



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 27 August 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.

Recording and Livestreaming of Council Meetings

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

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1. Australian National Anthem
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 6. Deputations
-

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 23 July 2020 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 23 July 2020.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7.1 **Mayoral Minute - Helium Restriction**

7. **Mayoral Minutes**

7.1 **Mayoral Minute - Helium Restriction**

Councillor

David Wright

I move

That Council write to relevant State and Federal Ministers to request a review of regulations on the sale and use of helium and other lighter than air gasses, other than for scientific and non-environmentally detrimental commercial purposes, especially relating to balloons.

Mayoral Comments

Council has been approached by the organisation "No Balloon Release Australia" to support Wollongong City Council in its efforts to restrict the sale of helium and other lighter than air gasses, other than for scientific and non-environmentally detrimental commercial purposes, especially relating to balloons.

A copy of their submission to Wollongong City Council is attached.

It is unclear how many members the organisation has, however the following information has been provided by Karen Joynes, No Release Australia, PO Box 325, Bermagui 2546.

No Balloon Release Australia has been informed of at least 11 illegal helium balloon releases around Australia in recent months - Forster, The Entrance, Terrigal, Wauchope, Fraser Coast (Qld), Hobart, Adelaide and four at Wollongong. Many hundreds of balloons have been released.

All except one of these have been in memory of a loved one. Although responsible for enforcing the Litter Act, councils have been reluctant to take action against grieving family and friends.

As a result of the four releases in Wollongong and Council's refusal to take any action, a combined effort from a number of groups and individuals resulted in the Council unanimously passing a motion with this amendment at its latest meeting:*

- 2. Council write to relevant State and Federal Ministers to request a review of regulations on the sale and use of helium and other lighter than air gasses, other than for scientific and non-environmentally detrimental commercial purposes, especially relating to balloons.*

The Wollongong City Council meeting webcast on this item can be viewed at approximately 55:50 <http://webcasts.wollongong.nsw.gov.au/archive/video20-0629.php#placeholder>.

The reason for restricting access to helium used to inflate balloons is simple: without helium, balloons cannot be released.

Such regulation would remove the compliance obligation from Council.

7.1 Mayoral Minute - Helium Restriction

Currently helium is easily available to the public at retail stores and discount shops such as K-Mart, Big W, Spotlight, The Reject Shop amongst others. Customers are not informed about any laws, the environmental impact of balloons nor the dangers of inhaling helium. People can easily ignore any warnings. Disposable helium tanks end up in landfill.

Punitive action after a release will not right the environmental wrong. The released helium balloons will end up as litter, somewhere, and threaten wildlife. Balloon releases need to be stopped at their source: unregulated access to helium.

**Groups included #plasticwise_portkembla, #plasticwise_thirroul, Australian Seabird Rescue South Coast, Clean Up Lake Illawarra as well as No Balloon Release Australia.*

As balloons can impact our wildlife and environment the proposed recommendation is reasonable in asking for a review of the regulations.

RECOMMENDATION

That Council write to relevant State and Federal Ministers to request a review of regulations on the sale and use of helium and other lighter than air gasses, other than for scientific and non-environmentally detrimental commercial purposes, especially relating to balloons.

Attachment(s)

1. Submission - Wollongong City Council - No Balloon Release Australia

8.1 DA 2018/51 - 20 North Creek Road, Lennox Head - Residential Subdivision

8. Planning and Environmental Health Division Reports

8.1 DA 2018/51 - 20 North Creek Road, Lennox Head - Residential Subdivision

Applicant	Ballina Island Developments Pty Ltd c/- Urbis
Property	Lot 1 DP 517111, 20 North Creek Road, Lennox Head
Proposal	Residential subdivision and subdivision works comprising: <ul style="list-style-type: none">• 99 residential lots• 5 super lots (subject to future DAs)• Construction of road works, drainage, sewer and water supply services together with bulk earthworks
Effect of Planning Instrument	The land is zoned R2 Low Density Residential, part R3 Medium Density Residential and part RU1 Primary Production under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan contained in Attachment 1 and Figure 1

Introduction

Council engaged Darryl Anderson Consulting to undertake the town planning assessment of this development application and prepare this determination report to Council.

The subject land is described as Lot 1 DP 517111 and is known as 20 North Creek Road, Lennox Head. The site is located on the corner of North Creek Road, Henderson Lane and Hutley Drive as shown in Attachment 1 (Aerial Photograph) and Figure 1 (Aerial Photo).



Figure 1: Subject Site - Aerial Photo (site shown in red outline)
Source: Revised SEE, February 2020, Version 3

8.1 DA 2018/51 - 20 North Creek Road, Lennox Head - Residential Subdivision

There have been extensive consultations between the applicant's representatives and Council Officers including requests for further information and submission of revised Plans and Reports.

Site History

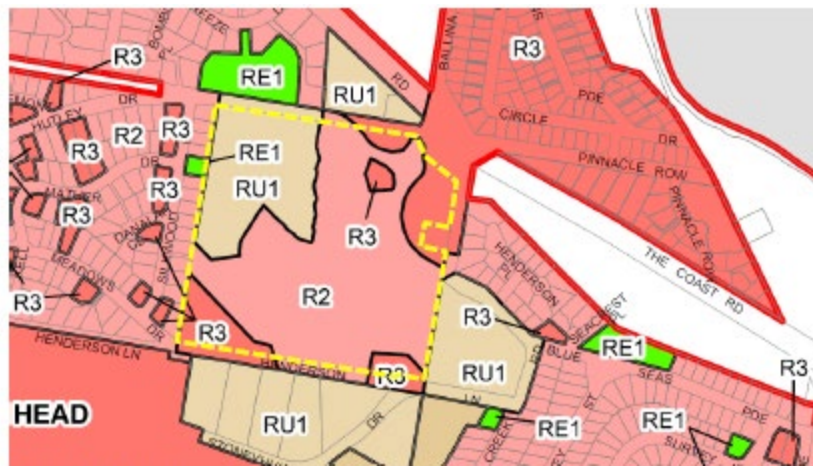
The site has an area of 15.07 hectares and has frontage to Henderson Lane, North Creek Road and Hutley Drive. It is currently vacant and has been used previously for agricultural purposes, including grazing.

Site Rezoning

The site was subject to a planning proposal in 2014. Subsequently the Department of Planning and Environment made a Gateway Determination to rezone the site and delegated authority to Ballina Shire Council to finalise the planning proposal. As such, most of the site was rezoned in December 2016 from RU1 Primary production to a mix of R2 Low Density Residential, R3 Medium Density Residential, with a portion of RU1 land retained solely to incorporate the existing wetland.

The original planning proposal was prepared in association with an indicative subdivision master plan as a guide to the type of development that could occur on the land if rezoned. In consultation with Council, the previous landowner revised the indicative master plan during the rezoning process and the relevant LEP mapping was amended in accordance with the revised layout. This has resulted in the existing irregular shaped zone boundaries as shown in Figure 2 below. The indicative master plan identified as part of the rezoning process for the site is no longer considered a desirable design outcome by Council.

Figure 2 – Extract of current BLEP 2012 Zoning Map – Sheet LZN_005D



Original Lodgement of DA 2018/51 – January 2018

This development has been subject to extended consultation with Ballina Shire Council. Prior to the lodgement of this application, a Pre-DA Lodgement meeting took place on 15 November 2017 with representatives from Council and the applicant. The subject development application (referred to as DA 2018/51) was subsequently lodged with Ballina Shire Council on 2 February 2018.

8.1 DA 2018/51 - 20 North Creek Road, Lennox Head - Residential Subdivision

The original development application under DA 2018/51 comprised:

Residential Subdivision of land to create 103 residential lots and seven super lots, construction of roads, stormwater management and drainage (including detention basins and piping of creek), infrastructure servicing, earthworks, vegetation clearing, open space and temporary signage.

