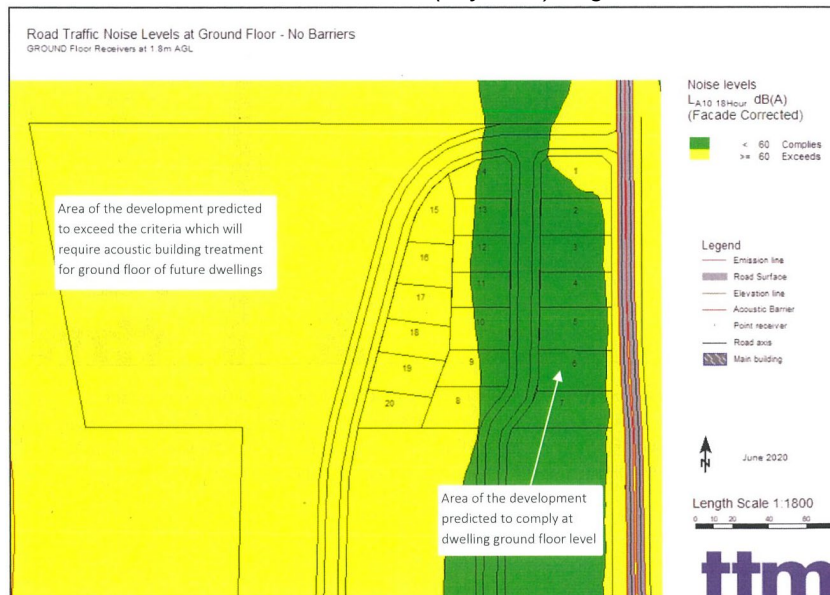
8.4 LEP Amendment Request - Mitchell Close, Cumbalum

A revised Road Noise Assessment has been submitted in association with the latest planning proposal request, prepared by TTM Consulting Pty Ltd, dated 11 June 2020.

The updated Road Noise Assessment makes the following key conclusions:

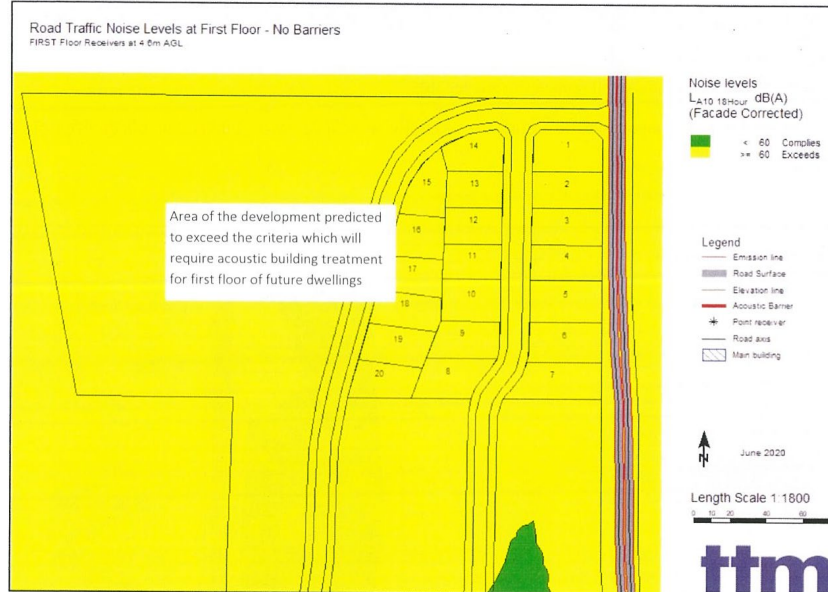
- Parts of the site meet the relevant acoustic criteria at ground level. These areas are shown in green in the first of the two images below. For these areas, 'standard building construction' methods would be required, but doors and windows will need to remain closed.
- The remainder of the site, shown yellow in the first of the two images below, will exceed the acoustic criteria at ground level and will require further acoustic assessment and building treatments to meet the relevant internal standard (at ground floor level).
- All of the site will exceed the relevant acoustic criteria at the first floor level, requiring further acoustic assessment and building treatments to meet the relevant internal standard. This area is shown in yellow in the second of the two images below.

Road traffic noise level exceedance (in yellow) at ground floor:



8.4 LEP Amendment Request - Mitchell Close, Cumbalum

Road traffic noise level exceedance (in yellow) at first floor:



The acoustic assessment indicates that, due to the topography of the land, noise barriers would not be effective. The assessment suggests that the relevant internal noise criteria could be met for those parts of the site (and/or residential floors) that are noise affected 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 relation to this matter on this site, Council has previously (December 2012 and August 2012) considered the following when determining that the measures required to achieve the acoustic standards were not appropriate under the circumstances:

- The noise criteria are generally based on the assumption of dwellings already being in place prior to works occurring. 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 be constructed with the closure of doors and windows required and reliance on air-conditioning to address road noise impacts. Such an approach would not appear to represent a sustainable development outcome.

8.4 LEP Amendment Request - Mitchell Close, Cumbalum

- 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 homeowners, 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 (then) NSW Office of Environment and Heritage during the initial CURA A planning proposal process, also remain relevant:

“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”.

Council's Environmental Health Officers have reviewed the updated report and reaffirm their previous advice on this matter:

“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”.

Fundamentally, the planning proposal request relies upon individual building treatments in order to achieve the internal noise criteria for the majority of the proposed potential residential floor area on the subject land. As a consequence, it is recommended that Council decline the requested amendment.

Should Council decline the planning proposal request, the developer may seek to have the decision reviewed by the Department of Planning, Industry and Environment.

Sustainability Considerations

- **Environment**
Further environmental assessments, with particular regard to Koala habitat, would be required should the planning proposal proceed.
- **Social**
Zoning the land for residential purposes has social implications for future residents relating to residential amenity and housing affordability.
- **Economic**
Zoning the land for residential purposes would have modest positive economic impacts associated with additional residential construction.

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.

The processing of this planning proposal can occur within existing resources should Council resolve to progress this matter further.

Consultation

This matter would be subject to the usual community consultation requirements in accordance with the Gateway determination, should Council resolve to progress this matter further.

Options

The following options are presented for Council's consideration:

Option 1 – Council could resolve to decline the planning proposal request.

This option would involve writing to the proponent advising of Council's decision.

This option is recommended on the basis that rezoning land for residential purposes would not be in the public interest, having particular regard for noise impacts and associated implications.

Option 2 – Council could resolve to progress the planning proposal request.

This option would involve finalisation of a draft planning proposal and referral of the proposal to the NSW Department of Planning, Industry and Environment for Gateway determination.

If the matter proceeds beyond Gateway determination it will be the subject of public exhibition and further reporting to Council.

This option is not recommended for the reasons set out under Option 1.

8.4 LEP Amendment Request - Mitchell Close, Cumbalum

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

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

RECOMMENDATION

That Council declines the proposed LEP amendment to apply an R3 Medium Density Residential zone under the Ballina Local Environmental Plan 2012 to part of Lot 1 DP 1077982 Cumbalum (being land currently zoned RU2 Rural Landscape) due to traffic noise impacts.

Attachment(s)

1. LEP Amendment Request - Mitchell Close Cumbalum - Ardill Payne and Partners

8.5 Ballina Shire Development Control Plan 2012 - Amendment No. 13A

Delivery Program

Strategic Planning

Objective

To inform Council of the outcomes of the public exhibition of proposed amendments to the Ballina Shire Development Control Plan 2012 and to seek direction in relation to the adoption of the recommended amendments.

Background

Draft Amendment No. 13 to the Ballina Shire Development Control Plan 2012 (the DCP) was considered at the May 2020 Ordinary meeting, where Council resolved as follows:

1. *That Council undertake the public exhibition of Draft Amendment No. 13 to the Ballina Shire Development Control Plan 2012 (as contained in Attachments 1 and 2), in accordance with the terms of the Environmental Planning and Assessment Act 1979 and the associated Regulation.*
2. *That a further report be submitted to Council following the public exhibition of Draft Amendment No. 13 to the Ballina Shire Development Control Plan 2012.*

In accordance with the resolution, Draft Amendment No. 13 was placed on public exhibition from 24 June 2020 to 24 July 2020.

During the exhibition period an administrative error was discovered, being that a previous amendment to the DCP was numbered Amendment No. 13. Council adopted these amendments at the 28 February 2020 Ordinary meeting and the amendments took effect from 4 May 2020. The amendments provide supporting development controls associated with Amendment No. 46 to the Ballina LEP 2012 which provides for industrial retail outlets in association with approved rural industries on land subject to the RU1 Primary Production zone and RU2 Rural Landscape zone of the Ballina LEP 2012.

The general amendments to the DCP (the subject of this report) are now referred to as 'Draft Amendment No. 13A' to provide clarity.

The purpose of this report is to seek direction from Council in relation to the adoption of the proposed amendments to the DCP.

Key Issues

- Implementation of amendments to the development control plan
- Ensuring the DCP provides for intended and consistent planning outcomes

Information

Details of the draft amendments to the DCP were reported to the May 2020 Ordinary meeting. Full details of the proposed amendments, which were placed on exhibition in accordance with the Council's resolution, are contained within Attachment 1.

Some of the more significant proposed amendments to the DCP are outlined as follows:

- Adjustments within Chapter 2 – General and Environmental Considerations relating to sewage management, including details specific to the Fig Tree Hill Estate in Lennox Head;
- Adjustments within Chapter 2 – General and Environmental Considerations relating to Public Art requirements;
- Inclusion of provisions within Parts 3.1 and 3.2 of Chapter 3 – Urban Subdivision to clarify Council's policy position regarding provision of Asset Protection Zones;
- Adjustments to controls within Chapter 4 – Residential & Tourist Development relating to secondary dwellings;
- Inclusion of a provision within Chapter 4 – Residential & Tourist Development to address bulk and scale issues associated with the construction of sheds in residential areas;
- Adjustments within Chapter 4 – Residential & Tourist Development to clarify controls relating to solar access; and
- Adjustments within Chapter 6a – Commercial Development Ballina Town Centre to incorporate activation requirements and to clarify accessible car parking provisions.

Public Art requirements – Chapter 2 – General and Environmental Considerations, Part 3.16

Some additional text changes have been made to the draft document post exhibition to assist in streamlining the public art approval process.

These changes are based on recent public art projects undertaken by Council.

It is proposed to further amend development control (vii) by deleting the following words:

vii. ~~Where artworks are to be transferred to the care of Council, they will be assessed by the Public Art Advisory Panel who will then make a recommendation regarding the suitability of the artwork for the collection. Depending on the work, the recommendation will be passed to Council or the GM for approval. Any public art entering Council's public art collection will be accompanied by a maintenance schedule and associated costs and a legal document transferring full rights of ownership to Ballina Shire Council. Council will have exclusive copyright licence of the works, however full copyright will remain with the artist/author of the work/object.~~

This change more accurately reflects the role of the Public Art Advisory Panel in providing feedback on public art projects and the administrative process associated with determining the compliance of public art with conditions of development approval.

Accessible car parking provisions – Chapter 6a – Commercial Development Ballina Town Centre, Part 5 Car Parking

The proposed amendments seek to clarify that on site car parking for certain developments is required to be freely accessible to the general public at all times.

Upon further consideration of a public submission in relation to the proposed amendments, it is proposed to amend the definition of accessible parking as follows:

Accessible parking means parking spaces provided to meet the minimum requirements of this DCP which must be freely accessible to the general public for car parking purposes at all times and that are not restricted by boom gates, security screens or other devices that visually or physically restricts access.

Details of submissions received in respect to the public exhibition of the proposed DCP amendments are provided later in this report.

Sustainability Considerations

- **Environment**

The DCP establishes local planning policy in relation to a variety of environmental, social and economic considerations. Specifically, it establishes guidelines for development proposals within the shire. As such, the DCP provides an opportunity for Council to address a wide range of sustainability considerations in relation to development. The implementation of the Draft Amendment to the DCP will improve the application of these sustainability considerations.

- **Social**

As above.

- **Economic**

As above.

Legal / Resource / Financial Implications

The preparation of the draft amendments to the Ballina Shire Development Control Plan 2012 has been undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the associated Regulation. The amendment can be completed and implemented within existing available staff and financial resources.

Clause 21(1) of the *Environmental Planning and Assessment Regulation 2000* sets out the process applicable once Council has considered submissions. Clause 21(1) is reproduced below:

21 Approval of development control plans

- (1) After considering any submissions about the draft development control plan that have been duly made, the council:
- a) may approve the plan in the form in which it was publicly exhibited, or
 - b) may approve the plan with such alterations as the council thinks fit, or
 - c) may decide not to proceed with the plan.

Consultation

The draft amendments to the DCP were publicly exhibited between 24 June 2020 to 24 July 2020 in accordance with the requirements of the EP&A Act and associated Regulation. Details of the proposed amendments were posted on Council’s website and an advertisement was placed in the Ballina Shire Advocate on 24 June 2020.

In response, two public submissions were received (Attachment 2). A summary of the issues raised and staff comments are provided in Table 1.

Table 1: Summary of Issues Raised in Public Submissions

DCP Reference	Issue(s) Raised	Comment
<i>Chapter 2 – General and Environmental Considerations Part 3.21 Bushfire Management (No.4 in Schedule of Amendments)</i>	Concerned that the changes to the provisions suggest that in assessing DAs on land that is not identified as bushfire prone, staff ‘can’ identify land as bushfire prone and therefore presumably require a bushfire report. The concern is that this may create uncertainty as to what is required with an application.	Council, and applicants, have a responsibility to ensure the proposed development is suitable for the site. This includes the potential exposure to bushfires. Current bushfire mapping does not include land identified as predominantly grassland or those urban areas that are planned for bushland regeneration. Grasslands are now identified under <i>Planning for Bushfire Protection 2019</i> as bushfire vegetation hazard. The proposed change to the DCP is also consistent with the NSW definition of Designated Bushfire Prone land that has been included in the 2019 version of the Building Code of Australia as reproduced below: Designated bushfire prone area means land that: (a) has been designated under legislation; or (b) has been identified under an environmental planning instrument, development control plan or in the course of processing and determining a development application, as land that can support a bushfire or is likely to be subject to bushfire attack. No change is recommended.
<i>Chapter 3 – Urban Subdivision Fire Asset Protection Zones –</i>	The proposed changes are inconsistent with the provisions of <i>Planning for Bush Fire Protection (PBP) 2019</i> , specifically s.3.2 Asset Protection Zones (APZ) which states the APZ can include roads or	Council’s <i>Fire Asset Protection Zones – Private Use of Public Land Policy</i> and associated DCP provisions are complimentary, supportive of and compliant with the NSW Rural Fire Service’s document <i>Planning for Bush</i>