Central to the original subdivision design was the accommodation of a planned road corridor for the realignment of North Creek Road and the extension of Hutley Drive. These road works were identified in the Ballina Shire Council Roads Contribution Plan, in response to a growing population and projected increase in traffic generation across the wider road network.

Within this Plan, it was identified that Hutley Drive is to be upgraded and extended along the northern boundary of the subject site. In addition, North Creek Road was identified for realignment and upgrade to eliminate existing substandard road geometry. These road works were identified to intersect with a new 2-lane roundabout, which was to connect with Byron Bay Road. These road works were to be located within the north eastern corner of the subject site.

Figure 3 – Original proposed subdivision under DA 2018/51



Subdivision Redesign

On 16 February 2018, Council issued a request for additional information related to DA 2018/51.

The letter advised that Council no longer requires the realignment of North Creek Road and Hutley Drive through the site (Lot 1 DP 517111). As Council acknowledged, this had significant implications on the original subdivision layout and advised:

The placement of your current development application on public exhibition will be withheld pending your further considerations in this regard.

DA 2018/51 was subsequently placed on 'Stop the Clock' in accordance with Clauses 54 and 109 of the Environmental Planning and Assessment Regulation 2000.

A revised subdivision concept was prepared in response to the changing circumstances, and also address a number of matters raised in the request for additional information through ongoing correspondence with Council.

Pre-DA Lodgement Meeting – 24 April 2018

Prior to the lodgement of this revised application, a second Pre-DA Lodgement meeting took place on 24 April 2018 with representatives from Council and the applicant. A revised concept subdivision plan for the proposed development was presented to the Council's Subdivision Panel. In preparation for the Pre-DA meeting, the applicant provided a letter addressing the overall revised vision for the site and identified the requirement for minor rationalisation to existing zoning boundaries.

Additional Information between July 2018 to February 2020

An amended development application package for DA 2018/51 was submitted to Council in July 2018, which addressed the issues identified by Council. During the assessment of the revised DA 2018/51 between July 2018 and February 2020, Council has requested additional information for the proposed development, primarily related to clarifying ecological assessment matters and refining the civil design.

Based upon consultation with Ballina Shire Council and the then Office of Environment and Heritage (OEH) and further ecological assessment in 2018 and 2019, the proposed development has been revised to amend the proposed stormwater management system and the subdivision plan to retain part of the Littoral Rainforest EEC. All matters addressed in response to requests for additional information were incorporated into an amended DA package in accordance with Clause 55 of the EP&A Regulations.

A further request for information (RFI) was issued on 20 April 2020. In relation to:

- Impact assessment on freshwater wetlands
- Bulk earthworks
- Services Plan
- Dedication within Lots 102 and 104

8.1 DA 2018/51 - 20 North Creek Road, Lennox Head - Residential Subdivision

- Public submissions

The applicant's responses dated 18 May 2020 are addressed in relevant sections of this Report.

The amended proposed development is summarised in the following section and addressed through the remainder of this report.

Details of Proposal

The proposed development for which consent is sought comprises:

- Torrens Title subdivision creating 99 residential lots and five super lots subject to future development.
- Landscaping works including street trees.
- Construction of roads, kerb, gutter and paths.
- Construction and installation of essential services and ancillary infrastructure.
- Excavation cut / fill including retaining walls.
- Stormwater network and drainage infrastructure (including detention basins and piping of creek).
- Clearing of site and vegetation amelioration works as indicated.
- Ancillary temporary signage (two signs adjacent to North Creek Road – see Attachment 2).

The Subdivision Plan (Rev. N) prepared by Urbis is included at Attachment 2. Key numeric aspects of the proposal are provided in the table below and the various components of the proposed development are described in the following sections.

Table – Proposed Development Parameters

Parameter	Proposed	Compliance
Site Area	15.07 hectares	N/A
Land Use	Residential (dwelling houses and roads)	YES
Lot Yield	99 residential lots and five super lots subject to future development applications.	N/A
Lot Sizes (Residential only)	600sqm – 1,200sqm	YES

In accordance with section 4.46 of the *EP&A Act*, the proposal will require General Terms of Approval from the NSW Office of Water.

Subdivision

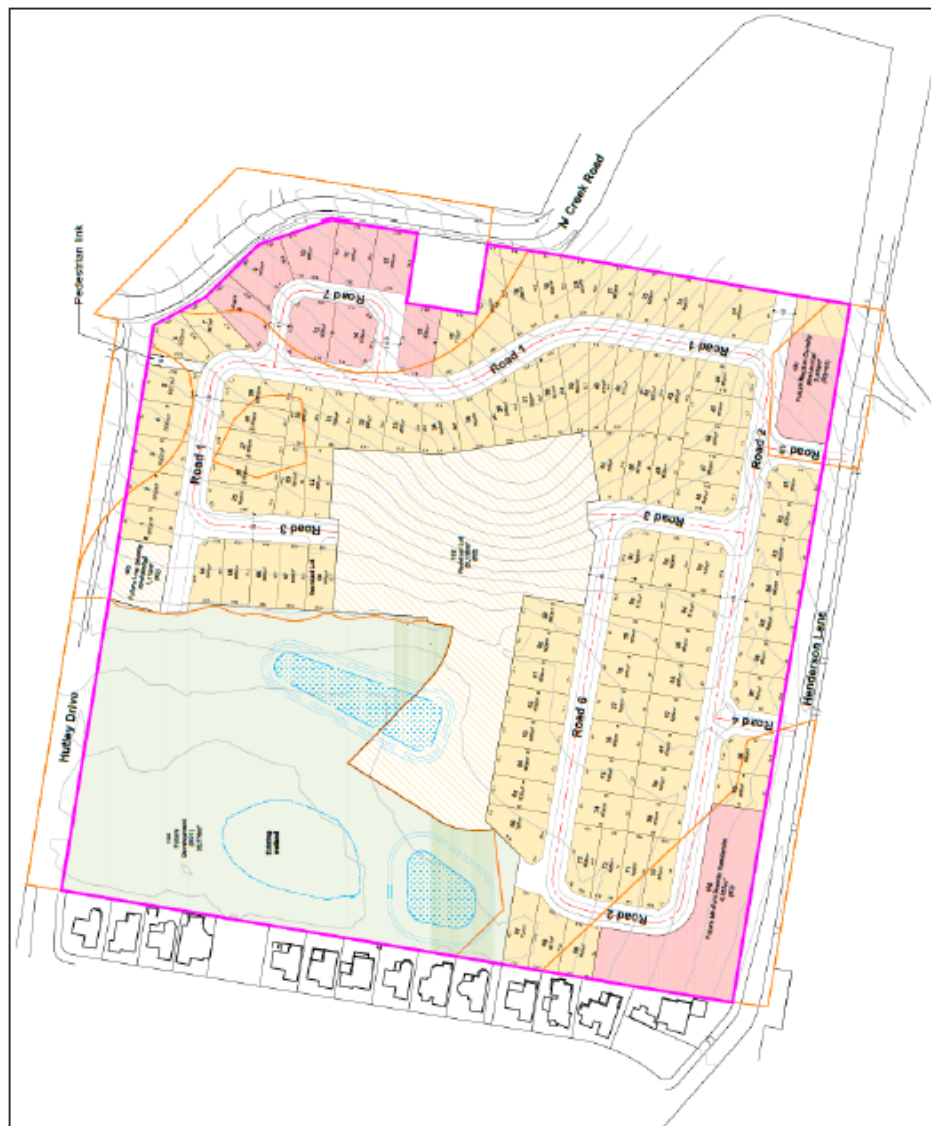
The proposed subdivision (shown in Figure 4) will create 99 residential lots and five super lots subject to future development to facilitate the following:

- Super lots 100 and 101 will be subject to future development applications for residential development. The proposed road network has been designed to ensure adequate access is provided to these future lots.