8.5 Ballina Shire Development Control Plan 2012 - Amendment No. 13A

DCP Reference	Issue(s) Raised	Comment
<p><i>Private Use of Public Land Policy</i> (No.6 in Schedule of Amendments)</p>	<p>properties managed to be consistent with APZ standards set out in Appendix 4 and the NSW Rural Fire Service (RFS) document 'Standards for Asset Protection Zones'.</p> <p>If a neighbouring property, including public land, is managed to be consistent with APZ standards (for instance by virtue of DA consent prescribing APZs or public land PoM), then there is no reason to not consider such neighbouring land as an effective setback buffer to a given hazard.</p> <p>The key question being is there a mechanism to ensure the land will be managed to be consistent with APZ standards? If yes, e.g. because of DA consent or statutory requirements for Council managed parkland and roads, then the APZ intent is fulfilled.</p> <p>There is a general confusing with the APZ function particularly concerning infill development. E.g. a proposal to build a dwelling on a residential block within bushfire prone land could be required to provide APZ setbacks to a classified hazard wholly within the lot even if such hazard occurs 80m away and the new dwelling is surrounded by residential development and a council public park. Notably, in such a case the public land is managed to be consistent with APZ standards and is thus an effective setback buffer to a given hazard. This does not mean that a Bushfire Attack Level (BAL) would not apply to the dwelling construction, the BAL is determined by the classified hazardous vegetation and the separation (i.e. the managed land including residential and a public park) distance to the proposed dwelling.</p>	<p><i>Fire Protection (PBP) 2019</i>, section 3.2.5 APZs on adjoining land.</p> <p>An APZ imposed by a development consent condition must be maintained for the lifetime of the development, unless modified by a subsequent consent.</p> <p>In order to guarantee that an APZ can be managed in perpetuity, APZs should be contained within the overall development site and not on adjoining lands.</p> <p>APZs on adjoining land are not encouraged. Where an APZ is proposed on adjoining land, a guarantee must be provided that the land will be managed in perpetuity. In order to achieve this, the land should have an easement under s.88B of the <i>Conveyancing Act 1919</i> to ensure the surety of APZ and the correct management prescriptions, and that management occurs in a binding legal agreement in perpetuity. These situations are assessed on their merits.</p> <p>The submission appears to have confused the wording and messages of PBP 2019 and the DCP.</p> <p>PBP 2019 does not support adjacent lands to maintain a development's APZ requirements in perpetuity. Council's policy and DCP provisions are consistent with this.</p> <p>No change is recommended.</p>
<p><i>Chapter 4 – Residential and Tourist Development</i> <i>Element J – Solar Access</i> (No.15 in Schedule of Amendments)</p>	<p>Solar access to all residential buildings is a good idea but must not have been applied to a lot of homes built recently in the new subdivisions. The DA cited in this amendment has living areas and windows facing east (and north) but would be considered non-compliant with this provision.</p>	<p>The removal of the heading, which currently does not include "dwellings or single dwellings", implies that the solar access provisions do not apply to these types of developments.</p> <p>The change is not intended to address aspect requirements associated with living areas and windows.</p> <p>The change is to ensure that solar access controls clearly apply to dwellings. This is to reinforce provision</p>

8.5 Ballina Shire Development Control Plan 2012 - Amendment No. 13A

DCP Reference	Issue(s) Raised	Comment
		<p>of adequate solar access for dwellings adjacent to proposed dwelling house developments.</p> <p>This reflects the outcomes of a recent Court case in which solar access was a key consideration.</p> <p>No change is recommended.</p>
<p><i>Chapter 6a – Commercial Development Ballina Town Centre</i></p> <p><i>Part 5 Car Parking</i></p> <p><i>Accessible car parking provisions (No. 16 in Schedule of Amendments)</i></p>	<p>Disagree that all car parking is to be accessible car parking. Suggest that car parking requirements are made up of spaces for staff and shop keepers / managers and for direct customers etc as well as for the general public.</p> <p>Council assertion is that all onsite car parking is for general use by anyone and I disagree that this is the original intent on car parking provisions / requirements.</p> <p>Also suggest that to follow this through to its conclusion, fully accessible car parking puts a priority on the location and prominence of car parking, whereas I believe there are other more significant elements to a successful workable useable aesthetic project / development than ensuring that all car parks can be accessed by anyone anytime.</p>	<p>Accessible parking is defined in the DCP as <i>parking spaces that are freely accessible to the general public for car parking purposes at all times and that are not restricted by boom gates, security screens or other devices that visually or physically restricts access.</i></p> <p>This provision was proposed in response to concerns expressed by some Councillors that access to some CBD car parking spaces has been restricted so as to exclude its use by the general public.</p> <p>The principle underpinning the change is that car parking that meets the minimum requirements of the DCP should be freely available for all potential users. In cases where car parking has been provided in excess of the minimum requirements, or where a contribution in lieu of car parking has been paid, then access to spaces in excess of required spaces could be restricted.</p> <p>It is suggested that the proposed definition of accessible car parking provision be amended so as to read:</p> <p><i>Accessible parking means parking spaces provided to meet the minimum requirements of this DCP, which must be freely accessible to the general public for car parking purposes at all times and that are not restricted by boom gates, security screens or other devices that visually or physically restricts access.</i></p>

Options

Option 1 - Adopt and implement the draft amendments to the DCP as exhibited, inclusive of changes to Chapter 2 General and Environmental Considerations and Chapter 6a Commercial Development Ballina Town Centre.

This approach would involve the adoption of Draft Amendment No. 13A as exhibited, including the following recommended changes:

- a) Chapter 2 General and Environmental Considerations, Part 3.16 Public Art:

Rewording of development control (vii) as outlined in the body of this report.

- b) Chapter 6a Commercial Development Ballina Town Centre, Part 5 Car Parking:

Amend the definition of accessible parking as outlined in the body of this report.

This is the recommended course of action as it is responsive to various issues arising from routine review of the operation of the DCP and will support sound land use planning outcomes in the shire.

If this is the approach adopted, it is proposed that the amendments take effect from 12 October 2020. Public notice is required to be given of the amendment's adoption within 28 days of the Council's decision.

Alternatively, Council could proceed to adopt the amendments subject to changes as specified by the Council.

Option 2 - Decline the adoption of the draft amendments to the DCP.

The Council may resolve to decline to adopt the draft amendments to the DCP in whole or in part. This is not the recommended course of action as it will result in the identified changes, corrections and interpretive improvements not being incorporated into the DCP.

Option 3 - Defer adoption of the draft amendments to the DCP.

The Council may resolve to defer the adoption of the draft amendments to the DCP and seek additional information and/or further consideration of the identified issues.

As detailed in this report, the intent of the draft amendments to the DCP is to provide better function and clarity to the DCP and as such, this option is not recommended. The work program for Council's Strategic Planning Section within the Planning and Environmental Health Division includes the monitoring of Council's key strategic land use planning documents and their regular reporting to the Council. This assists in ensuring that the DCP remains relevant in achieving the desired development outcomes within the shire.

RECOMMENDATIONS

1. That Council adopts the draft amendments to the Ballina Shire Development Control Plan 2012 as exhibited for public comment, inclusive of the following changes:
 - Chapter 2 General and Environmental Considerations, Part 3.16 Public Art - rewording of development control (vii).
 - Chapter 6a Commercial Development Ballina Town Centre, Part 5 Car Parking - amendment of the definition of accessible parking.
2. That Council provide a copy of Ballina Shire Development Control Plan 2012, once amended, to the NSW Department of Planning, Industry and Environment as required by the Environmental Planning and Assessment Regulation.
3. That Council provide public notice of the adoption of the amended Ballina Shire Development Control Plan 2012, with the amended DCP provisions to take effect from 12 October 2020.

Attachment(s)

1. Schedule of Proposed Amendments as exhibited
2. Copy of Submissions

8.6 Policy (Review) - Developer Contributions Incentive - Outdoor Spaces Activation

8.6 Policy (Review) - Developer Contributions Incentive - Outdoor Spaces Activation

Delivery Program

Strategic Planning

Objective

To examine a possible amendment to the Developer Contributions Investment Incentive Policy that seeks to promote activation of outdoor spaces on private land, in certain circumstances.

Background

Council's Developer Contributions Investment Incentive Policy was adopted in September 2018. The policy provides the basis for the waiving of developer contributions where there is a broader public interest outcome. A copy of the policy is included as Attachment 1.

Currently the policy applies to the following circumstances:

- a waiver of developer contribution charges for permitted changes of use within established premises located within the business zones, as Council wishes to encourage small businesses to operate and evolve within these zones.
- a discount of developer contributions and charges for the construction of secondary dwellings, as Council wishes to encourage affordable housing and maximise land use and essential infrastructure within the urban areas.

Council has received an enquiry regarding the contributions applicable to use of an outdoor area on private land adjoining a food outlet for seating. In this example, the premises has frontage to a laneway. Another example would be a plaza area within the boundaries of a commercial property, or a premises that fronts a footpath that is not a public footpath.

Where tenant businesses wish to utilise such spaces for alfresco dining, or the like, the increase in commercial floor space typically triggers a requirement for the payment of developer contributions.

This is in contrast to circumstances where businesses utilise public land, such as through Council's Commercial Use of Footpaths Policy, involving the charging of a modest annual license fee and developer contributions are not charged (albeit there was a point in time they were charged). A practical illustration of this is correspondence from Lennox Smokin' Barrel, dated 3 August 2020, which is provided as Attachment 2.

This report examines an expansion to the Developer Contributions Investment Incentive Policy, having regard to this type of situation.

Key Issues

- Private and public benefit from developer contributions payable

8.6 Policy (Review) - Developer Contributions Incentive - Outdoor Spaces Activation

- Place activation and business support

Information

Place activation is encouraged in a number of Council's place-based strategies, as well as by Council's Commercial Use of Footpaths Policy and Commercial Use of Public Land Policy.

Council's Economic Development Strategy (2019) seeks to encourage place activation and includes the following relevant actions:

- *A6 – Work with local businesses to facilitate a more vibrant and active public domain through place-making projects that encourage passive networking and opportunities for social interaction.*
- *A11 – Review developer contribution arrangements for business to identify affordable and effective means for supporting business establishment and growth, including considering options involving the deferral or waiving of developer contributions under certain circumstances.*

The term "place activation" in this context refers to works or activities within the public domain (typically within CBDs), such as alfresco dining, which encourages visitors and patrons to 'linger longer', thereby creating a more attractive social environment. This has the potential for an improved sense of social cohesion as well as economic benefits associated with increased spending.

Having regard for the above, it would appear that charging developer contributions, in the circumstances described, may discourage the activation of these private / public spaces.

This situation may also be viewed as being inequitable with respect to the following two circumstances which could involve the same functional increase in 'commercial floor space':

- businesses using adjacent public land or footpath, approved by Council, paying only an annual license fee of typically several hundred dollars per year.
- businesses using adjacent outdoor private land that is publicly accessible (but which lies within the commercial property boundary), required to pay often many thousands of dollars in developer contributions prior to operation.

It is noted, however, that the waving of developer contributions in this case may present a further inequity in that the users of private land would then pay neither developer contributions nor an annual licence fee, whereas users of the public footpath pay an annual license fee. The difference in this case is, however, in the order of several hundred dollars per year in most cases (depending on the area).

It is possible that commercial landlords may charge tenants for the increase in commercial floor space, which may equalise any competitive inequities of this approach, albeit to the commercial benefit of landlords.

8.6 Policy (Review) - Developer Contributions Incentive - Outdoor Spaces Activation

Notwithstanding, Council may consider the broader public interest outcomes associated with increased place activation as warranting an adjustment to Council's development contributions arrangements.

Should the Council support an update to the Developer Contributions Investment Incentive Policy, the following inclusion is presented for Council's consideration.

Name:	Place Activation – private/public land
Type:	Waiver
Delegated Approval:	General Manager
Applies to:	<ul style="list-style-type: none"> • Developer Contributions • Developer Charges
Eligibility:	<p>Commercial developments where:</p> <ul style="list-style-type: none"> • Outdoor areas accessible to the public are proposed to be used for alfresco dining or the display of goods for sale, trigger a requirement to pay developer contributions due an increase in commercial floor space. • Development consent (where required) is sought for the proposed use.
Ineligible:	<ul style="list-style-type: none"> • Contributions payable in association with an increase in commercial floor space beyond that outlined above, and/or commercial floor space within enclosed parts of the development. • Areas of the development that would impact upon landscaping or carparking, or any other element of the development that would be in contravention of an existing development consent.
Incentive:	<ul style="list-style-type: none"> • 100% waiver for contributions payable with respect to the increase in commercial floor space associated with alfresco dining or the display of goods for sale that is located on outdoor private property that is accessible to the public at all times located contiguous with, and adjacent to, a public footway with commercial frontage. • Up to a limit of 25m² of area per commercial property.
Application:	Applicants are to nominate their development as an 'eligible for private-public land activation incentive' in their Development Application.

The policy would not apply retrospectively, although Lennox Smokin' Barrel would be eligible based on their current correspondence. Other sections of the existing policy would also be updated for consistency.

As outlined in the above table, it is recommended that the incentives have limited application as per the following:

- Exclude enclosed outdoor spaces – so as to only apply the incentive to areas accessible to the public at all times.

8.6 Policy (Review) - Developer Contributions Incentive - Outdoor Spaces Activation

- Limit of up to 25m² of additional outdoor commercial floor space per commercial property – to facilitate the activation of under-utilised outdoor spaces while limiting unintended incentives which might encourage the design of new developments to exploit the incentive beyond that intended.

As the use of these areas would typically continue to be subject to development consent, it is expected that the placement of structures within these private-public areas would continue to be assessed through the normal planning process.

This would ensure the activity complies with other relevant requirements such as food handling, trade waste, public safety and relevant access and mobility standards.

Sustainability Considerations

- **Environment**
Not Applicable.
- **Social**
The activation of public spaces contributes to the social wellbeing of the community through increased social interaction and cohesion.
- **Economic**
The policy may have positive economic implications by encouraging economic activity and investment and support a lively social environment that is conducive to spending and business activity more broadly.

Legal / Resource / Financial Implications

The waiver of contributions in the circumstances outlined in this report is not anticipated to have significant financial implications for Council on the basis that contributions are not currently being collected due to the disincentive created with the imposition of contributions under these circumstances.

Consultation

Subject to the Council's endorsement of the approach outlined in the body of this report, the Developer Contributions Investment Incentive Policy would be amended and placed on public exhibition for public comment. Following the conclusion of the exhibition period, submissions would be reported to the Council for consideration.

Options

The following options are presented for Council's consideration:

Option 1 – Adopt the amendment of the policy and also undertake public exhibition.

8.6 Policy (Review) - Developer Contributions Incentive - Outdoor Spaces Activation

This option would involve updating the Developer Contributions Investment Incentive Policy, as outlined in the body of this report, as well as placing it on public exhibition for a period of 28 days.

If any submissions are received during the public exhibition, the matter would be reported to Council for further consideration. If no submissions are received no further action is required.

This option is recommended on the basis that the proposed amendments would appear to remove impediments to the activation of the private-public in a manner that otherwise has little financial or other impacts for Council.

Option 2 – Receive and note the contents of the report and take no further action.

This option is available should Council consider the matter inconsequential or otherwise not meriting support at this time.

Option 3 – Defer the matter to a Councillor briefing

Whilst not recommended this option is presented should Council wish to receive further information.

RECOMMENDATIONS

1. That Council adopts the amendment to the Developer Contributions Investment Incentive Policy, as detailed within this report.
2. That Council place the amended policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

Attachment(s)

1. Policy (Existing) - Developer Contributions Investment Incentive
2. Lennox Smokin' Barrel - Contribution Waiver Request

8.7 Policy (Review) - 4WD Beach Access - Seven Mile Beach (4WD Beach Permit)

8.7 Policy (Review) - 4WD Beach Access - Seven Mile Beach (4WD Beach Permit)

Delivery Program

Open Spaces

Objective

To consider submissions received during the public exhibition period for the 4WD Beach Access - Seven Mile Beach (4WD Beach Permit) Policy.

Background

Council at the May 2020 Ordinary meeting resolved to place on public exhibition the updated 4WD Beach Access – Seven Mile Beach (4WD Beach Permit) policy. As per standard Council practice the updated policy was adopted at the May 2020 Ordinary meeting and Council also resolved to place the updated policy on exhibition for public comment.

The policy was then placed on public exhibition with a closing date of 8 July 2020. As a result of the exhibition process 19 submissions were received and this report provides an opportunity for Council to review the feedback.

Key Issues

- Management options and impact of 4WD access to Seven Mile Beach
- Purpose of policy
- Timing of review

Information

The report to the May 2020 Ordinary meeting, related to the regular four year review of Council policies, and the report only recommended minor changes to the existing policy.

Council subsequently resolved to adopt the updated policy, along with approving exhibition. The updated policy was exhibited for a period of 28 days to allow for public comment. The exhibition was notified via Council's website and by way of advertisement in the local newspaper. Copies of the document were made available at Council's Community Access Points. A Councillor briefing was also held during August 2020.

A copy of the exhibited policy is included as Attachment 1.

Council received 19 submissions during the consultation period and copies of the submissions are included as Attachment 2.

The policy, as it currently stands, confirms that 4WD vehicles are permitted to access Seven Mile Beach, along with outlining that permits must be obtained prior to accessing the beach (subject to certain restrictions).

8.7 Policy (Review) - 4WD Beach Access - Seven Mile Beach (4WD Beach Permit)

The policy also contains guidelines for 4WD users along with enforcement information.

Many of the submissions received, as per Attachment 2, raise concerns in respect to environmental damage and adherence to guidelines, enforcement, safety, increase in the volume of vehicles and changing community recreation values. The recent COVID-19 restriction of 4WD access to Seven Mile Beach was also referenced.

Some of the submissions advocate for increased restrictions on beach access for 4WD vehicles.

With respect to 4WD accessibility to Seven Mile Beach, Council considered a notice of motion at the April 2020 Council meeting and resolved as follows:

- 1. That as part of the review of the Plan of Management for the Coastal Reserve, Council examines ways to limit beach 4 wheel drive permits.*
- 2. That Council also receives a report that investigates moving the vehicle access point further to the north to where the current horse access is.*

If Council intends to make significant changes to existing use rights for 4WDs, the preferred approach to examine those changes, as part of the review of the Ballina Coastal Reserve Plan of Management, which is consistent with the April 2020 resolution.

The Coastal Management Plan framework, as established by the State Government, documents a process that ensures all key stakeholders are involved in the consultation and preparation of a management plan.

It is also more likely that the State Government will support outcomes identified in the updated Ballina Coastal Reserve Plan of Management, if Council has complied with the recommended framework. This is important as Council is only the reserve manager for Seven Mile Beach, with the State Government able to over-rule or change any decision of Council that it does not support.

Council has followed similar processes for Shaws Bay and Lake Ainsworth and this more consultative process does typically lead to better outcomes, through a comprehensive engagement with all sections of the community, along with State Government agencies.

The Council review of the Ballina Coastal Reserve Plan of Management is scheduled for 2020/21 and 2021/22 as part of the changes arising from the new Crown Land Management Act.

In the absence of a Council decision to close the access, or otherwise restrict access, the existing policy provides direction for the management of existing access arrangements, particularly with respect to the permit system. The policy can operate whilst further consideration is given to long term access arrangements in line with the April 2020 resolution.

The concerns and community sentiment evident in the submissions will be considered as part of the Plan of Management review.

8.7 Policy (Review) - 4WD Beach Access - Seven Mile Beach (4WD Beach Permit)

Sustainability Considerations

- **Environment**
The policy seeks to establish an administrative framework for beach access on Seven Mile Beach that balances recreational and environmental considerations as well as safety and special access.
- **Social**
As above.
- **Economic**
As above.

Legal / Resource / Financial Implications

There are no specific legal or resource implications associated with the policy, as the policy is consistent with the current Ballina Coastal Reserve Plan of Management.

The wording in the current Plan of Management for 4WD access is as follows:

STRATEGY / ACTION:

Develop a beach vehicle access policy for the Ballina Coastal Reserve, incorporating a vehicle permit system, allowing limited access to specified beaches, and including provision for:

- *designated 4WD access areas;*
- *a permit system, regular patrols;*
- *total restriction in specific areas;*
- *periodic review of management and safety of 4WD use.*

A beach vehicle permit system will include the following components:

- *(4WD) vehicle access for a limited number of vehicles to the northern end of Seven Mile Beach, using one access only*
- *Regular patrolling to ensure full compliance with the regulation.*
- *Permits will be issued on an annual basis and maintained in strict accordance with a code of practice which will include the following initiatives:*
 - *a strong emphasis on safety and enjoyment for walkers and other passive users, including speed limits, especially near other users*
 - *no access to or damage to the dune and hind-dune environment, minimum disturbance to wildlife (eg. resting migratory birds)*
 - *exclusion of vehicles during high use periods (ie. daylight hours of weekends, public holidays and other high-use periods, eg. New Year's Eve*
 - *vehicle permit system to be administered by the Reserve Trust Manager, reviewed yearly to assess the system's appropriateness, safety and impact on general beach amenity, and environmental impacts.*

The current Plan of Management is accessible at the following link:

<https://ballina.nsw.gov.au/files/Ballina-Coastal-Reserve-Plan-of-Management-2003---amended-2011.pdf>

8.7 Policy (Review) - 4WD Beach Access - Seven Mile Beach (4WD Beach Permit)

Council reviews the fees for the 4WD permit system, as part of the annual review of Council's entire fees and charges, with the adopted fees as follows for 2020/21:

- Annual Permit - \$120
- Six Month Permit - \$70
- Thirty Day Permit - \$50
- One Day permit - \$18

Revenue generated from the permit system, in recent years, is as follows:

- 2019/20 - \$71,000 (COVID impacted)
- 2018/19 - \$66,000
- 2017/18 - \$59,000
- 2016/17 - \$46,000

These figures reflect an increasing 4WD use as the revenue raised is outpacing the annual increases in fees.

Consultation

The draft policy was placed on public exhibition.

Options

In respect to the policy the options are to again adopt the document, as exhibited, or amend.

The recommendation is to adopt, as this maintains the existing framework until a more holistic assessment of beach access options is completed as part of the Ballina Coastal Reserve Plan of Management review.

There are also options available in respect to the existing permit fees, in that there has been feedback on changing the fees to allow annual permits only, or even six months, which would theoretically reduce the overall use as occasional day trippers would be unlikely to pay for more costly passes.

There has also been a suggestion that residents only should be allowed to purchase permits. This is not supported as the beach is a crown reserve that is provided for all people, not just for people who reside in the shire. This option may not be supported by the State Government.

Any option to change the fees would need to be exhibited to comply with the Local Government Act.

With approximately \$20,000 collected for 2020/21, to date, the preference is not to change the fees part way through the financial year.

If changes are proposed they should be examined and exhibited as part of Council's preparation of the annual Operational Plan, during April and May 2021.

8.7 Policy (Review) - 4WD Beach Access - Seven Mile Beach (4WD Beach Permit)

RECOMMENDATIONS

1. That Council thank the people who made submissions and acknowledge that the preferred approach to reviewing 4WD access to Seven Mile Beach is through the scheduled review of the Ballina Coastal Reserve Plan of Management.
2. That Council adopts the 4WD Beach Access – Seven Mile Beach (4WD Beach Permit) policy, as exhibited, as per Attachment 1 to this report.

Attachment(s)

1. Policy (Review) - Four Wheel Drive Beach Access - Seven Mile Beach (4WD Beach Permit)
2. Submissions - Policy Review - 4WD Beach Access Seven Mile Beach

8.8 Policy (Review) - Community Property Leasing and Licensing

8.8 Policy (Review) - Community Property Leasing and Licensing

Delivery Program

Open Spaces

Objective

To provide an overview of outcomes from the public exhibition of proposed amendments to the Community Property Leasing and Licensing Policy and seek direction on the adoption of the policy.

Background

Council considered a review of the Community Property Leasing and Licensing Policy at the July 2020 Ordinary meeting.

The review identified a large number of recommended changes and the report recommended that Council adopt essentially a new policy based on the number of changes.

The updated policy was adopted and Council also resolved to place the document on exhibition for public comment, with any submissions to be resubmitted back to Council.

This report provides details of the submissions received and seeks Council's direction on the policy.

Key Issues

- Parameters for the leasing and licensing of community property.
- Equity in the leasing and licensing of community property.

Information

The updated policy was placed on public exhibition on Council's website.

In addition, details were placed in Council's Community Connect newsletter and emails were sent to the tenants of the properties listed in the policy inviting submissions.

A copy of the exhibited policy is included as Attachment 1.

Three submissions were received from community group tenants. Two from sporting clubs and one from a community preschool.

Copies of the submissions are contained in Attachment 2.

A summary of the issues raised in the submissions and the staff response are set out in Table 1.

The report to the July 2020 Ordinary meeting also provides the background to the changes in the updated policy.

Table 1: Submissions Summary

Issue from submission	Staff responses		
<p>Increasing rent from \$1 to the statutory minimum rent for many of the Council owned properties covered by the policy would:</p> <ul style="list-style-type: none"> place a financial burden on the community group tenant for sporting group tenants, would increase the fees for players does not recognise that tenants have often paid for capital improvements to the building (using grant funding or the tenant's own funds) makes it harder to attract volunteers to run sporting clubs, as the volunteers are already under increased pressure from sporting bodies to provide higher accountability and also to manage increasing costs 	<p>For those tenants currently paying \$1 per annum who would have their rent increased to the statutory minimum rent amount (currently \$496 as at July 2020), this would require a payment of approximately \$41 per month.</p> <p>As noted in the report about the reviewed policy, the statutory minimum rent is the minimum amount community tenants need to pay when the property they are leasing is located on Crown Land.</p> <p>Replicating this rent structure for Council owned community properties creates consistency with the community Crown Land Council manages as Crown Land Manager. It is also more equitable.</p> <p>Having a rental amount in place also helps to keep track of the status of community group tenants as the payment of the rent engages groups with Council.</p> <p>For example, if a group is unable to meet a payment, this may indicate there are other issues at the tenant organisation, such as not having an active committee running the tenant organisation. If there is no active committee, this can also result in the tenant not carrying out their repair and maintenance obligations under their lease, not having in place the insurances required under the lease etc.</p> <p>An additional benefit of having this statutory minimum rent in place is that it also encourages community group tenants to assess the number of buildings they need. Some community group tenants wish to occupy multiple Council properties.</p> <p>Having the statutory minimum rent in place will encourage more consideration by community groups about the properties that they need, and whether there is an opportunity to consolidate. There are limited community properties available for use, so consolidation should be encouraged where possible.</p> <p>In relation to charging the proposed rental amount under the reviewed policy, there are other councils charging community groups application fees for new leases and also for the preparation of lease documents each time the lease is renewed. Examples include:</p> <table border="1" data-bbox="735 1653 1425 1982"> <tr> <td data-bbox="735 1653 970 1982"> Port Macquarie-Hastings Council </td> <td data-bbox="970 1653 1425 1982"> Community lease application and administration fee - \$750 for a new lease or \$310 for a renewal. Community group rent - \$600 per annum Advertising costs and legal costs are charged at cost. (see <i>Port Macquarie-Hastings Council Schedule of Fees and Charges 2020-2021</i>) </td> </tr> </table>	Port Macquarie-Hastings Council	Community lease application and administration fee - \$750 for a new lease or \$310 for a renewal. Community group rent - \$600 per annum Advertising costs and legal costs are charged at cost. (see <i>Port Macquarie-Hastings Council Schedule of Fees and Charges 2020-2021</i>)
Port Macquarie-Hastings Council	Community lease application and administration fee - \$750 for a new lease or \$310 for a renewal. Community group rent - \$600 per annum Advertising costs and legal costs are charged at cost. (see <i>Port Macquarie-Hastings Council Schedule of Fees and Charges 2020-2021</i>)		

8.8 Policy (Review) - Community Property Leasing and Licensing

	Wollongong City Council	Community lease or licence preparation cost - \$182-\$303 Community group rent - \$705 per annum (other than community gardens and museum tenants, who pay \$121) <i>(see Wollongong City Council 2020-2021 Revenue Policy, Fees and Charges)</i>
	Lismore City Council	Not-for-profit group lease application or renewal fee - \$99 Not-for profit group rent- to be negotiated upon application <i>(see Lismore City Council Fees and Charges 2020-2021)</i>
	Campbelltown City Council	Administration fee for a lease or licence - \$293.45 Community group rent – not listed in fees and charges. <i>(see Campbelltown City Council Fees and Charges 2020-2021)</i>
	Coffs Harbour City Council	Application fee for a lease or licence - \$572 Community group rent – 7.5% - 50% of the market rent for the property <i>(see Coffs Harbour City Council Guideline for Assessment of Rental for Community Tenants and Coffs Harbour City Council Integrated Planning and Report – Fees and Charges 2020-2021)</i>
	Central Coast Council	Community group lease or licence application fee - \$478 Community group rent – not listed in the fees and charges <i>(see Central Coast Council Fees and Charges 2020-2021)</i>
	Clarence Valley Council	Application fee for new lease - \$370.85, or renewal of lease \$241.25 Community group rent – not listed in the fees and charges <i>(see Clarence Valley Council Adopted Fees and Charges 2020-2021)</i>
	Armidale Regional Council	Application fee for each new lease or each renewal - \$110 Community group minimum rent - \$600 for Council owned property or statutory minimum rent for Crown Land managed by Council <i>(see Armidale Regional Council Fees and Charges 2020-2021)</i>

8.8 Policy (Review) - Community Property Leasing and Licensing

	<p>Ballina Shire Council generally does not charge tenants for lease preparation costs unless there is an unusual or complex arrangement with the tenant requiring an external lawyer to prepare the documents, or if the lease is to be registered on the title of the land.</p> <p>Council also does not charge an application fee to new tenants or existing tenants renewing their leases. For this reason, it is considered that the proposed rental charge structure in the revised policy is reasonable.</p> <p>Overall, Council has a significant portfolio of community properties that have significant cost associated with them (recognising that community groups do make a substantial contribution to the management of these facilities). Ultimately a comprehensive review of the management framework and rental structure will assist Council in developing a longer term strategy for these properties. In the meantime, implementation of a consistent and modest minimum rental is recommended.</p>
<p>Concern about the circumstances allowing Council to charge a rent higher than the statutory minimum rent</p>	<p>The reviewed policy notes that there will occasionally be some community leases or licences for which Council resolves to charge a rent higher than the statutory minimum rent (see Attachment 3 – Guide for Rent Assessment of the reviewed policy).</p> <p>The guide provides some examples of when Council may resolve to charge a rent higher than the statutory minimum rent, but the examples provided are not an exhaustive list. The usage of the properties listed in the reviewed policy may change in nature or intensity over time.</p> <p>For example, development work may be carried out changing the nature or extent of facilities on the property, or a tenant may sublet part of the property and start generating income from the property.</p> <p>Council's financial position may also change over time, and Council may consider the options available to Council to sell a parcel of operational land or lease a parcel of operational land at a commercial rental, for the benefit of ratepayers.</p> <p>There are many variables that could change over time, and that is why the reviewed policy includes some flexibility for Council. The reviewed policy includes a process for Council staff to report to Council (either a full report or use of seal report) if a rent higher than the statutory minimum rent is proposed to be charged under the policy.</p>
<p>Concern about the assessment criteria referring to financial return to Council</p>	<p>For the reasons noted above, it is reasonable for Council to consider whether a particular property covered by the reviewed policy could generate a better financial return to Council, for the benefit of ratepayers.</p> <p>An example of this is Council's recent consideration of the potential uses of the operational land at 26 Endeavour Close, Ballina (Resolution 230720/23 at Council's Ordinary Meeting on 23 July 2020).</p>