8.1 DA 2018/51 - 20 North Creek Road, Lennox Head - Residential Subdivision

- Super lot 102 contains a relatively small area of disturbed Mid-high woodland (*Banksia integrifolia*) and regrowth. This lot will be subject to a future development application for residential subdivision and the future connection of Road 3.
- Super lot 103 is reserved to provide flexibility on an appropriate access point to the Hutley Drive north extension.
- Super lot 104 contains temporary drainage basins.
- Proposed Lot 58 is a residential lot that will contain a turning head for Road 3 until such time as Road 3 is connected, subject to a future development application.

Proposed residential lots across the R2 zoned land vary between 600sqm to 1,200sqm, and are designed in accordance with the development standards of BLEP and DCP. Compliance with BLEP and DCP is addressed below.



Source: Urbis

Figure 4 – Proposed Subdivision Plan (February 2020) – see also Attachment 2

Road Layout and Access

The proposed development includes the construction of:

- Seven new internal public roads to be dedicated to Council.
- Most proposed internal roads are classified as 'local streets' and have a 7-9m wide sealed carriageway in a 15-17m wide road reserve.
- Road 3 is proposed in two sections and designed with an alignment that can be connected as part of a further development application to subdivide Super lot 102. The northern section of Road 3 will include a temporary turning head located within proposed Lot 58, to allow for vehicles to turn around in a forward motion.
- Road 7 is proposed as a 'one-way access street' or laneway with a minimum 6m wide sealed carriageway in a 10-14.9m wide road reserve.

All lots will be accessed via the internal road network, and therefore no direct access to lots is proposed onto Hutley Drive, North Creek Road or Henderson Lane. The internal road network will be accessed via two roads from Henderson Lane to the south of the site. To facilitate further integration to the wider road network, the intersection of Road 1 and 3 has been designed to facilitate a future road connection to Hutley Drive. This connection will be subject to a future development application.

All internal roads will have pedestrian footpaths to encourage walking, and a pedestrian link is proposed in the north eastern corner of the site to provide convenient pedestrian connectivity to Lennox Head Town Centre to the north. A number of roads are proposed to have a drainage swale on one side of the road for stormwater drainage where grade permits.

An unsealed access road is proposed to connect to Road 6 to provide vehicular access to the proposed drainage basins for future maintenance by Council. Removable bollards will be installed at the southern end of the access road to restrict public vehicular access. This access road alignment also conveys a swale connecting to Drainage Basin 1.

The proposed road works are detailed within the Civil Plans.

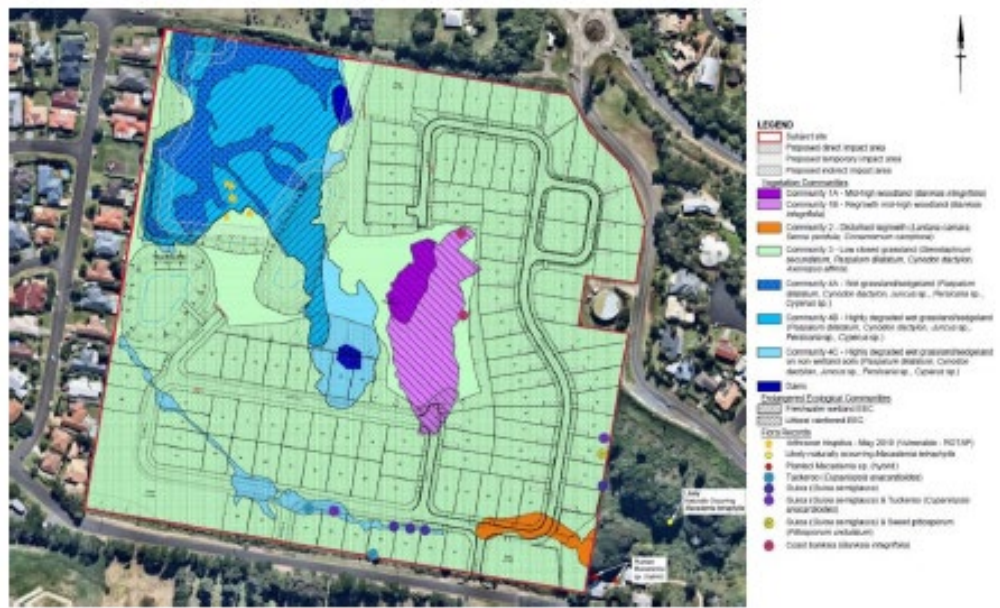
The Landscape Report provides further information to support the design.

Vegetation Clearing and Proposed Amelioration

To facilitate the residential subdivision of the site, some existing vegetation will need to be cleared as shown in Figure 5. An existing farm dam will be safely decommissioned and filled with suitable fill.

The proposed areas of vegetation clearing are shown in Figure 5. The central portion of the site which predominantly contains Community 1A and 1B (Littoral Rainforest – EEC) is not proposed to be cleared as part of this application and will be the subject of future assessment under separate DA.

Figure 5 – Indicated Area of Vegetation Clearing



Source: JWA

Section 5.3 of the Ecological Assessment report prepared by JWA Ecological Consultants provides recommended amelioration works in response to the loss of flora and fauna on the site.

Around 2.38ha of the site (within the RU1 land) is proposed to be retained as a Rehabilitation (Wetland Management) area as shown in Figure 6. A Wetland Management Plan has been prepared by JWA. The compensatory habitat area will be cleared of weed species and re-vegetated with native freshwater wetland species.

Figure 6 – Wetland Management Plan



Source: JWA

Bulk Earthworks and Retaining Walls

Mott Macdonald and Coffey have investigated land stability for the site and designed bulk cut and fill earthworks to facilitate the subdivision to allow for new roads and grading of residential lots. Due to the steep topography of the site, there will be a requirement for imported fill on site and retaining walls.

These works are detailed in the Civil Plans. Prior to any earthworks commencing on the site, erosion and sediment control measures will be put in place.

Stormwater Management and Drainage

Mott Macdonald were commissioned to prepare a Stormwater Management Report for the proposed residential subdivision. The major/minor approach to stormwater drainage is the recognised drainage concept for urban catchments within the Ballina Shire Council local government area.

The minor drainage system is comprised of the below ground pit and pipe network and is designed to control nuisance flooding and enable effective stormwater management for the site. Council's DCP requires that the minor system be designed for a minimum 5 year ARI for urban residential areas.

The major drainage system incorporates overland flow routes through proposed road, hardstand and landscaped areas and is assessed against the 100 year ARI design storm event. The major system also exists to cater for minor system failures. In accordance with council's requirements, the major drainage system is to be designed in a manner that ensures that personal safety is not compromised. As such, all overland flow routes for the site are to be designed so that the maximum velocity-depth product shall not exceed 0.4m²/s.

DRAINS software has been used to calculate stormwater flows generated within the site for the existing and proposed scenarios. Stormwater piped capacities have been designed to convey the minor storm event with safe overland flows for the 100year ARI storm event. If the major system cannot meet the safety and flooding criteria, then the capacity of the minor system has been increased.

In addition to the pit and pipe network, vegetated swales have been incorporated into the drainage network within the verge space of roads with favourable grades.

Onsite detention basins are proposed within the north western portion of the site land as detailed in the Civil Plans. The detention and water quality strategies for the development have been designed in consultation with JWA, Gilbert and Sutherland, and Council to ensure that adverse impacts on this area are avoided and mitigated, consistent with the Wetland Management Plan contained in the Ecological Assessment.

In accordance with Council's DCP, all detention basins are designed to detain stormwater runoff for short durations during storm events. These are generally not expected to pond for longer than 12 hours in long storm events.

8.1 DA 2018/51 - 20 North Creek Road, Lennox Head - Residential Subdivision

In consultation with NSW Office of Water, the existing drainage corridor running east to west across the site does not require creation of a riparian corridor, and will be piped to discharge into the proposed detention basins.