8.8 Policy (Review) - Community Property Leasing and Licensing

<p>Concern about short term licences being issued for Crown Land managed by Council</p>	<p>The reviewed policy notes the intention is to increase the lease term from three years to four years for most tenancies covered by the policy. This is to give tenants longer tenure where possible, and where it fits in with any plans for the property. The submission received was supportive of the 4 year lease term.</p> <p>The submission noted however that on Crown Land managed by Council, only short term licences of 12 months are currently being issued by Council.</p> <p>The Crown Land Management Act changes are progressively being rolled out. Council is in the Initial Period under the Crown Land Management Act, where a Plan of Management for community Crown Land managed by Council is being prepared.</p> <p>Until the Plan of Management process is finalised with Crown Lands and the new Plan of Management is adopted, which is not likely to be until mid-2021, Council is required to issue short term licences of 12 months for Crown Land managed by Council. So although this particular tenant is seeking a 4 year lease term now, unfortunately the statutory process with Crown Lands needs to be completed first.</p>
<p>Concern that community preschools should receive a longer lease term</p>	<p>The submission received indicated that community preschools generally need a longer lease term than the proposed 4 years. The reviewed policy notes that generally a 4 year term will be offered, however, there will be exceptions to this. This will be assessed on a case by case basis.</p>
<p>Concern about the reviewed policy changing the terms of existing leases</p>	<p>As noted in the reviewed policy, the policy does not change the terms of existing signed leases. The submission mentioned an existing long term lease to a community preschool and was concerned that the new rental structure in the reviewed policy would apply.</p> <p>The new rental structure in the reviewed policy would not apply until after the existing long term lease expires.</p> <p>In addition, the reviewed policy includes a delayed introduction of the new rental structure. It will apply to a new lease or licence entered into for a period after 30 June 2021.</p>
<p>Request that leases to groups carrying out a community service be for 20 years and include an option for the tenant to purchase the land at the end of the 20 year term</p>	<p>Many of the properties covered by the reviewed policy are located on community land, which cannot be sold by Council. If Council wished to reclassify a parcel of community land to make it operational land for the purposes of selling the property, there are legislative processes to be followed to allow a sale to proceed. It may also be a property Council wishes to retain for future community uses.</p> <p>Once a property is sold, the owner of the property may on-sell the property at a profit, apply to develop the property for another use etc.</p> <p>For this reason, including in a lease an option for a community group tenant to purchase land at the end of the term is not recommended.</p>

8.8 Policy (Review) - Community Property Leasing and Licensing

Concern about the policy encouraging sharing of community properties	<p>The submission referred to a preschool not being suitable for sharing the space with other community groups.</p> <p>The reviewed policy encourages the sharing of buildings where it is practical/suitable to do so.</p> <p>The type of building and the existing use of the building would be taken into account when assessing if there is an ability for the building to be shared.</p> <p>It is only one of the assessment criteria in Attachment 2 of the reviewed policy, and this will not be relevant to all properties.</p>
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Also, with respect to Council's July 2020 consideration of the potential uses of the operational land at 26 Endeavour Close Ballina, which may include leasing that property at a market rent (depending on the Council's resolution of the item about this property included in the agenda for this meeting), it is recommended that 26 Endeavour Close Ballina be deleted from the list of properties covered by the policy.

Sustainability Considerations

- **Environment**
Not Applicable

- **Social**
There are significant social benefits provided to the community by the occupants of community properties. It is important to ensure that these groups are able to operate affordably and sustainably.

With population growth and changing demographics, the demand for the use of community properties will grow. The reviewed policy seeks to encourage better utilisation of existing community properties where possible.

- **Economic**
The foregoing of commercial/market rent represents an economic loss to Council. However, that loss is offset to some extent by the broader social and recreational benefits which are provided by community groups.

Legal / Resource / Financial Implications

With respect to financial implications, some tenants of Council owned community properties paying less than the statutory minimum rent will have a rent increase (being less than \$10 per week in relation to the 2020/21 statutory minimum rent), to bring their rent in line with the Crown community properties that Council manages. There is a transition period for existing tenants.

Consultation

There was significant internal consultation in developing the updated policy and the policy has been exhibited for public comment, along with correspondence being sent to existing tenants.

8.8 Policy (Review) - Community Property Leasing and Licensing

Options

The options available include:

1. Adopt the exhibited Community Property Leasing and Licensing policy as per Attachment 1, with the reference to 26 Endeavour Close Ballina deleted.
2. Further amend the policy based on submissions received.
3. Defer seek additional information.

Option one is recommended as the policy is considered to be contemporary and to provide an equitable balance of management obligations for all of the Council community property leases and licenses.

RECOMMENDATION

That Council adopts the Community Property Leasing and Licensing policy, as per Attachment 1 to this report, subject to the deletion of 26 Endeavour Close Ballina.

Attachment(s)

1. Policy (Review) - Community Property Leasing and Licensing
2. Submissions - Community Property Leasing and Licensing Policy

8.9 Swimming Pool Compliance - Seahorse Place, Ballina

Delivery Program

Development Services

Objective

To provide an overview of a swimming pool barrier non compliance in association with a confidential report that seeks direction on the preferred approach to remedy the non-conformance.

Background

Lot 33 DP 828679 located at 16 Seahorse Place, Ballina is a residential premises with an in ground swimming pool. The swimming pool located at the rear of the subject premises is approximately five metres from a public reserve containing a permanent waterway.

Council has investigated a complaint that a swimming pool has been constructed within the subject premises without obtaining development consent for the works.

Council has sought the installation of a suitable swimming pool barrier in accordance with applicable legislation.

To date agreement has not been reached with the landowner and a barrier has not been installed.

The purpose of this report is to provide an overview of the matter, with an associated confidential report providing options in relation to further action.

Key Issues

- Swimming pool compliance

Information

This matter has been investigated with key considerations noted below:

- In July 2005, Ballina Shire Council issued the Building Certificate for the swimming pool within the subject premises
- A development consent (DA 2006/101) was issued by Council for additions to the dwelling on the subject premises in September 2005
- Development under DA 2006/101 did not proceed to a Final Occupation Certificate for the works on the subject premises
- In January 2020 an inspection of the subject premises in relation to the pool was conducted by Council officers
- Council officers have identified what are considered to be non-conformances relative to the applicable legislation
- The landowners have sought to rely on exemptions historically permitted under the *Swimming Pools Regulation 1998*

8.9 Swimming Pool Compliance - Seahorse Place, Ballina

- Council has subsequently engaged with the landowners seeking the installation of a compliant barrier in accordance with applicable legislation.

As this matter has not been resolved to date, the associated confidential report outlines legal advice on the matter obtained by Council and options for further action.

Sustainability Considerations

- **Environment**
Not applicable.
- **Social**
Swimming pool barrier compliance is an important community and property safety outcome.
- **Economic**
Not applicable.

Legal / Resource / Financial Implications

Legal implications associated with this matter are the subject of a confidential report.

Consultation

Council's legal representatives have been consulted in relation to this matter.

Options

The purpose of this report is to provide an open Council overview of the associated confidential report. The recommendation is for Council to note this report.

RECOMMENDATION

That Council notes the contents of this report regarding swimming pool barrier compliance at 16 Seahorse Place, Ballina.

Attachment(s)

Nil

8.10 Development Applications - Works in Progress - September 2020

8.10 Development Applications - Works in Progress - September 2020

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

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

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

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

8.10 Development Applications - Works in Progress - September 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/316	20/5/2019	RJ Westblade	Establishment of a multi dwelling housing development comprising the staged construction and Strata Title Subdivision of two detached dwellings - 20 Canal Road, Ballina	Being assessed
2019/376	11/6/2019	Newton Denny Chapelle	Erection of five greenhouses to be used for the propagation of potted plants, expansion of farm dam, and associated earthworks and other civil works – 348 Rous Road, Rous Mill	Awaiting additional information
2019/499	2/8/2019	Planners North	Implementation of erosion and slope stabilisation measures, bushland regeneration works, ongoing geotechnical monitoring and use of existing structures for residential purposes – 35 Pine Avenue, East Ballina	Awaiting additional information
2019/535	21/8/2019	Ardill Payne & Partners	To undertake a development in four stages comprising: Stage 1 - Three Lot Torrens Title Subdivision (Proposed Lots 1 and 2 – area of 801m ² and Proposed Lot 3 – area of 1,090m ²). Stage 2 - Erection of a Two Storey Dwelling on Proposed Lots 1, 2 and 3. Stage 3 - Strata Subdivision of Proposed Lots 1, 2 and 3. Stage 4 – Erection of a New Dwelling on each Vacant Strata Lot to create a Detached Dual Occupancy. 26-30 Fitzroy Street, Wardell	Awaiting additional information
2019/666	16/10/2019	GHD Pty Ltd on behalf of Ballina Shire Council	Upgrades to the Marom Creek Water Treatment Plant – 65 Weis Lane, Rous	Awaiting additional information
2019/669	17/10/2019	Victor Holmes Town Planning	Two lot Torrens Title Subdivision to create one x 600m ² allotment and one x 539m ² allotment (below the 600m ² minimum lot size development standard of the Ballina LEP 2012), demolition of gazebo, carport and swimming pool, site filling and drainage, infrastructure servicing, vegetation management works and associated works – 23 Skinner Street, Ballina	Being assessed

8.10 Development Applications - Works in Progress - September 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2019/736	19/11/2019	D & S Greeney	Proposed Two Lot Torrens Title subdivision, erection of dwelling house and associated swimming pool, earthworks, vegetation removal, access driveway and change of use of existing dwelling to a secondary dwelling – 16 Tara Downs, Lennox Head	Being assessed
2019/743	22/1/2019	Ardill Payne & Partners	Refurbishment and expansion of the existing caravan park to provide a total of 87 long-term sites and one site for the manager residence/office. The proposal comprises demolition works, earthworks, removal of short-term and camping sites, removal of access from River Street and construction of new driveway access from Emigrant Lane, construction of new amenities and facilities, internal roadworks and car parking - 586 River Street & 21 Emigrant Creek Road, West Ballina	Being assessed
2019/765	2/12/2019	Viru Investment Holdings Pty Ltd	Intensification of existing intensive horticulture facility and establishment of associated agricultural processing facility to be carried out as a staged development including construction of additional greenhouse, alteration to existing greenhouse, construction of agricultural processing industry building, construction of farm dam, construction of car park , erection of security fencing and associated landscaping works – 167 Rous Road, Rous	Being assessed
2019/794	12/12/2019	Ardill Payne & Partners	Two lot subdivision by way of boundary adjustment to create one x 42.46ha and one x 1.47ha allotments – Palm Lake Resort, 120 North Creek Road, Ballina	Being assessed
2020/25	22/1/2020	Planners North	Multi Dwelling Housing Development comprising the Erection and Strata Title Subdivision of 15 Two Storey Dwellings – The Coast Road, Skennars Head	Being assessed

8.10 Development Applications - Works in Progress - September 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/56	7/2/2020	Ballina Shire Council	Construction of a new sewer rising main extending 1465m from the intersection of North Creek Road and Skennars Head Road to an existing sewer pump station east of Castle Drive, Lennox Head. The proposed new pipeline will replace an existing dilapidated main – North Creek Road, Skennars Head Road & Castle Drive, Lennox Head	Referred to Government Departments
2020/69	13/2/2020	Ardill Payne & Partners	Demolish an existing shed, change the use of an existing dwelling house and construct a new shed and associated facilities for the purposes of the Ballina community Men's shed, site filling and car parking – 44 Fishery Creek Road, Ballina	Determination pending
2020/76	14/2/2020	Newton Denny Chapelle	Proposed filling of land to establish a building pad for future development purposes and associated works – 210 Southern Cross Drive & Corks Lane, Ballina	Awaiting additional information
2020/83	18/2/2020	Newton Denny Chapelle	Demolition of existing structures and the erection and Strata Title subdivision of a multi-dwelling housing development comprising nine single storey dwellings, earthworks, retaining, servicing and vegetation management works – 167 & 169 Tamar Street, Ballina	Being assessed
2020/122	6/3/2020	Ardill Payne & Partners	Erection of an industrial building for the purposes of a marine manufacturing and equipment fit out operation and ancillary works – 45 Northcott Crescent, Alstonville	Determination pending
2020/153	13/3/2020	Planners North	Erection of a mixed use development comprising recreation facility (indoor) and information and education facility and associated works – 68 De-Havilland Crescent, Ballina	Being assessed
2020/193	9/4/2020	Newton Denny Chapelle	Two Lot Torrens Title subdivision to create one x 628sqm and one x 746sqm allotments and the carrying out of earthworks and erection of a single storey dwelling house on Proposed Lot 2 – 2 Spring Creek Place, Wollongbar	Determination pending

8.10 Development Applications - Works in Progress - September 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/194	30/3/2020	Ardill Payne & Partners	To undertake the construction of a car park and associated access driveway to service an existing seniors housing development – 148 & 120 North Creek Road, Ballina	Awaiting additional information
2020/199	1/4/2020	Newton Denny Chapelle	Alterations and Additions to an Existing Industrial Building and Associated Works – 6 Piper Drive, Ballina	Being assessed
2020/207	6/4/2020	Sarah Addicoat	Strata Title Subdivision of an Existing Dual Occupancy – 13 Trelawney Avenue, Wollongbar	Awaiting additional information
2020/233	17/4/2020	Magus PM C/- Creative Planning Solutions	Erection of a Permanent Group Home for People with a Disability – 9 Leach Crescent, West Ballina	Being assessed
2020/242	23/4/2020	Planners North	Multi Dwelling Housing Development comprising the erection and Strata Title subdivision of 44 two storey dwellings and associated works - Lot 6 DP 1225206 The Coast Road, Skennars Head	Awaiting additional information
2020/244	23/4/2020	Northern Rivers Land Solutions	Three Lot Torrens Title Subdivision to create one x 800m ² , one x 860m ² and one x 1,084m ² allotments, filling and retaining works, vegetation removal, riverbank stabilisation works, infrastructure servicing and associated works – 23 Richmond Street, Wardell	Being assessed
2020/257	29/4/2020	Ardill Payne & Partners	To undertake the erection and subsequent Strata Title subdivision of an industrial building containing 11 light industrial units, take away food and drink premises, associated works and consolidation of three approved lots into one – 39-45 North Creek Road, Ballina	Being assessed
2020/264	30/4/2020	Ardill Payne & Partners	To undertake demolition, alterations and additions to the existing Northern Rivers Seafood Building – 480 River Street, West Ballina	Being assessed