Services and Utilities Infrastructure

The subdivision proposes infrastructure arrangements for electricity, lighting, communications, water and sewer. Details of the proposed services and utilities infrastructure are detailed further in the IGS Infrastructure Report and the Services Plans prepared by Northrop.

As part of the design process, IGS has consulted with the relevant service providers and the report demonstrates that the subdivision can be adequately serviced.

Landscape Design

The landscape plans and accompanying report prepared by Urbis provides a description on the proposed landscape works, including street trees in accordance with Council's recommended tree species. Street trees have been located on both sides of each street, with approximately one tree per lot positioned as to not restrict driveway access or interfere with utility services.

In addition, landscaping and vegetation has been designed as part of the stormwater infrastructure to support water sensitive urban design and facilitate easy maintenance and management.

Figure 7 – Landscape Design (February 2020)



Source: Urbis

Temporary Signage

To facilitate the future marketing of the subdivision, two temporary billboard advertising signs are proposed located along the frontage of existing North Creek Road. Each billboard is proposed to have an area of approximately 10 sqm (being five metres wide x two metres high).

The proposed billboards are temporary and strictly for the purpose of advertising the residential subdivision of the site. The billboards are proposed to be removed following completion of the project.

Plans of the proposed subdivision and signage are provided at Attachment 2.

The estimated development cost of the project is \$11,387,385.00.

The proposal is for integrated development under the Water Management Act 2000. General Terms of Approval from the DPI Water (29 May 2018) and the Natural Resource Access Regulator (NRAR) (25 May 2020) are attached to the draft Conditions of Consent.

Reportable Political Donations

Details of known reportable political donations are as follows:

- The DA Form indicates that no Disclosure Statement accompanies the Application.

Public Exhibition

The Application was publicly exhibited on two occasions as follows:

1. 18 July 2018 to 18 August 2018 (29 submissions received). Refer to attachments.
2. 18 March 2020 to 15 April 2020 (19 submissions received). Refer to attachments.

The key issues raised in the objections are summarised and addressed as follows:

1. Drainage - The submitter questions whether or not the proposed drainage through the subject land has been designed to appropriate standards and whether it includes sufficient capacity for future dwellings on the submitter's property (to the east of the subject land).

Comment

A condition has been applied to the consent to address this matter. Refer Condition No. 41.

2. There has been no provision for vehicular access and service interconnections for future development of the submitter's land to the east of the subject land.

Comment

The amended Application Plans provide for a public road (Road 2) which will provide the potential for access to the submitter's property should a future development consent be granted.

3. Proposed excavation adjacent to the submitter's property to the east of the subject land is excessive and unreasonable.

Comment

Maximum cut appears to be limited to 6m. The retaining walls adjacent to the submitter's property are 3m in height and are proposed to be stepped retaining walls. A condition has been applied to the consent to ensure that they are suitably offset such that they will not result in any restrictions on the adjoining property. Refer Condition No. 51.

4. The submitter disagrees with the proposed 1.8m to 3m high acoustic barrier along North Creek Road and Henderson Lane because of adverse impacts on the view corridor for existing residents and motorists/pedestrians on North Creek Road. Further, the submitter contends that the acoustic barriers are not required based on the Acoustic Report accompanying the DA.

Comment

Having regard to the comments in Sections 6.0 and 7.1 of the ENIR (CRG Acoustics, 19 June 2018) acoustic barriers to North Coast Road and Hendersons Lane are not required, subject to appropriate treatment of future dwellings as recommended in Section 6.1 of the ENIR. This can be addressed by a condition of consent. Refer Condition No. 141

A condition should also be imposed requiring a Section 88B Restriction on Lots 6 to 12 and 17 to 19 precluding structures (other than swimming pools and garden sheds) within 6m of the eastern boundary of the lots to preserve view corridors and minimise acoustic impacts. Refer Condition 142.

5. The future use and management of the residual lot is unknown.

Comment

An appropriate condition is proposed to address the future ownership and management of the stormwater facilities on Lots 102 and 104. Refer Condition No. 9.

6. The exact number of dwellings is unknown.

Comment

The total number of dwellings will be determined when Development Applications for the medium density lots and residue lots are approved. Infrastructure capacity will be required to accommodate ultimate yields. Refer Condition No. 11.

7. There is no connection to Hutley Drive.

Comment

No connection to Hutley Drive is proposed. The revised SEE, at Section 4.3, states that:

“To facilitate further integration to the wider road network, the intersection of Road 1 and 3 has been designed to facilitate a future road connection to Hutley Drive, once Council has finalised the Hutley Drive extension. This connection will be subject to a future development application.”

A Traffic Impact Assessment has been submitted to Council which demonstrates that this link while desirable is not essential to service the development.

Hutley Drive has now been completed. To address safety, capacity and amenity issues, a condition is recommended requiring a potential future road corridor to be secured to Hutley Drive. Refer Condition No. 111.

8. The existing natural waterway should be retained and an assessment of wetland vegetation impacts and groundwater dependent ecosystem impacts should be required.

Comment

Refer comments under Ecological Assessment later in this report.

9. No provision for pedestrian and cycle traffic and its access to the township.

Comment

The amended Application Plans provide a pedestrian link from Road 1 to Hutley Drive in the north eastern corner of the site which will provide improved connectivity to the existing network.

10. No detailed Socio-Economic Assessment accompanies the DA and the community needs public spaces, parks and green corridors.

Comment

Having regard to the scale and nature of the development, the zoning of the land and given that the zoning was relatively recently imposed, it is considered that a Socio-Economic Assessment is not essential to enable Council to make a full and proper assessment of the merits of the Development Application.

The development proposal does not include the dedication of any additional public reserves on the site on the basis that there are adequate facilities in close proximity including north of Hutley Drive and immediately adjoining the site to the west.

11. We can't believe that Henderson Lane is expected to cope with all access in and out of the new subdivision. Henderson Lane is a little, steep lane already struggling under peak time loads. It's not adequate.

Comment

A condition will be applied to the consent requiring the construction of kerb and gutter and associated stormwater infrastructure for the full property frontage of Henderson Lane connecting to the existing kerb and gutter and stormwater infrastructure to the west of the site. To allow for a total carriageway width of 11m and comply with the collector road standard. Refer Condition No. 15.

12. There seems to be a severe lack of information supporting the current intention or future role of the wetland area in the north west corner. What is going to be constructed there in future, given that it obviously a significant ecological area? Who is going to maintain it? Given point 2. above, is there a plan for vehicle access at some future date - where else can better access be provided? Surely not through the ecological zone?

Comment

This issue has been further addressed in the revised DA and SEE (February 2020) and conditions are proposed to address ownership, management and compliance bonding.

13. The submitter contends that the development should not be approved until at least an indication of the total lot/dwelling yield including future and medium density lots is provided.

Comment

The revised application proposes 99 residential lots and 5 super lots. Subject to detailed design and approval of future DAs for the super lots, it is estimated that the ultimate yield will be in the order of 140 to 150 dwellings.

14. A technical peer review of the Ecological Assessment should be completed by an independent ecological consultant, particularly addressing location and likelihood of occurrence of Hairy Joint Grass and freshwater wetland EEC and an assessment of impacts to both if found.

Comment

It is considered that a peer review is not necessary. See comments under Ecological Assessment later in this report.

15. An updated traffic report and revised subdivision layout should be prepared that caters for both proposed and future development yields and includes a connection to the Hutley Drive extension that does not traverse the residual lot.

Comment

Provision has been made to service a potential future road corridor to Hutley Drive. A revised traffic report is not considered to be required based on the engineering comments in this report.

16. Updated hydrological and ecological assessments should be provided that assesses the impacts of the proposed bulk earthworks and waterway infill

Comment

A revised Ecological Assessment (JWA, February 2020) has been submitted with the amended DA and a revised Hydrological Regime Assessment (G&S, 24 February 2020). Refer comments under Ecological Assessment later in this report.

17. The submitter objects on the grounds that the DA is incomplete. In particular there is no information on the Hutley Drive extension or round-about, so effects on traffic cannot be known or even estimated.

Comment

See response to Issues 7 and 11.

18. The use of the large lot zoned in the northwest corner is unclear and seems to be left to some future planning.

Comment

The residue lot has environmental constraints and is partly proposed as an area for drainage and water quality together with retention of sensitive vegetation. Further details have been submitted following consultations with Council Officers in relation to the treatment of this area. Refer ecological and engineering assessment comments later in this report.

19. I would ask council not to be coerced or tricked into making important decisions regarding the future of the shire with an incomplete DA. It is a reasonable and straightforward matter to ask the developer to provide relevant information

Comment

Based on the amended plans and reports it is considered that adequate information has been provided to enable Council to make a full and proper assessment of the application.

20. I am concerned that there is a large residual lot proposed as part of the DA with no details as to what is proposed for it.

Comment

See comments regarding Issue 5.

DA 2020/284 for an 18 lot subdivision of part of the residual lot 102 has been submitted to Council. The future use and disposition of the residue lot will be considered in the assessment of that DA.

21. The information of the proposed traffic impacts is inadequate as it does not address future development yields.

Comment

Based on the engineering comments in this report and as DA 2020/284 has been lodged for the residue Lot 102, it is considered that traffic impacts have been adequately addressed.

22. Continued poor development outcomes for Lennox Head

Comment

The proposal, subject to appropriate conditions, will be consistent with the zone objectives, the Lennox Head Structure Plan and similar contemporary estates in Lennox Head.

23. Confusion over lot sizes and zonings resulted in allotment owners being unclear as to where their property boundaries were and therefore no maintenance of uncertain areas

Comment

The amended DA and accompanying plans and reports delineate proposed lot boundaries. The proposed lots comply with the minimum lot size required in BLEP2012.

24. Extensive area of the threatened species Hairy Joint Grass (*Arthraxon hispidus*) loss has not been rehabilitated and does not appear to be monitored nor evaluated

Comment

See comments under Ecological Assessment later in this report.

25. General infrastructure and population growth concerns.

Comment

The developer will be required to pay contributions to support the upgrade services and infrastructure for the increase in population as a consequence of this development in accordance with the relevant contribution plans. Refer Condition Nos. 122 and 123.

26. Future signage.

Comment

The Application includes proposed temporary real estate signs. Any additional signs will require a separate development consent, if required.

27. This subdivision is impermeable to pedestrians, cycling, etc. It is basically a closed/gated community conceptually. This is not the type of housing development that is conducive to the Lennox lifestyle.

Comment

The proposal is for a conventional subdivision (not closed/gated) which is generally consistent with the zone objectives and the emerging urban character of the locality. Also refer comments to issue 9.

28. There is no Aboriginal assessment in the DA.

Comment

There are no heritage items identified in the BLEP 2012 on or adjacent to the site. An Aboriginal Cultural Heritage Assessment accompanied the Planning Proposal.

29. Where is the grey/recycled water plan?

Comment

All lots will be connected to the reticulated sewer system.

30. Density of housing

Comment

The proposal is consistent with the zone objectives and minimum lot size requirements in BLEP2012.

31. With regard to the Hairy Joint Grass we believe that simply re-locating the grass is not enough. Who will monitor this and what are the consequences if it is not done correctly. Conditions need to be imposed and policed to ensure compliance should the development be approved.

Comment

See comments under Ecological Assessment later in this report.

32. As this hillside is awash with creeks in the wet season we are very worried about the significant impact on the waterways when these waterways are piped. We are concerned about the impact on the groundwater dependent ecosystems i.e. the hairy joint grass and the (disputed) wetland on the site also. This level of development must have a significant impact on the waterway and the run off. We are a high rain area and a lot of water comes down that hillside.

Comment

As part of the stormwater management plan submitted with this application, the developers will be required to provide bioretention infrastructure and infiltration swales. These devices will be designed to ensure groundwater recharge is appropriate to sustain the health of the wetland and to ensure that peak flows associated with the increase in impervious area are suitably attenuated. See engineering and ecological assessment comments. A number of conditions are imposed to address this issue.

33. The level of earthworks is very significant. This would be reduced if the development site was reduced and would therefore reduce the impact of the change to the topography and the waterway.

Comment

Maximum cut and fill appears to be limited to 6m. A satisfactory stormwater management plan has been submitted with the application demonstrating compliance with Council engineering standards and development control plans.

34. We are also concerned about the extent of Civil works associated with the development occurring in close proximity to existing dwellings and pools etc for existing residences on Silkwood Road. (noise, dust, vibration from compaction, storm water flow etc)

Comment

A condition of consent is recommended requiring a Dilapidation Report prior to work commencing and following completion of civil works and the preparation of a construction management plan. Refer Condition Nos. 66, 67, 71 and 145.

35. Land is flood prone and will require extensive filling.

Comment

The subject land zoned for urban purposes is not flood prone.

Matters for Consideration

The proposed development has been assessed under the heads of consideration in Section 4.15 of the Environmental Planning and Assessment Act 1979 (referred to assessment report – Attachment 5). The proposal has been assessed as being generally compliant with the BLEP 2012, Council's DCP 2012 and relevant State Environmental Planning Policies. The assessment has identified the following key issues which are elaborated upon for Council's information and consideration.

Applicable Planning Instruments

Federal and State Acts

Commonwealth Environmental Protection and Biodiversity Conservation Act, 1999

Section 5.4 of the SEE addresses this Act in the following terms:

The Environmental Protection & Biodiversity Conservation (EPBC) Act (1999) states a person must not, without an approval under the Act, take an action that has or will have, or is likely to have, a significant impact on matter of National Environmental Significance (NES). These are assessed by JWA and summarised as follows:

- *Declared World Heritage Areas On or Near the Site: There are no declared World Heritage areas on, or within 10km, of the subject site.*
- *Declared Ramsar Wetlands On or Near the Site: There are no declared Ramsar wetlands on, or within 5km of the subject site.*
- *Commonwealth Listed Threatened Flora and Fauna Species: No Commonwealth Threatened fauna species have previously been recorded within the subject site.*

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Two (2) Commonwealth Threatened fauna species were considered possible occurrences based on the availability of suitable habitat.

*One (1) Commonwealth Threatened flora species were recorded on the site, Hairy joint grass (*Arthraxon hispidus*). An additional EPBC listed species, Rough-shelled bus (*Macadamia tetraphylla*) has been recorded on a property adjacent to the site. Both of these species are listed as Vulnerable under the EPBC Act.*

With the mitigation measures described above, including in particular the preparation of a Stormwater Management Plan, it is considered that the proposed development will not result in any significant impacts on any of the EPBC listed Threatened species recorded from or considered possible occurrences on the site.

As such, no significant impacts to threatened flora or fauna or their habitat is expected as a result of the proposed development.

- *Listed Ecological Communities: No ecological community currently listed in the EPBC Act (1999) is considered to occur in the site.*
- *Listed Migratory Species On or Near the Site: No migratory species were observed on the site. It is considered that although a number of listed migratory species are known or likely to occur occasionally in the site, no area of important habitat occurs in the site for listed migratory species. No significant impacts to listed migratory species are expected as a result of the proposed development.*

On the basis of the above assessment (and in greater detail in Appendix H), it is considered that Commonwealth referral is not required for the proposed development.

Comment

See comments under Ecological Assessment later in this report.