8.10 Development Applications - Works in Progress - September 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/270	4/5/2020	R & J Harris Consulting Pty Ltd	Alterations and Additions to an existing waste management facility comprising the erection of a waste transfer shed used for the storage of excavation drilling mud and the transfer of recycled containers (Container Deposit Scheme Materials) and parking of vehicles – 540 Pimlico Road, Pimlico	Being assessed
2020/284	12/5/2020	Ballina Island Developments Pty Ltd	Subdivision of Proposed Super Lot 102 in DA 2018/51 comprising the creation of 17 Torrens Title residential lots and one super lot, road construction, installation of infrastructure and services, earthworks and vegetation clearing – 20 North Creek Road, Lennox Head	Awaiting additional information
2020/292	15/5/2020	Newton Denny Chapelle	Subdivision of land involving the creation of 12 Torrens Title lots, road and infrastructure servicing, bulk earthworks, retaining walls and vegetation removal. 11 of the residential lots range in size from 825sqm to 1200sqm and one lot having an area of approximately 3800sqm. – 180 & 190 North Creek Road, Lennox Head	Being assessed
2020/325	29/5/2020	Ardill Payne & Partners	Multi-Dwelling Housing Comprising the Erection and Strata Title Subdivision of Four Dwellings and associated works – 2 Unara Parkway, Cumbalum	Being assessed
2020/346	4/6/2020	Byron Bay Planning	Erection of Dwelling House and Associated Works and Demolition of Existing Shed. The Application Includes a Variation to the 40 Hectare Minimum Lot Size Development Standard for the Erection of a Dwelling House – 2 Fredericks Lane, Tintenbar	Being assessed
2020/358	11/6/2020	Newton Denny Chapelle	Extension to the Existing Junior School Discovery Centre to include Two Additional Classrooms and an Outdoor Covered Learning Area and Associated Earthworks and Infrastructure Servicing – 62 Horizon Drive, West Ballina	Being assessed
2020/364	12/6/2020	Ardill Payne & Partners	Boundary adjustment subdivision of two lots to create two modified lots comprising one proposed 1.3ha and one 17.3 ha allotments - 13 Kamala Place, Tintenbar	Being assessed

8.10 Development Applications - Works in Progress - September 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/391	23/6/2020	B D Greig	Vegetation management works comprising the removal of nine trees - 13 Angus Kennedy Close, Lennox Head	Being assessed
2020/399	26/6/2020	RLA Building Design	Multi Dwelling Housing Development comprising the demolition of existing dwelling house and the erection of three x three bedroom single storey dwellings, vegetation removal and associated works – 110 Ballina Road, Alstonville	Awaiting additional information
2020/431	8/7/2020	Ardill Payne & Partners	Change of Use of part of the existing operation of a general industry – brewery to an artisan food and drink industry - 2/188-202 Southern Cross Drive, Ballina	Being assessed
2020/439	14/7/2020	Newton Denny Chapelle	Erection of Industrial Building and associated infrastructure and earthworks and the use of Unit 1 for the purpose of a warehouse or distribution centre and Units 2 to 5 for the purpose of general industry - 46 Kays Lane, Alstonville	Being assessed
2020/445	14/7/2020	Lee Middleton	Strata Title Subdivision of an Existing dual occupancy – 95 Hutley Drive, Lennox Head	Being assessed
2020/450	20/7/2020	Ray Cavill	Establishment of an Information and Education Facility (art gallery and studio) comprising conversion of existing church building to gallery space, erection of pottery studio, kiln shed, ancillary amenities including caretaker's accommodation and associated infrastructure works – 36 Rous Mill Road, Rous Mill	Awaiting additional information To be determined by Council Resolution No: 270820/10
2020/462	24/7/2020	Planners North	Erection of covered Grandstand and associated works – 96-98 Kalinga Street, West Ballina	Being assessed
2020/485	5/8/2020	Templar Designs	Conversion of part of an existing industrial building to self-storage sheds, erection of business identification sign and associated works – 12 Northcott Crescent, Alstonville	Being assessed
2020/518	14/8/2020	T Fitzroy	Extensions to existing industrial building and associated works and change in use of existing premises from a vehicle repair station to light industry – 11 Owens Crescent, Alstonville	Being assessed

8.10 Development Applications - Works in Progress - September 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/529	21/8/2020	Ardill Payne & Partners	To establish a detached dual occupancy and associated works involving the change of use of a shed to a dwelling (retrospective). The application is supported by a variation to a development standard request to enable the proposed dual occupancy to be detached rather than attached to the existing dwelling house as required by Clause 14 of the Ballina Local Environmental Plan 1987 – 76 Phillips Road, Newrybar	On exhibition
2020/540	26/8/2020	Ardill Payne & Partners	Subdivision involving the staged creation of three Torrens Title Lots, demolition of dwelling house and associated infrastructure works – 71 Teven Road, Alstonville	On exhibition
2020/542	26/8/2020	Newton Denny Chapelle	Expansion of an existing Rural Industry involving the processing of natural extracts and including the erection of a new shed and the carrying out of associated earthworks, services and driveway access- 226 Hinterland Way, Knockrow	On exhibition
2020/545	26/8/2020	G Heathwood	Vegetation management works comprising the removal of one tree - 21 Wollongbar Drive, Wollongbar	Being assessed
2020/548	27/8/2020	Tim Fitzroy & Associates	Erection of an Industrial Building and associated works- 66 De-Havilland Crescent, Ballina	Being assessed
2020/551	28/8/2020	J Cleverley	Vegetation management works comprising the removal of one tree - 62 Moon Street, Ballina	Being assessed
2020/562	3/9/2020	Newton Denny Chapelle	Temporary earthworks stockpile and rock crushing - Super Lot 5 DP 1239938 Montwood Drive at EPIQ, Lennox Head	Being assessed
2020/566	3/9/2020	Ardill Payne & Partners	Subdivision to create 10 Torrens Title residential lots and associated infrastructure services – Approved Lot 605 (as per DA 2015/468) DP 1265586 Ballina Heights Drive, Cumbalum	On exhibition

8.10 Development Applications - Works in Progress - September 2020

Regional Development (Determined by Northern Regional Planning Panel)

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

Major Development (Determined by Minister)

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

RECOMMENDATION

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

Attachment(s)

Nil

9.1 Use of Council Seal

9. Corporate and Community Division Reports

9.1 Use of Council Seal

RECOMMENDATION

That Council affix the Common Seal to the following documents.

US/21	<p>Ballina Shire Council lease to The Australian Steel Company (Operations) Pty Limited for Lot 871 DP 1158234, No. 2-6 Cessna Crescent, Ballina for a period of three years with a three year option at market rent.</p> <p>Explanation: The Australian Steel Company (ARC) have occupied the property since 2010 with their current lease expiring 31 August 2020. Council staff have been in negotiation with ARC and have now finalised lease terms and conditions. The negotiated rent is essentially the same as the existing rent.</p>
US/22	<p>Subdivision plan administration sheet and any other documents required for the subdivision of Lot 2 DP 620838, being 9 Byron Bay Road, Lennox Head. This subdivision creates a road reserve for the Hutley Drive northern extension.</p> <p>The residue land remains as a single lot owned by Council.</p>

Attachment(s)

Nil

9.2 Investment Summary - August 2020

9.2 Investment Summary - August 2020

Delivery Program

Financial Services

Objective

To provide details of Council's cash and investments portfolio breakup and performance.

Background

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a Council must provide a monthly investments report setting out Council's cash and investments.

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

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

Key Issues

- Compliance with Investment Policy and the return on investments.

Information

As at 31 August 2020, Council's investments are in accordance with Council's Investment Policy and the Local Government Act and Regulations.

The total balance of investments as at 31 August 2020 was \$89,538,300. This was an increase of \$6,000,000 from the balance as at 31 July 2020.

Council's investments, as at 31 August, were invested at an average (weighted) interest rate of 1.27%, which was 1.17% above the August average 90 Day Bank Bill Index of 0.10%.

The balance of the Commonwealth Bank business account as at 31 August 2020 was \$9,566,264 increasing by \$945,230 from 31 July 2020.

The increase in total cash and investments as at the end of 31 August 2020 is as expected, with first quarter rates and charges due 31 August 2020.

TCorp prepare a weekly Economic Commentary report. This has previously been provided to Councillors as an attachment. TCorp have requested that Council instead provide a reference to the link on the TCorp website.

The 31 August 2020 TCorp Economic Commentary report can be reviewed online using the following link:

<https://www.tcorp.nsw.gov.au/resource/310820.pdf>.

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

9.2 Investment Summary - August 2020

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

* Reflects reserves updated as at 30 June 2020.

A. Summary of Investments by Institution

Funds Invested With	Fossil Fuel Aligned	Rating S&P	Rating Moody	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
Grandfathered Investments								
National Australia Bank	Yes	BBB	-	1,788	1,788	0	2.0%	2%
Rated Institutions								
AMP Bank	Yes	BBB+	A2	6,500	6,500	10%	7.3%	
Australian Unity bank	n/a	BBB+	-	5,000	3,000	10%	3.4%	
Auswide Bank	No	BBB	Baa2	2,000	2,000	10%	2.2%	
Bank of China	Yes	A	A1	5,000	5,000	20%	5.6%	
Bank of Communications	Yes	A-	A2	1,000	1,000	20%	1.1%	
Bank of Queensland	Yes	BBB+	A3	6,000	6,000	10%	6.7%	
Bendigo & Adelaide Bank	No	BBB+	A3	0	2,000	10%	2.2%	
Commonwealth Bank of Aus	Yes	AA-	Aa3	11,000	11,000	20%	12.3%	
Credit Union Australia	No	BBB	Baa1	600	600	10%	0.7%	
Defence Bank Ltd	No	BBB	-	5,500	5,500	10%	6.1%	
ING Bank (Australia) Ltd	Yes	A	A3	1,000	1,000	20%	1.1%	
ME Bank	No	BBB	Baa1	6,750	4,750	10%	5.3%	
Macquarie Bank Limited	Yes	A+	A2	1,000	1,000	20%	1.1%	
My State Bank Ltd	No	BBB+	Baa1	5,000	3,000	10%	3.4%	
National Australia Bank	Yes	AA-	Aa3	13,000	15,000	20%	16.8%	
Newcastle Permanent Bld Soc	No	BBB	A3	4,700	4,700	10%	5.2%	
Suncorp Limited	No	A+	A1	0	2,000	10%	2.2%	
Teachers Mutual Bank Ltd	No	BBB	Baa1	700	700	10%	0.8%	
Westpac Banking Corp	Yes	AA-	Aa3	7,000	13,000	20%	14.5%	98%
Total				83,538	89,538		100%	
Credit Rating Summary as per the Investment Policy		Maximum Allowed		Value	Value	%	%	
		%	Value	Previous	Current	Previous	Current	
A- or Higher		100%	89,538	40,000	49,000	48%	42%	
BBB		60%	53,723	43,538	40,538	52%	43%	
Total				83,538	89,538	100%	100%	

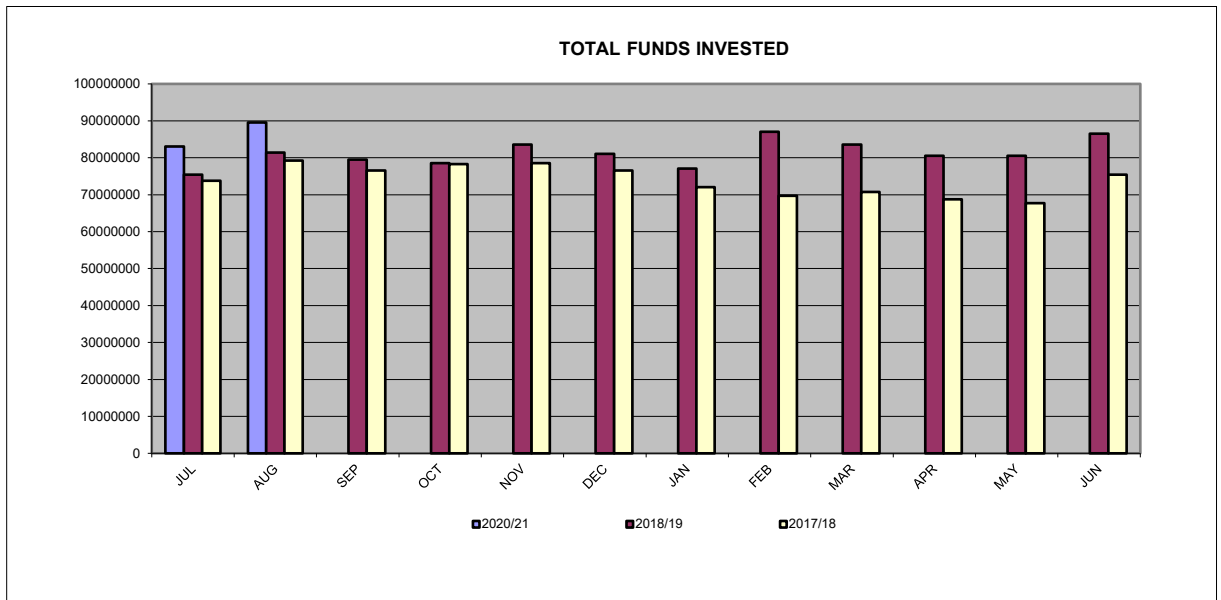
9.2 Investment Summary - August 2020

B. Summary of Investments Fossil Fuel Aligned

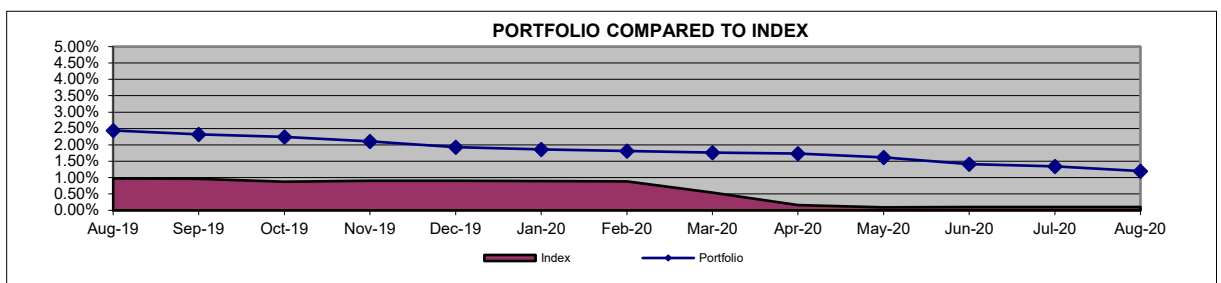
	Previous Month (\$'000)	Current Month (\$'000)
Fossil Fuel Aligned	53,288 64%	61,288 68%
Non-Fossil Fuel Aligned	25,250 30%	25,250 28%
Not Classified	5,000 6%	3,000 4%
Total	83,538 100%	89,538 100%

Classification based on advice from 'Market Forces'.