NSW Biodiversity Conservation Act 2016

Section 5.2 of the SEE addresses this Act in the following terms:

The Biodiversity Conservation Act 2016 (BC Act) commenced on the 25th August 2017 to provide environmental protection and ecologically sustainable development. It should be noted that the NSW Government established transitional arrangements related to biodiversity assessment for the various categories of development assessment that were underway at the time or had already been made. These transitional arrangements are set out in the Biodiversity Conservation (Savings and Transitional) Regulation (BCST Regs) 2017 and effectively postponed the provisions of the BC Act until 25th February 2018.

In this regard, the subject application DA 2018/51 was lodged on 2 February 2018, and therefore in accordance with the BCST Regs, the previous legislation – the TSC Act 1995 – will apply.

Comment

See comments under Ecological Assessment later in this report.

NSW Threatened Species Conservation Act (1995)

Section 5.3 of the SEE addresses this Act in the following terms:

5.3.1. Threatened flora

One (1) Threatened flora species (*Arthraxon hispidus* – Hairy joint grass (HJG) has been recorded on the subject site. Recent targeted surveys for HJG were completed in May 2018 and May 2019. The results of the May 2019 survey found six occurrences of HJG. All of the recorded locations consisted of multiple HJG stems occurring within an overall area of approximately 600sqm in total, with each clump covering 1-3 sqm. All of these HJG stems occur within the proposed Wetland Management Area (i.e outside of the proposed development footprint).

The threatened species Rough-shelled bush nut (*Macadamia tetraphylla*) has been recorded from previous studies by JWA as occurring on a site adjacent to the subject site.

On the basis of the assessments undertaken by JWA, it is considered that the proposed development is unlikely to result in any significant impacts on Threatened flora species recorded on or adjacent to the subject site. Therefore, a Species Impact Statement (SIS) is not required for threatened flora occurring in the site.

5.3.2. Littoral Rainforest - Endangered Ecological Communities (EECs)

A Littoral Rainforest tree survey was completed on 25th October 2019 by JWA to map the extent of the Littoral Rainforest community on the site. A second site inspection was completed on the 15th November 2019 to identify individual trees, and delineate the margins between regrowth/highly disturbed and better quality areas of the community (as shown in Figure 8).

With consideration of this updated survey data, a revised extent of Littoral Rainforest was established and assessed in accordance with Section 5A of the Threatened Species Conservation Act (1995) (TSC Act) and in accordance with the Threatened Species Test of Significance Guidelines (OEH 2018).

Figure 8 – Littoral Rainforest EEC Tree Survey



Source: JWA

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The revised extent of the Littoral rainforest EEC on the subject site shown in Figure 8 includes:

- Community 1 – Mid-high woodland (*Banksia integrifolia*)
 - Community 1a: Considered better quality areas and relatively disturbed, covering a total area of approximately 0.14ha.
 - Community 1b: Considered regrowth/highly disturbed area covering a total area of approximately 0.58ha.

The vegetation community is considered to best fit with PCT 1536 – Tuckeroo – Lilly Pilly – Coast *Banksia littoral* rainforest. This community has been disturbed by grazing and weed infestations. The mid-high woodland community on the subject site contains some species that are representative of the EEC – Littoral rainforest in the NSW North Coast, Sydney Basin and South-East Corner bioregions, as listed within schedules of the NSW TSC Act (1995). Advice from the former OEH after a site inspection on the 6th June 2019 has confirmed that, in their opinion, vegetation communities 1a and 1b appears to be representative of the Littoral rainforest Endangered Ecological Community (EEC).

The small size and degraded nature of this vegetation excludes it from meeting relevant criteria for representing the Commonwealth listed TEC Littoral rainforest and coastal vine thickets of Eastern Australia. The conservation value of this community is reduced by its small size, disturbance by cattle, and high level of degradation by weed species and other edge effects.

Based on the above, a total of 0.72 ha of Littoral rainforest EEC exists on the subject site and 0.08 ha will be impacted by the proposed development. This equates to 11% of the Littoral rainforest community occurring on the subject site and approximately <3% of the potential Littoral rainforest EEC identified within approximately 1.2km of the EEC patch on the subject site.

JWA concludes the highly degraded condition of this vegetation patch and its presence in the landscape suggests that the degraded patch of Littoral rainforest EEC is considered to make minimal contribution to the extent of this vegetation type in the locality and the 3% loss of vegetation extent is an overestimate when considering these limiting factors. For this reason, the removal of part of the regrowth area of Littoral rainforest EEC is considered highly unlikely to place the local occurrence of this EEC at risk of extinction.

Given the above, it is determined that the proposed development will not adversely effect the extent of the ecological community nor adversely modify the composition of the ecological community such that is local occurrence is likely to be placed at risk of extinction. On the basis of the assessments undertaken by JWA it is considered that a Species Impact Statement (SIS) is not required for degraded EEC vegetation occurring in the study area.

5.3.3. Freshwater Wetland - Endangered Ecological Communities (EECs)

As detailed in the Ecological Assessment prepared by JWA in Appendix H, with consideration of the results of the soil analysis (completed by Gilbert and Sutherland (Appendix I)) and data collected during vegetation surveys in May 2018 and May 2019, the community of Freshwater Wetland was divided into the following sub-categories:

- Community 4a: This community consists of the better-quality portions of Community 4. This community occurs in the lower-lying portions of Community 4 and contains the highest portion of native wetland species and the lowest incursion of weed species.
- Community 4b: Highly disturbed version of Community 4a with only scattered occurrences of native wetland species, but extensive incursion of pasture grass species.

- *Community 4c: Highly disturbed version of Community 4a with extensive incursion of pasture grass species and occurring outside of the mapped wetland soil extents.*

Community 4a and Community 4b are considered to be representative of the Freshwater Wetland Endangered Ecological Community (EEC). These highly degraded areas have been included within the extent of the Freshwater Wetland EEC for the purposes of this assessment as a precautionary measure as requested by OEH.

Written advice received from OEH (dated 19th June 2019) has determined that the local occurrence of the Freshwater Wetland EEC is likely confined to the subject site. While some genetic exchange may occur through bird dispersal, drainage and land filling associated with adjoining downstream residential development is likely to restrict genetic exchange for aquatic species.

JWA has identified a total of 2.11 ha of Freshwater Wetland EEC exists on the subject site – relatively intact wetland vegetation considered more consistent with the Freshwater Wetland EEC descriptions cover an area of approximately 0.72 ha (Community 4a), whilst highly degraded vegetation (Community 4b) covers the remaining 1.39 ha. Of this wetland vegetation, it is estimated that approximately 0.53 ha (25%) will be impacted by the proposed development. However, approximately 0.13ha of the expected impacts are temporary in nature and will be rehabilitated following construction in accordance with the proposed Wetland Management Plan, leaving a total long-term impact of 0.4 ha (19%). Of the 0.4 ha of long term impact, the majority (0.36 ha) will occur within the fringing highly degraded wetland vegetation. 94% of the better-quality Freshwater Wetland EEC vegetation will be free of both direct and temporary impacts.

It is noted that Ballina Shire Council has requested the construction of an additional drainage swale and associated access track in the north-western portion of the Freshwater Wetland EEC area to assist with drainage on adjoining land. These works will result in a further 0.08ha of temporary impacts and 0.10 ha of long term impacts. As the long term impacts are not associated with the proposed development, these impacts have been excluded from this assessment of significance and will need to be addressed by Ballina Shire Council.

The long-term removal of 0.4ha of this Freshwater Wetland EEC community as a result of the proposed development, or 6% of the better quality Freshwater Wetland EEC vegetation, is not considered likely to place this EEC on the subject site at risk of extinction. A Hydrological Regime Assessment (Appendix I) has been completed and demonstrates that, with the incorporation of mitigation measures, the proposed development will not adversely alter the hydrological regime of the retained wetland/Groundwater Dependent Ecosystem (GDE) and the wetland can be maintained.