C. Monthly Comparison of Total Funds Invested

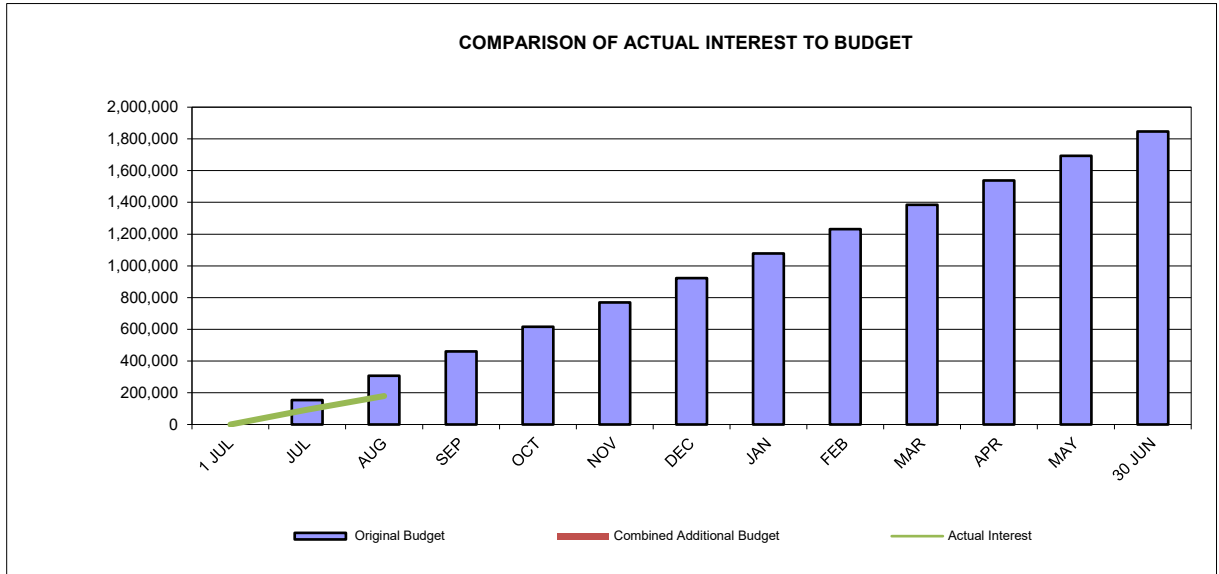


D. Comparison of Portfolio Investment Rate to 90 Day BBSW



9.2 Investment Summary - August 2020

E. Progressive Total of Interest Earned to Budget



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

F. Investments held as at 31 August 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
20/09/04	National Australia Bank (ASX Listed)	FRN	1.35%	Perpetual	1,788	1,618
17/06/16	Commonwealth Bank of Australia	FRN	1.15%	17/06/21	1,000	1,000
30/06/16	Commonwealth Bank of Australia	FRN	1.14%	30/06/21	1,000	1,000
03/08/17	Westpac Banking Corporation	FRN	1.15%	03/08/22	2,000	2,000
18/08/17	Westpac Banking Corporation	FRN	1.15%	18/08/22	1,000	1,000
09/11/17	ME Bank	FRN	1.36%	09/11/20	750	750
06/02/18	Newcastle Permanent Bld Society	FRN	1.50%	06/02/23	700	700
30/07/18	Westpac Banking Corporation	FRN	1.03%	31/07/23	1,000	1,000
31/07/18	Westpac Banking Corporation	FRN	1.03%	02/08/23	1,000	1,000
06/09/18	Credit Union Australia	FRN	1.35%	06/09/21	600	600
06/09/18	Newcastle Permanent Bld Society	FRN	1.50%	06/02/23	1,000	1,000
10/09/18	AMP Bank	FRN	1.18%	10/09/21	1,500	1,500
11/01/19	Commonwealth Bank of Australia	FRN	1.24%	11/01/24	1,000	1,000
08/02/19	Westpac Banking Corporation	FRN	1.15%	06/02/24	2,000	2,000
21/02/19	Newcastle Permanent Bld Society	FRN	1.15%	22/02/21	2,000	2,000
22/02/19	Newcastle Permanent Bld Society	FRN	1.16%	22/02/21	1,000	1,000
26/07/19	Commonwealth Bank of Australia	FRN	1.15%	26/07/21	1,000	1,000
01/08/19	AMP Bank	FRN	1.18%	10/09/21	2,000	2,000
26/08/19	AMP Bank	FRN	1.18%	10/09/21	1,000	1,000
28/10/19	Bank of Communications	FRN	0.99%	28/10/22	1,000	1,000
28/11/19	Australian Unity Bank	TD	1.70%	25/11/20	2,000	2,000
28/01/20	ING Bank (Australia) Ltd	TD	1.65%	21/01/21	1,000	1,000
11/02/20	Auswide Bank	TD	1.65%	04/02/21	2,000	2,000
20/02/20	ME Bank	TD	1.60%	22/09/20	3,000	3,000
25/02/20	ME Bank	TD	1.60%	16/09/20	1,000	1,000
26/02/20	Defence Bank Ltd	TD	1.65%	23/02/21	1,000	1,000

9.2 Investment Summary - August 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
27/02/20	My State Bank Ltd	TD	1.65%	20/11/20	1,000	1,000
03/03/20	Defence Bank Ltd	TD	1.65%	02/03/21	1,000	1,000
05/03/20	My State Bank Ltd	TD	1.65%	03/03/21	1,000	1,000
07/03/20	Defence Bank Ltd	TD	1.60%	08/12/20	1,500	1,500
17/03/20	My State Bank Ltd	TD	1.75%	16/12/20	1,000	1,000
17/03/20	Macquarie Bank Limited	TD	1.60%	22/12/20	1,000	1,000
24/03/20	Defence Bank Ltd	TD	1.85%	23/03/21	1,000	1,000
28/05/20	National Australia Bank	TD	0.95%	06/10/20	2,000	2,000
28/05/20	National Australia Bank	TD	0.95%	13/10/20	2,000	2,000
28/05/20	National Australia Bank	TD	0.95%	20/10/20	2,000	2,000
04/06/20	National Australia Bank	TD	0.99%	18/05/21	3,000	3,000
04/06/20	Bank of China	TD	0.95%	01/06/21	2,000	2,000
10/06/20	AMP Bank	TD	1.55%	10/12/20	1,000	1,000
10/06/20	Australian Unity Bank	TD	1.05%	08/04/21	1,000	1,000
10/06/20	Bank of China	TD	0.92%	08/06/21	1,000	1,000
24/06/20	Bank of China	TD	0.95%	23/06/21	2,000	2,000
29/06/20	Commonwealth Bank of Australia	TD	0.74%	05/01/21	4,000	4,000
29/06/20	Bank of Queensland	TD	1.05%	28/06/21	2,000	2,000
29/06/20	Bank of Queensland	TD	1.05%	22/06/21	1,000	1,000
02/07/20	Teachers Mutual Bank Limited	TD	1.47%	02/07/21	700	700
30/07/20	Commonwealth Bank of Australia	TD	0.72%	04/02/21	3,000	3,000
04/08/20	National Australia Bank	TD	0.85%	28/07/21	2,000	2,000
04/08/20	National Australia Bank	TD	0.85%	03/08/21	4,000	4,000
11/08/20	Bendigo & Adelaide Bank	TD	0.75%	05/08/21	2,000	2,000
11/08/20	Bank of Queensland	TD	0.85%	10/08/21	3,000	3,000
17/08/20	AMP Bank	TD	0.80%	17/08/21	1,000	1,000
20/08/20	Westpac Banking Corporation	TD	0.75%	21/07/21	4,000	4,000
27/08/20	Defence Bank Ltd	TD	0.90%	26/08/21	1,000	1,000
31/08/20	Suncorp Limited	TD	0.70%	02/03/21	2,000	2,000
31/08/20	Westpac Banking Corporation	TD	0.76%	03/09/21	2,000	2,000
Totals					89,538	89,368
TD = Term Deposit		FRN = Floating Rate Note				

RECOMMENDATION

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

Attachment(s)

Nil

9.3 Deputy Mayor - Election

9.3 Deputy Mayor - Election

Delivery Program

Governance

Objective

To determine whether Council wishes to appoint a Deputy Mayor and if so, how that position is to be elected.

Background

Section 231 of the Local Government Act states:

- (1) *The councillors may elect a person from among their number to be the deputy mayor.*
- (2) *The person may be elected for the mayoral term or a shorter term.*
- (3) *The deputy mayor may exercise any function of the mayor at the request of the mayor or if the mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of mayor.*
- (4) *The councillors may elect a person from among their number to act as deputy mayor if the deputy mayor is prevented by illness, absence or otherwise from exercising a function under this section, or if no deputy mayor has been elected.*

It is normal practice for Ballina Shire Council to elect the Deputy Mayor for one year although Section 231(2) allows the election to be for any period up to the entire term of Council.

Nominations for the office of Deputy Mayor are to be submitted in writing to the General Manager, signed by the nominee and at least one other Councillor, prior to this report being discussed at the Ordinary meeting.

Copies of the nomination forms are attached under separate cover.

The Deputy Mayor can be paid an allowance for such time as the Deputy Mayor acts in the office of the Mayor. The Office of Local Government has advised that such an allowance cannot be established on an annual basis and paid as an annual figure. It must reflect actual time acting as the Mayor.

This means the Deputy Mayor will only receive an allowance if the Mayor is on a period of extended leave and Council has resolved to pay an allowance.

Key Issues

- To determine whether Council wishes to appoint a Deputy Mayor
- If yes, Council must determine the method of voting

Information

An election must be held if more than one nomination is received. Council must determine whether the voting is to be by preferential ballot (if three or more candidates nominated), ordinary ballot (secret ballot) or open voting.

9.3 Deputy Mayor - Election

Section 251(5) of the Local Government (General) Regulation states as follows:

Voting at a council meeting, including voting in an election at such a meeting, is to be by open means (such as on the voices or by show of hands). However, the council may resolve that the voting in any election by councillors for mayor or deputy mayor is to be by secret ballot. (Reg 251)

Note: Part 11 of this Regulation provides that a council is to resolve whether an election by the councillors for mayor or deputy mayor is to be by preferential ballot, ordinary ballot or open voting (clause 394 and clause 3 of Schedule 7). Clause 3 of Schedule 7 also makes it clear that "ballot" has its normal meaning of secret ballot.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
It has been a long-standing tradition that Council elects a Deputy Mayor.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

There is no legal obligation for Council to elect a Deputy Mayor.

Consultation

Not applicable.

Options

The options are to have, or not have, a Deputy Mayor and the method of voting.

The recommendation reflects Council's traditional practices.

In respect to voting, if Council resolves to have a secret ballot (i.e. preferential or ordinary) and any Councillors attend this meeting remotely, it will then be a matter for the returning officer (the General Manager) to collect their votes.

The only realistic option for this may be to have the councillor(s) email their vote (or text) to the returning officer, which would result in the loss of some confidentiality.

This has been discussed with the Office of Local Government (OLG) and they have confirmed that a number of councils are struggling with this issue. The OLG is not yet aware of how any council has complied totally with the requirements for 100% confidentiality. Technically this does mean that someone could challenge the outcome of the election albeit that this is highly unlikely.

An open vote would remove this concern.

RECOMMENDATIONS

1. That Council elect a Deputy Mayor for the period to September 2021.
2. That the method of voting for the election of Deputy Mayor be by way of ordinary (secret) ballot.
3. That the number of votes at the ballot be revealed at the meeting and that the General Manager, following the meeting, destroy the ballot papers.

Attachment(s)

1. Deputy Mayor Nomination Form (Under separate cover)

9.4 Operational Land - 26 Endeavour Close Ballina

9.4 Operational Land - 26 Endeavour Close Ballina

Delivery Program

Community Facilities

Objective

To provide an update on the lease for 26 Endeavour Close, Ballina and to confirm the preferred direction of Council.

Background

TS Lismore Inc has occupied the Council owned property at 26 Endeavour Close, Ballina since 1988.

The Council lease in place is with Unit Committee TS Lismore Inc, which has been a registered not-for-profit incorporated body, since November 1988. This is a distinct organisation and not part of the Australian Defence Force or Royal Australian Navy.

The current lease expires on 27 September 2020.

Council at the 23 July 2020 Ordinary meeting resolved as follows:

“That Council advise the Australian Navy Cadets of its intention upon the expiry of the existing lease, the lease will move to month to month to allow Council to receive a report on the use of the land for the benefit of the entire community, such as the SES”.

The focus of this report is on the ongoing discussions with the Royal Australian Navy (RAN), being the naval branch of the Australian Defence Force, and their request for Council to consider the provision of an eighteen month lease to enable sufficient time for RAN to investigate a potential commercial lease.

Key Issues

- Use of operational land by community groups
- Commercial return on operational land
- Potential of commercial lease to Australian Defence Force
- Equitable allocation of limited Council resources

Information

The current lease is with Unit Committee TS Lismore (“TS Lismore”), which is a not for profit organisation consisting of parents of current and former cadets and other local volunteers. The Australian Navy Cadets is a youth development program supported by RAN.

TS Lismore has indicated that RAN do not provide direct financial support however they have funded maintenance works to the property at 26 Endeavour Close, Ballina and provided equipment.

Prior to the development of the current lease, Council gave careful consideration to the significant benefit that one community group, being TS

9.4 Operational Land - 26 Endeavour Close Ballina

Lismore, were receiving from the property, as well as possible opportunities for alternative users, and the potential option for Council to sell or lease the property on a commercial basis.

At the 6 December 2016 Finance Committee meeting, Council received a report on options for the land. Council subsequently resolved at the 15 December 2016 Ordinary meeting as follows:

“That Council authorizes the General Manager to commence negotiations with the Naval Cadets to determine what options are available for the eventual sale and transfer of this land to the Cadets, or an associated body. These discussions are also to canvas an increase in the current rental to recognize the significant value of this land to the Ballina Shire community”.

In response to this resolution, Council staff entered into discussions with TS Lismore regarding the use of the property. This process identified that TS Lismore did not have the funds to purchase the property or pay commercial market rent. The discussions also highlighted a number of complexities surrounding the long term usage of the property by TS Lismore, including the history surrounding the building improvement works and belief by TS Lismore that they should have long term tenure over the property.

A further report was provided to the September 2017 Commercial Services Committee meeting to inform Council of the on-going discussions with TS Lismore. Council subsequently resolved at the 28 September 2017 Ordinary meeting as follows:

1. *That Council notes the contents of this report and approves for a three year community group lease at a nominal rent to TS Lismore Australian Naval Cadets at 26 Endeavour Close, Ballina.*
2. *This new lease is to include an allowance for the facilities to be shared with other community groups, subject to Council approval.*
3. *That council authorizes the General Manager to finalise negotiations, execute and affix the Council seal to all relevant lease documentation.*
4. *That during the course of the lease period Council make contact with the Australian Naval Cadets regarding that body’s intention to take charge of lease negotiations for Naval Cadet units and what type of rental arrangements they will be considering as part of those negotiations.*

The long term position of Council to investigate options for the use or sale of this land is well understood by RAN and TS Lismore.

During the negotiations in the development of the current lease, TS Lismore and RAN were informed of Council’s potential interest in selling the property.

A clause was inserted in the current lease to provide Council with the ability to provide one month’s notice to terminate the lease if Council was selling the property.

9.4 Operational Land - 26 Endeavour Close Ballina

Following the more recent 23 July 2020 resolution, Council staff have informed TS Lismore and RAN of Council's decision to move to a month by month lease arrangement, whilst Council investigates options for the use of the land.

In response, RAN has requested Council's consideration to the approval of an 18 month lease whilst negotiations can progress on a potential commercial lease arrangement. The reason for this request is to provide certainty to TS Lismore during these negotiations.

A copy of the correspondence received from RAN is included as Attachment 1 to this report.

Following receipt of the letter from RAN, further clarification was sought on the current situation for TS Lismore; the intentions from RAN with regard to a potential commercial lease arrangement; and support for other community groups to utilise this space.