Given the above, it is determined that the proposed development will not adversely effect the extent of the ecological community nor adversely modify the composition of the ecological community such that is local occurrence (i.e occurrence on the subject site) is likely to be placed at risk of extinction. Nor will the development result in an adverse effect on any critical habitats listed under the Threatened Species Conservation Act (1995).

On the basis of the above assessment, it is considered unlikely that there will be any significant impacts on the Freshwater Wetland EEC as a result of the proposed development. The assessment of Key Threatening Processes (KTP) also concluded that with the implementation of the recommended management actions, the proposed development will not increase the impact of any relevant KTPs. It is therefore concluded that a Species Impact Statement (SIS) is not required.

5.3.4. Fauna

No threatened fauna species have been recorded within the study area. Based on an assessment of available habitat, five (5) threatened fauna species are considered to possibly occur within the study area over time:

- Black-necked stork (*Ephippiorhynchus asiaticus*)
- Grey-headed flying fox (*Pteropus poliocephalus*)
- Australian painted snipe (*Rostratula australis*)
- Common blossom bat (*Syconycteris australis*)
- Eastern grass owl (*Tyto longimembris*)

On the basis of the assessments undertaken by JWA it is considered that a Species Impact Statement (SIS) is not required for threatened fauna species considered a possible occurrence in the study area.

Comment

See comments under Ecological Assessment later in this report.

NSW Roads Act 1993

Approval under this Section 138 of this Act will be required for any construction works within the existing road reserves. The Application proposes the construction of two access streets onto Henderson Lane. No direct vehicular access is proposed to Hutley Drive.

In accordance with normal practice, a condition of consent is recommended requiring the applicant to obtain a Section 138 Approval prior to the issue of a Subdivision Works Certificate.

Draft Environmental Planning Instruments

Ballina Shire Council has prepared Planning Proposal No. 18/004 (September 2019, Version 4 Exhibition).

Council's Strategic Planners advised on 29 June 2016 as follows:

"There are ongoing and interconnected issues between the DA and the planning proposal, particularly in relation to ecological and drainage issues. It is critical to resolve these issues through the DA process prior to finalising the planning proposal.

Advice to date in response to government agency consultation includes an objection from the NSW Biodiversity and Conservation Division (formerly OEH) dated 13 November 2019, and comments from DPI Agriculture dated 4 November 2019.

The proponent, Richard Barry, has since advised that an amended ecological assessment report was submitted in February 2020 in respect to DA 2018/51. I have had brief discussions with Ian Gaskell about the amended report but am unable to confirm if this satisfies Council's issues with the DA, which if it does not, would also presumably not satisfy the BCD's objection to the planning proposal. This matter will require clarification for both the DA and the planning proposal.

The Department of Planning, Infrastructure and Environment have granted a nine month extension of time to complete the LEP amendment, which now must be completed by 12 February 2021."

See comments under Ecological Assessment later in the report.

The proposed development does not rely on the Planning Proposal for permissibility.

State Environmental Planning Policies

SEPP (Infrastructure) 2007

Clause 102 of the Policy is in the following terms:

“102 Impact of road noise or vibration on non-road development

- (1) *This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration—*
 - (a) *residential accommodation,*
 - (b) *a place of public worship,*
 - (c) *a hospital,*
 - (d) *an educational establishment or centre-based child care facility.*
- (2) *Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*
- (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*
 - (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*
- (4) *In this clause, **freeway, tollway** and **transitway** have the same meanings as they have in the [Roads Act 1993](#).”*

In relation to Clause 102, the Applicant has provided the following information:

Road traffic noise criterion for new residential developments is specified in the State Environment Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). Therefore, the current NSW Road Noise Policy (RNP) does not provide noise goals for new residential developments.

Infrastructure SEPP requirements are mandatory only for proposed noise sensitive developments near highly trafficked roads (i.e. roads with annual average daily traffic volume (AADT) of more than 40,000 vehicles. Whilst this development does not front a road corridor with AADT of more than 40,000 vehicles, the design advice offered by the Infrastructure SEPP has been considered useful by CRG Acoustics (Appendix L) when designing noise sensitive developments near other road uses such as North Creek Road, Henderson Lane and The Coast Road.

The internal noise goals specified in the Infrastructure SEPP (and also Section 3.22.3 of Ballina Shire Council Development Control Plan 2012) are as follows:

- (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*

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- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

Given that the SEPP does not provide a specific external noise criterion (for assessment of building facades, outdoor recreation areas and the application of acoustic barriers), CRG adopted the external criterion from the RNP of 60 dB(A) Leq 15hr and 55 dB(A) Leq 9hr for “existing residences affected by noise from redevelopment of existing freeway / arterial / sub-arterial roads”. This adopted external criterion has been used to assess acoustic barrier treatments, and the extent of residential lots that will require additional acoustic dwelling assessments for determining upgraded building shell treatments.

The report prepared by CRG assesses two road noise modelling scenarios as follows:

- Scenario 1 – No acoustic barrier treatments and reliance of upgraded acoustic building shell treatments at noise affected lots
- Scenario 2 – Construction of acoustic barriers (refer to Appendix L) to exclude the requirement of building shell treatments at ground floor level building facades). First floor level dwellings (if constructed) would require building shell treatments at noise affected lots.

Proposed lots which are predicted to have road noise impacts above the adopted external noise criterion of 60 dB(A) Leq 15hr and / or 55 dB(A) Leq 9hr are as follows:

- **Ground (No Acoustic Barrier Scenario):** Lots 1 to 19, 25, and Superlots 10, 106 to 108.
- **First Floor (if constructed):** Lots 1 to 20, 25 to 37, 40, 42, 44, 46, and Superlots 104, 106 to 108.

To achieve the internal noise criterion at future dwellings on the noise affected habitable lots, CRG recommend that additional noise assessments be conducted once building plans are finalised.

In accordance with the requirements of the Infrastructure SEPP, Ballina Shire Council Development Control Plan and the RNP, this proposal considers the implementation of acoustic building shell treatments (i.e. upgraded glazing, external façade/roof treatment) to dwellings affected by road noise as a reasonable noise mitigation measure. This measure is considered a desirable alternative to acoustic walls, which are out of keeping with the surrounding area, would fail to respond to the topography of the site, and create poor amenity.

Comment

A number of submissions raise objections to any proposed acoustic fence adjacent to North Creek Road because of adverse visual impacts and loss of views. In the circumstances, acoustic treatment of future dwellings as proposed by the applicant is considered to be the better option. Refer condition 141.

Clause 104 of the Policy is in the following terms:

104 Traffic-generating development

- (1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves—
 - (a) new premises of the relevant size or capacity, or
 - (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.
- (2) In this clause, **relevant size or capacity** means—

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- (a) *in relation to development on a site that has direct vehicular or pedestrian access to any road (except as provided by paragraph (b))—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
 - (b) *in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*
- (2A) *A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has—*
- (a) *given written notice of the intention to carry out the development to RMS in relation to the development, and*
 - (b) *taken into consideration any response to the notice that is received from RMS within 21 days after the notice is given.*
- (3) *Before determining a development application for development to which this clause applies, the consent authority must—*
- (a) *give written notice of the application to RMS within 7 days after the application is made, and*
 - (b) *take into consideration—*
 - (i) *any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, RMS advises that it will not be making a submission), and*
 - (ii) *the accessibility of the site concerned, including—*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
 - (iii) *any potential traffic safety, road congestion or parking implications of the development.*
- (4) *The consent authority must give RMS a copy of the determination of the application within 7 days after the determination is made.*

Comment

North Creek Road is not a classified road and in any case, the intersection of proposed Road 5 and Henderson Lane is more than 90m from North Creek Road. Therefore, referral of the Application to Transport for NSW (TfNSW) is not required.