The subsequent advice provided by RAN is summarised as follows:

- (i) TS Lismore is willing and able to sign a new lease under the current lease terms whilst negotiations are undertaken with RAN. The preference is for an 18 month lease to provide TS Lismore with security of tenure while a future solution is identified.
- (ii) There is no capability for TS Lismore to pay a commercial market rent.
- (iii) There are currently 21 Cadets and six Cadet Instructors registered at TS Lismore.
- (iv) A commercial lease will be pursued by the Australian Navy Cadets Directorate however RAN have advised that the establishment of a Commonwealth Lease is a complex and lengthy process that will require a number of approvals to ensure compliance with Commonwealth policy and Defence legislative requirements. It is believed that the 18 month lease period will provide sufficient time for investigations and negotiations to be completed. RAN would closely consult with Council throughout this process.
- (v) There is no guarantee that at the conclusion of the negotiations that RAN will be in a position to enter into a commercial lease.
- (vi) In-principle support is provided for other users to utilise this facility, subject to the ability of a third party to comply with the Commonwealth Youth Safety and Protection policy. RAN believe that this policy is not onerous however its focus is on ensuring there is exclusive use of the facility during designated times when youth are present and that there is an adequate level of security for their equipment.

It is currently difficult to commit to a resource sharing agreement with another community group when the future of the property is somewhat uncertain.

9.4 Operational Land - 26 Endeavour Close Ballina

Council has also received correspondence from the Ballina RSL Sub-branch in response to the July 2020 Council resolution. Following receipt of their correspondence, discussions have been held with Ballina RSL Sub-branch and a copy of their letters requesting Council's continued support for TS Lismore are included as Attachments 2 and 3.

Discussions with RAN and the Ballina RSL Sub-branch have highlighted the significance of this property site, specifically its ideal location to the waterways, for training purposes for TS Lismore. A location plan is included as Attachment 4.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Council has supported TS Lismore in the use of 26 Endeavour Close, Ballina since 1988. There are currently 21 Cadets and six Cadet Instructors registered at TS Lismore. The property has the capacity to be utilised by a broader range of community organisations.
- **Economic**
The financial support provided to TS Lismore has been significant through the provision of the entire space under peppercorn community lease terms and the considerable Council donations over the years towards the rates payable by TS Lismore under its lease.

Council's intention to consider the selling or commercial lease of this property was communicated to RAN and TS Lismore during the development of the current lease.

Legal / Resource / Financial Implications

The land is classified as operational land and Council has the authority to lease or sell the property. In 2017 the land value of the property was \$926,000 (excluding improvements) with an estimated commercial rental value of \$40,000. A current valuation will need to be completed for any negotiations.

Consultation

Council staff have been in discussions with RAN and the Ballina RSL Sub-branch.

Options

The fundamental issue for Council in respect to 26 Endeavour Close is largely a resource allocation principle in that Council is providing a significant in-kind benefit (capital value close to \$1m, or \$40,000 per annum based on a return of 4%), to a relatively small group. Council needs to be of the opinion that this is a reasonable allocation of scarce resources.

9.4 Operational Land - 26 Endeavour Close Ballina

The sentiment expressed by Council in recent years, through resolutions, is that it is not reasonable, which is why sharing, sale or commercial leasing, has been promoted.

One of the complexities with the property is that all of the improvements have been undertaken and funded by volunteers, and the cadets, and this needs to be recognized as part of any on-going discussions.

There are a number of options available, the key ones listed as follows.

1. 18 Month Lease - Approve a new 18 month lease based on the current terms and conditions to allow commercial negotiations to take place. The one concern with this is based on the correspondence from RAN there is no guarantee a commercial lease will eventuate and Council may well find itself in the same situation it is in today.
2. Shorter Lease - As per option one with a reduced period. For example 12 months could be the preferred lease period. In reality this will not achieve much more than option one as Council will still be waiting for RAN to confirm the commercial lease outcomes.
3. Sale – This would be a difficult option for Council recognising that the improvements to the land were funded by the community and Council would be evicting a community based group from the land, who have had approximately 32 years operating from the facility. The only caveat on this is that if the sale did proceed, it would be appropriate to apportion the proceeds between Council (for the land component) and TS Lismore (for the value of the improvements), which may provide TS Lismore sufficient funds to establish elsewhere, albeit most likely on a much smaller scale.
4. Continue month to month – This effectively is the current position of Council. The downside is that it does not provide TS Lismore certainty of tenure. However it may provide an incentive for RAN to complete their commercial negotiations as quickly as possible to then provide greater certainty to all parties.

On balance option one is recommended as RAN has advised that 18 months is required to finalise the commercial negotiations and supporting this timeframe does allay some of the immediate concerns of TS Lismore.

As stated, there is a concern that this provides limited incentive to the RAN to finalise the commercial negotiations, as promptly as possible, and there is no guarantee that a commercial lease will eventuate. Still, TS Lismore is a community based organization that has been operating from Council owned land for 32 years and it is important to recognize this length of tenure.

Sale, as per option three, is not the preferred option, at this point in time, as RAN has agreed to enter commercial negotiations.

Options two and four remain valid options if Council wishes to provide a more timely incentive for RAN to finalise the commercial negotiations although they may not be in a position to do so based on the layers of bureaucracy that potentially need to agree to a commercial lease.

9.4 Operational Land - 26 Endeavour Close Ballina

In respect to the commercial lease, the reasonable approach is to base the negotiations and lease rental on land value only, as Council did not fund the improvements to the property. RAN would then be responsible for all repairs, maintenance and improvement works to the property improvements. This is similar to the lease for the Shelly Beach Café site.

RECOMMENDATIONS

1. That Council notes the contents of this report and approves an 18 month lease to Unit Committee TS Lismore Incorporated for 26 Endeavour Close, Ballina, based on the current lease terms and conditions, while Council undertakes negotiations with the Department of Defence to enter a commercial lease for the property.
2. That Council authorises the Council seal to be attached to the lease in point one.
3. That Council authorises the General Manager to commence negotiations with the Department of Defence on a commercial lease. The commercial lease is to be based on a land only lease rental recognising that Council has not funded the improvements to the property.
4. That a further report be provided back to Council, prior to or by September 2021, on the progress of the commercial negotiations.

Attachment(s)

1. Correspondence - Royal Australian Navy
2. Correspondence - Ballina RSL Sub-branch August 2020
3. Correspondence - Ballina RSL Sub-branch September 2020
4. Locality Plan - 26 Endeavour Close Ballina

9.5 Alstonville Cultural Centre - Licence Proposal

9.5 Alstonville Cultural Centre - Licence Proposal

Delivery Program

Community Facilities

Objective

To determine whether Council wishes to provide agreement for Byron Studios to occupy the Alstonville Cultural Centre for the purposes of film production.

Background

Byron Studios has expressed their strong interest in establishing a sound stage and studio complex on the Innovation Precinct. The Innovation Precinct is also referred to as Stage 1 of the Southern Cross Expansion Precinct.

An update on the progress to rezone Stages 1 and 2 of the Southern Cross Expansion Precinct was presented to the 18 August 2020 Commercial Services meeting. This report indicated, that subject to resolving a number of issues, including flood mitigation, the rezoning process should be completed by early 2021.

Assuming the rezoning process is completed by that time, development works to create the lots ready for sale or lease may take approximately six months to complete. Proponents could then start construction in late 2021. This means premises may not be available for occupation until mid to late 2022.

In the past few months circumstances have changed in the Australian film arts industry. This is due, in part, to problems created for the film industry in the USA by the COVID-19 pandemic forcing movie producers to seek low risk locations in the other parts of the world such as Australia and New Zealand.

Byron Studios has been pursuing opportunities created by these circumstances and are close to securing a major production, subject to securing suitable premises by 1 November 2020.

Finding suitable premises at short notice is difficult. Byron Studios approached Council seeking assistance and the Alstonville Cultural Centre ("ACC") was identified as a potential option.

Following on from inspections of the ACC by producers, set designers, engineers etc., Byron Studios has confirmed their intention to secure the premises. Negotiations in principle have now concluded.

The purpose of this report is to seek Council's approval, or otherwise, for Byron Studios to occupy the ACC, based upon the terms and conditions set out in this report.

Key Issues

- Granting exclusive use to occupy the ACC
- Rental
- Term of licence
- Commercial use balanced against community use

Information

The circumstances leading to this opportunity arising are unusual. The COVID-19 pandemic has forced the film industry to seek locations and facilities outside the USA to create productions. Australia and New Zealand have become sought-after locations due to their low rates of infection and workforce with the specialised skills required.

These circumstances have assisted Byron Studios to hopefully secure a major production if premises can be secured by November 2020. In effect this is an opportunity to establish and promote a business, that if successful, will reduce the level of risk in transitioning into a large complex such as the sound stage and studio complex they are proposing to develop.

The establishment of a viable and successful film industry in the Ballina Shire will create employment and career opportunities for young people as well as boost local businesses such as catering, accommodation, set making, costuming, make-up artist etc.

Coupled with the above circumstances, the COVID-19 pandemic has caused a substantial decrease in bookings for space in the ACC, as well as Council's immediate requirement to substantially refurbish the premises.

Concept designs have been prepared for the upgrade and refurbishment of the ACC however Council does not currently have the funds available for such a major redevelopment project. It is proposed to proceed with gaining the relevant development and building approvals, detailed construction design and apply for grant funding when the project is "shovel ready". This process could take up to two to three years if funding is not forthcoming.

Byron Studios has inspected ACC a number of times with various parties including producers, set designers, engineers and others involved in establishing and operating studio space.

Cost estimates to fit out the premises could be in the order of about \$200,000 and include works such as sound proofing, access doors, temporary air-conditioning plant etc. The sports hall would be used for filming and the multi purposes room for filming and or post production.

There is also interest in utilising the library space, if it became available, for offices and post production.

Discussions with Byron Studios indicate that if the first production is a success there is a good chance other opportunities may follow.

Given these circumstances they will need a reasonable degree of certainty of tenure.

An initial term of one year with two one year options to the licensee (Byron Studios) giving a total of three years, is the preferred term.

This time frame is important for Byron Studios as it would give them certainty to book and secure productions and hopefully coincide with the completion of their proposed studio complex at the Innovation Precinct.

9.5 Alstonville Cultural Centre - Licence Proposal

Byron Studios has advised that it would be preferable to relocate the library out of the ACC to enable them to occupy the entire building. This would require consultation with Richmond Tweed Regional Library and the ability to find an appropriate and affordable alternative location.

The following terms and conditions have been negotiated, in principle, with Byron Studios, subject to approval by Council.

1.	Agreement	Licence agreement
2.	Licensor	Ballina Shire Council
3.	Licensee	Byron Studios (or entity to be nominated)
4.	Premises	Alstonville Cultural Centre (see layout plan attached)
5.	Term	1 + 1 + 1 years.
6.	Commencement Date	TBA
7.	Rental	<p>Two tier rental structure:</p> <p>a) Active rate of \$750 per week whilst ever the premises are occupied and or the contract for a movie is in progress.</p> <p>b) Passive rate of \$375 per week whilst the premises are not in use.</p> <p>The rental shall be reviewed upon exercise of the option to renew the licence. The review shall take into account the forward bookings secured by the licensee.</p> <p>GST is payable in addition to the figures noted.</p>
8.	Rent Free Period	A rent free period of three months from the date of the execution of the licence agreement
9.	Signage	The Licensee shall be entitled to erect signage subject to being approved by Council.
10.	Cleaning	The Licensee will be responsible for cleaning the premises on a regular basis.
11.	Insurances	The Licensee shall have public liability insurance to the value of \$20m
12.	Consumption Charges	The Licensee shall be responsible for all consumption charges including electricity, water, sewer, waste water, garbage removal.
13.	Condition of Premises	The Licensee accepts the condition of the Premises "as is".
14.	Make Good	Upon vacating the premises the Licensee leave the Premises in a clean and tidy state and make good any damage to the building to the satisfaction of the Lessor.
15.	Permitted Use	Production of movies, television programs and related visual arts productions
16.	Bond	\$10,000
17.	Licence Preparation Costs	Each party shall be responsible for their own costs in preparing and executing licence documentation.
18.	Local Content Charter	<p>A local content charter will be developed with Byron Studios so that every reasonable endeavour will be made use local businesses for services such as catering, transport, trades services, accommodation, etc.</p> <p>Byron Studios also propose to reach out to the local indigenous community and educational institutions to get young people involved in understanding working in the industry as well.</p>

9.5 Alstonville Cultural Centre - Licence Proposal

Determining a reasonable commencement rental for a start-up business or industry is difficult as both parties are in effect sharing the risk to hopefully share in future benefits.

There is no doubt that if the COVID-19 pandemic were to disappear in the short term then casual bookings for the ACC would increase, however indications are this is unlikely until the premises is refurbished.

The facility currently has four frequent bookings and an event scheduled for end of October 2020.

The four regular users at the facility are:

- Alstonville Physical Culture hire the facility four times per week (approximately two hours per booking). This business will require the use of the facility until end of October 2020 and for Council to assist with an alternative space from February 2021.
- At Work hire the facility one day per week.
- Alstonville High school hire the facility once per week for a two hour sports session.
- Lord Taverners hire the facility one hour per week.

Should Council support the use of ACC for Byron Studios effective from 1 November 2020, staff will actively work with the current hirers to try and assist with finding an alternative facility to support their needs.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The establishment of a film industry in the Shire would have significant social benefits through generating employment and educational opportunities.
- **Economic**
The establishment of a film industry in the Shire would have significant economic benefits in generating employment and opportunities for local businesses to provide services.

Legal / Resource / Financial Implications

The ACC is located on property classified as operational under the provisions of the NSW Local Government Act 1993 (as amended) and as such Council is able to lease / licence or sell the property.

Byron Studios appears to be the operating name for the proponents and any licence agreement will need to be with a formal legal entity.

Further details on Byron Studios is available at the following link:

<https://www.byronstudios.co/about#board>

Assuming a licence agreement is executed and Byron Studios take possession of ACC, there would be little further staff involvement in dealing with the physical aspects of this project, however Byron Studios wish to have an ongoing collaborative relationship with Council.

The current condition of the building, together with the impact of COVID-19, has resulted in minimal use of this facility by the community.

Prior to COVID-19, the facility was generating on average \$38,000 per year income. This was offset by operating expenses such as cleaning, utilities, advertising and general administration costs.

Should the library be relocated, to support the full utilisation of this premises by Byron Studios, Council would need to fund all costs associated with relocation and alternative space rental costs for the library.

Consultation

Council staff have conducted negotiations with Byron Studios. Representatives from Byron Studios have also provided a number of presentations to Council. Extracts from their most recent presentation are included as Attachment 1 to this report, including the key personnel involved in the proposal.

The adjoining Agricultural Society has been informed and have indicated their support for the proposal.

Staff have informed regular users of the facility of the potential for the premises to not be available, pending Council decision on future use of this site.

Options

The available options are to support or not support a licence agreement with Byron Studios at this facility.

As part of these options, Council will need to determine if it is supportive of a licence agreement over the entire facility or whether it wishes to retain the library at this location.

The granting of a licence at ACC will provide an ideal opportunity for Council to assist in establishing a vibrant and sustainable film industry in the Ballina Shire.

The removal of the availability of this facility for hire by the broader community will result in existing users of the facility needing to find alternative venues and the temporary loss of a community facility in Alstonville.

As an alternative space for the library has not yet been determined and consultation has not been able to commence with the Richmond Tweed Regional Library, it is recommended that the library remain in its current location until this consultation process and the investigation into alternative options is completed.

9.5 Alstonville Cultural Centre - Licence Proposal

Based on the benefits of this opportunity to the Ballina Shire, it is recommended that Council support the issuance of a licence to this facility (excluding library area) as this is an ideal opportunity for Council to assist in establishing a vibrant and sustainable film industry in the Ballina Shire.

RECOMMENDATIONS

1. That Council notes the contents of this report and approves a licence agreement at Alstonville Cultural Centre, on the terms and conditions as outlined in this report. The licence will be for the entire building, excluding the library space.
2. That Council authorises the General Manager to attach the Council seal to all relevant documentation.
3. That Council staff consult with Richmond Tweed Regional Library and investigate alternative locations for the Alstonville Library and that a further report be provided to Council once alternative options are identified.

Attachment(s)

1. Byron Studios - Extracts from Councillor Briefing - 4 August 2020

10. Civil Services Division Reports

10. Civil Services Division Reports

Nil Items

11.1 Rescission Motion - DA 2019/694 - 841 Fernleigh Road, Brooklet

11. Notices of Motion

11.1 Rescission Motion - DA 2019/694 - 841 Fernleigh Road, Brooklet

Councillor Cr Johnson
Cr Parry
Cr Williams

We move that Resolution 270820/4, as follows, be rescinded:

DA 2019/694 - 841 Fernleigh Road, Brooklet

*That DA 2019/694 for the Tourist and Visitor Accommodation comprising eight holiday cabins, Communal Recreation Building and an Information and Education Facility for the purposes of a Cooking School at Lot 17 DP 1031242, No. 841 Fernleigh Road, Brooklet be **APPROVED** subject to conditions contained in Attachment 8.*

Staff Comments

It is the understanding of staff that if this rescission motion is successful it is still intended to move approval, with an amended condition that the internal driveway require sealing from the entry to the car parking spaces proposed for the tourist cabin facilities and cooking classes.

The original application proposed to seal the entry driveway for a distance of 160m to address issues relating to potential noise and dust impacts. The recommendation from staff in the August 2020 Ordinary meeting assessment report recommended sealing of the driveway from the entry to the creek to mitigate potential impacts. This was included in the draft conditions of consent to the August 2020 Ordinary meeting as condition number 27; i.e.

27. Internal access driveway

The internal access driveway from Fernleigh Road property boundary through to the creek (CH280), which is located approximately 250 metres into the property, is to be constructed of all weather, sealed construction as a minimum 4.0m wide. The driveway is to be maintained and graded to ensure that stormwater and or dust is not directed or impacts onto adjoining properties.

The remainder of the internal access driveway (i.e. from the creek at CH280 through to the car parking spaces proposed for the tourist cabin facilities and cooking classes) must be constructed as a minimum 4.0m wide gravel pavement formation. The design and construction of the driveway must be in accordance with the "Planning for Bushfire Protection" and Standard Drawings R14 and R15 of the Northern Rivers Local Government Development Design and Construction Manuals. Any curves within the road access shall have a minimum inner radius of 6 metres and must be minimal in number to allow rapid access and egress by fire fighting vehicles. The pavement must be designed to carry a vehicle load of 15 tonnes. Design plans are to be certified by a suitably qualified professional and approved by Council prior to issue of the Construction Certificate.

11.1 Rescission Motion - DA 2019/694 - 841 Fernleigh Road, Brooklet

Sealing of the internal access driveway from the property boundary to the car parking spaces was not recommended as the extension of the original proposal to the creek (CH280) was assessed as reasonable, and a further extension to the car parking spaces was not deemed reasonable.

If Councillors do wish to amend this condition the revised recommendation would be as follows:

*That DA 2019/694 for the Tourist and Visitor Accommodation comprising eight holiday cabins, Communal Recreation Building and an Information and Education Facility for the purposes of a Cooking School at Lot 17 DP 1031242, No. 841 Fernleigh Road, Brooklet be **APPROVED** subject to the conditions contained in Attachment 8 of the report to the 27 August 2020 Ordinary meeting, with draft condition 27 being amended to require the internal access driveway from Fernleigh Road property boundary through to the car parking spaces proposed for the tourist cabin facilities and cooking classes, to be constructed of all weather, sealed construction, at a minimum 4.0m wide.*

COUNCILLOR RECOMMENDATION

That Resolution 270820/4, as follows, be rescinded:

DA 2019/694 - 841 Fernleigh Road, Brooklet

*That DA 2019/694 for the Tourist and Visitor Accommodation comprising eight holiday cabins, Communal Recreation Building and an Information and Education Facility for the purposes of a Cooking School at Lot 17 DP 1031242, No. 841 Fernleigh Road, Brooklet be **APPROVED** subject to conditions contained in Attachment 8.*

Attachment(s)

Nil

11.2 Notice of Motion - Amendment to Ballina LEP 2012

11.2 Notice of Motion - Amendment to Ballina LEP 2012

Councillor

Cr Willis

I move

1. That Council prepare a planning proposal to amend the Ballina Local Environmental Plan 2012 to prohibit information and education facilities in the RU1 Primary Production and RU2 Rural Landscape zones.
2. That the planning proposal be submitted to the Department of Planning, Industry and Environment for Gateway determination.
3. Where a Gateway determination is received enabling the planning proposal to progress, that staff proceed to undertake public exhibition of the planning proposal in line with the requirements of the Gateway determination.
4. That Council receive a further report on the planning proposal following completion of the public exhibition.
5. That Council advises the Department of Planning Industry and Environment that it wishes to exercise its plan making delegation in relation to the planning proposal.

Councillor Comments

The recent planning assessment report on the education facility related application for 841 Fernleigh Road identified concerns in respect to the appropriateness of these types of facilities in primary production and rural landscape zones, along with the potential for there to be on-going responsibilities for Council to ensuring that the development is operated as per the approved use.

Ideally education related facilities should be located in our urban areas where they are supported by appropriate infrastructure (sealed roads etc) and it is open for Council to amend the LEP to prohibit these types of facilities those zones.

The notice of motion has been prepared in conjunction with Council staff.

Staff Comments

The proposed notice of motion is the recommended approach if Council wishes to remove the ability to approve the types of facilities mentioned in the RU1 and RU2 zones.

The main thing for consideration is that information and education facilities were permitted in the rural zones based on supporting rural and nature based tourism and the diversification of land uses in rural areas.

11.2 Notice of Motion - Amendment to Ballina LEP 2012

A key reason for the permissibility of this use is that facilities that support farm education and entrepreneurial activity (such as on farm tour infrastructure, production education and display areas) can be problematic to achieve given the definitions in the standard instrument LEP in the event that information and education facilities are prohibited.

The original intent was to create zones open to ideas for different forms of economic activity associated with agriculture, tourism, and rural lifestyle on rural land with parameters in place to guide the form and operation of such development.

The difficulty is trying to get the balance in the LEP right to allow appropriate development without having any unforeseen negative impacts.

COUNCILLOR RECOMMENDATIONS

1. That Council prepare a planning proposal to amend the Ballina Local Environmental Plan 2012 to prohibit information and education facilities in the RU1 Primary Production and RU2 Rural Landscape zones. That the planning proposal be submitted to the Department of Planning, Industry and Environment for Gateway determination.
2. Where a Gateway determination is received enabling the planning proposal to progress, that staff proceed to undertake public exhibition of the planning proposal in line with the requirements of the Gateway determination.
3. That Council receive a further report on the planning proposal following completion of the public exhibition.
4. That Council advises the Department of Planning Industry and Environment that it wishes to exercise its plan making delegation in relation to the planning proposal.

Attachment(s)

Nil

11.3 Notice of Motion - Tree Planting

11.3 Notice of Motion - Tree Planting

Councillor

Cr Cadwallader

I move

1. That the review of the Hampton Park Plan of Management, scheduled for 2020/21, also consider tree planting options in the adjoining streets to improve the overall amenity in this location.
2. That Council ensure that the recurrent road and car park reconstruction program also examine opportunities to align Council's street tree planting program with the planned road works to assist in minimising the cost of planting trees and to maximise the opportunity to enhance the overall street tree amenity in the shire.

Councillor Comments

Council has a relatively small tree planting program of approximately \$21,000 per annum to help improve the overall street tree amenity in the Shire.

Recent road reconstruction works in Burnet Street have highlighted that there may be opportunities to leverage the road, and car park funding, to expand the street tree planting program, as and when opportunities arise, as street trees can potentially be incorporated into the engineering works program.

As demonstrated by the tree planting works Council has previously undertaken in Crane Street, trees can provide a significant enhanced amenity to the urban landscape, and this notice of motion reinforces Council's preference to promote street tree planting as an important priority for this Council.

Staff Comments

The comments in this notice of motion are supported in that the Hampton Park Plan of Management review should consider street tree planting, as well as the availability of perimeter car parking spaces.

Council's street tree planting program has limited funding, at \$21,000 for 2020/21, with the funds to be expended in Wardell, as per an action in the adopted Wardell Strategic Plan (Action 16 – Undertake avenue street tree planting in Carlisle and Cedar Streets and Fitzroy and Sinclair Streets).

If street trees are to be planted within the traffic area of a road (i.e. within the car parking spaces as compared to the pedestrian area of the road reserve frontage) typically permanent blisters are required to protect the trees from vehicles.

Blister costs are difficult to estimate as there are a high number of variables such as the locality of underground services, traffic control, soil type, proposed tree size, size of blister, road treatment and establishment costs, which can sometimes lead to a cost approaching \$5,000 per blister.

11.3 Notice of Motion - Tree Planting

For example, the northern side of Burnet Street, between Cherry and Moon Streets, where Council has recently undertaken reconstruction works, has a recycled water main, which would need to be relocated if street trees were planted.

This means to implement the Council's street tree planting program, with the limited funding available, a significant amount of upfront research is undertaken to ensure that reasonable benefits are gained from the works.

In recent years, street tree planting in locations such as Crane Street and Headlands Drive has been generally well received and the program is supported, albeit, like many other Council services, additional funding would help to achieve enhanced outcomes and may even allow more difficult high profile locations to be included in the program.

Therefore it is important, as per point two of the notice of motion, to ensure that there is an integrated approach to reconstruction works to maximise the benefits achieved. This is not only relevant to street trees but also other infrastructure such as water and wastewater and even other utilities such as electrical and telecommunications.

The Hampton Park precinct is also interesting in that for many years the Cherry Street Sports Club and the Tennis Club have advocated for improved parking at this location as they have concerns with the volume of traffic using the access road to these facilities from Burnet Street. Therefore the Plan of Management process will need to determine how to balance the need for sufficient car parking and a desire to improve the urban amenity from street tree planting.

COUNCILLOR RECOMMENDATIONS

1. That the review of the Hampton Park Plan of Management, scheduled for 2020/21, also consider tree planting options in the adjoining streets to improve the overall amenity in this location.
2. That Council ensure that the recurrent road and car park reconstruction program also examine opportunities to align Council's street tree planting program with the planned road works to assist in minimising the cost of planting trees and to maximise the opportunity to enhance the overall street tree amenity in the shire.

Attachment(s)

Nil

11.4 Notice of Motion - Lennox Head Car Parking

11.4 Notice of Motion - Lennox Head Car Parking

Councillor

Cr McCarthy

I move

That as part of the Operational Plan action to Review the Planning Framework for Lennox Head (2020/21 and 2021/22) that Council examine options for additional car parking peripheral to the village centre (including an examination of multi-storey and / or underground car parking at the Lennox Head Cultural Centre car park). The outcomes from this review will also assist with the preparation of a new Developer Contributions Car Parking Plan for Lennox Head, with the spaces in the existing plan having been fully allocated.

Staff Comments

Car parking will form part of the Planning Framework review for Lennox Head, particularly based on recent population growth, along with understanding the impacts on car parking demand in the village centre through the opening of the commercial precinct at the EPIQ Estate.

There are limited options for additional public car parks, unless Council purchases additional property, therefore maximizing the car parking spaces available or around the Lennox Head Cultural Centre precinct, may be an important consideration in meeting future car parking demand.

COUNCILLOR RECOMMENDATION

That as part of the Operational Plan action to Review the Planning Framework for Lennox Head (2020/21 and 2021/22) that Council examine options for additional car parking peripheral to the village centre (including an examination of multi-storey and / or underground car parking at the Lennox Head Cultural Centre car park). The outcomes from this review will also assist with the preparation of a new Developer Contributions Car Parking Plan for Lennox Head, with the spaces in the existing plan having been fully allocated.

Attachment(s)

Nil

12. Advisory Committee Minutes

12. Advisory Committee Minutes

Nil Items

13.1 Mayoral Meetings

13. Reports from Councillors on Attendance on Council's behalf

13.1 Mayoral Meetings

Councillor David Wright

Activities I have attended, or propose to attend, as at the time of writing this report, since the August 2020 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
25/8/20	Ballina RSL Club - Club Grants
27/8/20	Cross Border Meeting
28/8/20	Arrival of First Dubbo Flight – Fly Pelican
31/8/20	Inspection of New Alstonville Pool Facilities
2/9/20	Public Art Advisory Panel
3/9/20	Meeting – Cross Border Issues
3/9/20	Opening – New North Coast Community College Primary Industries Training Centre
3/9/20	Meeting – Urgent Industry Event – Tweed Heads
4/9/20	NSW (QLD) Border Council Meeting with Commissioners
4/9/20	Meeting – Eli Cook – Potential Cultural Centre
6/9/20	Commemoration Park Markets
7/9/20	Meeting – Youth in Film
8/9/20	'A' Ward Committee
9/9/20	Meeting – Cross Border Issues
9/9/20	Ballina CWA International Day
9/9/20	Meeting – Proposed Environmental Event at Alstonville
10/9/20	Presentation – Light Horse
10/9/20	Meeting – Tourist Minister –Elements
10/9/20	'C' Ward Committee
11/9/20	Meeting – Adam Mumford – Local Newspaper
11/9/20	Meeting – Parking - William Street – Lennox Head
13/9/20	Commemoration Park Markets
13/9/20	Meeting with Executive Lennox Head Surf Club and Nippers
14/9/20	Meeting – Australian Newspaper
15/9/20	Briefing – Dog Management Lennox Head
16/9/20	Meeting – Cross Border Issues 9.30
17/9/20	On-Line Citizenships 9.00
20/9/20	Commemoration Park Markets
20/9/20	Ballina Markets
21/9/20	'B' Ward Committee
24/9/20	Council Meeting
25/9/20	NRJO Meeting – Mullumbimby
27/9/20	Commemoration Park Markets
27/9/20	Meeting – Shark Management – Lennox Head
28/9/20	Opening of Lennox Cultural Centre
28/9/20	Meeting – 70 Shelly Beach Road

RECOMMENDATION

That Council notes the contents of the report on Mayoral meetings.

Attachment(s) - Nil

14. Confidential Session

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

14.1 Swimming Pool Compliance - Seahorse Place, Ballina

Refer to Item 8.9 of this agenda.

RECOMMENDATION

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

14.1 Swimming Pool Compliance - Seahorse Place, Ballina

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(e) (g) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- e) information that would, if disclosed, prejudice the maintenance of law; and
- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as this may compromise any legal action taken by Council..