State Environmental Planning Policy No. 14 – Coastal Wetlands

Section 5.7 of the SEE addresses this SEPP in the following terms:

State Environmental Planning Policy No.14 Coastal Wetlands was repealed upon commencement of State Environmental Planning Policy (Coastal Management) 2018 on 3 April 2018. Notwithstanding, SEPP 14 remains the relevant environmental planning instrument in accordance with the transitional saving provisions of the Coastal Management SEPP.

State protected wetlands are identified within 10km of the site. However, there are no coastal wetlands mapped within the boundary of the site. As such, this proposal does not include further assessment of SEPP No.14.

Comment

Council Officers concur with the applicant's assessment of SEPP14.

State Environmental Planning Policy No. 26 – Littoral Rainforest

Section 5.8 of the SEE addresses this SEPP in the following terms:

State Environmental Planning Policy No.26 Littoral Rainforest was repealed upon commencement of State Environmental Planning Policy (Coastal Management) 2018 on 3 April 2018. Notwithstanding, SEPP 26 remains the relevant environmental planning instrument in accordance with the transitional saving provisions of the Coastal Management SEPP.

Littoral Rainforests are identified within the locality of the site and detailed site surveys have identified communities representative of Littoral Rainforest (refer to Section 5.3). However, the SEPP does not map Littoral Rainforest as being within the boundary of the site. As such, this proposal does not include further assessment of SEPP No.26. Littoral Rainforest.

Comment

The subject land is approximately 200m from the littoral rainforest located to the east of the subject land and therefore the Policy is not applicable to this development proposal.

State Environmental Planning Policy (Coastal Management) 2018

Section 5.9 of the SEE addresses this SEPP in the following terms:

State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone. The Coastal Management SEPP consolidated the now repealed SEPP 14, SEPP 26 and SEPP 71 assessed in this SEE.

Notwithstanding, the Savings and Transitional Provisions under clause 21 of the Coastal Management SEPP identifies it does not apply to this development application as stated:

- (1) The former planning provisions continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy in relation to land to which this Policy applies.*

DA 2018/51 was lodged prior to the commencement of the Coastal Management SEPP, and therefore it is applicable to continue assessment of this application against the provisions of the repealed SEPP 14, SEPP 26 and SEPP 71, and repealed clause 5.5 of BLEP 2012.

Comment

State Environmental Planning Policies 14, 26 and 71 were repealed on 3 April 2018 and replaced by State Environmental Planning Policy (Coastal Management) 2018 which came into force on the same date. DA2018/51 was lodged on 2 February 2018 and therefore the Policy does not apply to this Development Application.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

Section 5.10 of the SEE addresses this SEPP in the following terms:

The site is located in the Ballina LGA, which is listed under Schedule 1 of the SEPP. As such, this SEPP is applicable.

JWA has undertaken a site assessment in accordance with the SEPP, to determine the likelihood of the site providing a habitat for Koalas. The assessment by JWA is summarised in the following table:

Table 5 – Koala Habitat Protection Assessment

Site Assessment Criteria	Comments
<p>1. Does the policy apply? <i>Is the landholding to which the DA applies greater than 1 hectare in area?</i></p>	Yes
<p>2. Is the land potential Koala habitat? <i>Does the site contain areas of native vegetation where the trees of types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component?</i></p>	No. The site does not contain any Koala food trees.
<p>3. Is there core Koala habitat on the subject land?</p>	The site does not support core Koala habitat.
<p>4. Is there a requirement for the preparation of a Plan of Management for identified core Koala habitat?</p>	

As such, the site does not pose any potential impact on Koala habitats.

Comment

The applicant’s comments are concurred with.

State Environmental Planning Policy (Koala Habitat Protection) 2019

This Policy came into force on 1 March 2020. The Development Application was lodged on 2 February 2018 and therefore this Policy does not apply.

SEPP 55 – Remediation of Land

Section 5.11 of the SEE addresses this SEPP in the following terms:

The objectives of State Environmental Planning Policy – No.55 – Remediation of Land (SEPP 55) include the promotion of remediation of contaminated land for the purpose of reducing the risk to human health or another aspect of the environment. The consent authority must be satisfied the land is suitable for the purpose of the proposed development.

As part of the rezoning process for the site, a Phase 1 Site Contamination Assessment was undertaken by Coffey Geotechnics in 2013. Soil samples were collected to analyse for contaminants. All analysed samples returned results below the Soil Investigation Levels (SIL) identified in Column 1 of the Table ‘Soil Investigation Levels for Urban Redevelopment Sites in NSW’ (NSW DEC, 2006). Therefore, the report concluded no further assessment of land contamination was required prior to rezoning or at subdivision stage. This report is attached in Appendix G.

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To ensure the findings of this report remain applicable, Coffey undertook a site walkover in October 2017 and reviewed the 2013 report. Coffey confirmed the findings of the 2013 report remain applicable and recommendations for activities to remediate landslide should include:

- Removal of landslide material to a sound foundation.
- Installation of subsoil drainage.
- Replacement of the volume using structural (controlled) that has been placed, tested and documented as per the guidelines in AS3798.

Coffey do not identify any changes to the site regarding contamination, and recommend that any unexpected finds protocol be implemented, including a simple statement in the Construction Management Plan or equivalent document.

Based on the above, the proposal is considered to be in keeping with the requirements of SEPP 55 and the site is suitable for residential development.

Comment

Council's Environmental Health Unit has advised as follows:

"The assessment of soil contamination undertaken was appropriate for a preliminary screening investigation, The Phase 1 Assessment appears to have been undertaken in a diligent and thorough manner. The assessment concludes that a further Phase 2 Site Contamination Assessment is not required for this site at this stage.

The limitations of a Phase 1 Assessment is that the presence of buried contaminants cannot be excluded from potentially existing on the site. Therefore, the findings of the Phase 1 Site Contamination assessment are accepted however a condition will be included to ensure that in the event of contaminated matter or soils being discovered during the development of this parcel, they must be reported to Council and appropriate removal or remediation must be undertaken. The site is not identified as Acid Sulfate soils on Council mapping system."

State Environmental Planning Policy No.64 – Advertising and Signage

Section 5.12 of the SEE addresses this SEPP in the following terms:

State Environmental Planning Policy No.64 – Advertising and Signage (SEPP 64) aims to ensure signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of a high-quality design and finish.

This development application includes proposed temporary signage which is ancillary to the development and solely for the purpose of real estate signage directly associated with the development of the site. Clause 8 and Clause 13 of SEPP 64 specify that consent cannot be granted to signage unless the consent authority is satisfied that the proposed has been designed to satisfy the provisions of Schedule 1. Accordingly, an assessment of the proposed signage against the relevant provisions of Schedule 1 within SEPP 64 has been undertaken below in the following Table.

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Table – SEPP 64 Compliance Table

Control	Proposal	Compliance
1 - Character of the Area		
<ul style="list-style-type: none"> • Is the proposal compatible with the character of the area or locality in which it is proposed to be located? • Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? 	<ul style="list-style-type: none"> • The proposed signs are temporary in nature and comparable with the current and future residential character of the locality; the signs promote the future residential land release at the site (subject to DA approval). • The design and scale of each proposed sign is comparable with existing land release advertising signs throughout the LGA. 	YES
2 - Special Areas		
<ul style="list-style-type: none"> • Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? 	<ul style="list-style-type: none"> • The proposed signage is not illuminated and has been specifically designed with inoffensive colours, images and text to ensure it does not detract from the amenity or visual quality of environmentally sensitive areas, natural conservation areas, open space areas, waterways, rural landscapes or residential areas. • The proposed signage will temporarily activate the North Creek Road site frontage and be informative to the community. 	YES
3 - Views and Vistas		
<ul style="list-style-type: none"> • Does the proposal obscure or compromise important views? • Does the proposal dominate the skyline and reduce the quality of vistas? • Does the proposal respect the viewing rights of other advertisers? 	<ul style="list-style-type: none"> • The proposal does not obscure or comprise important views, including water views. Surrounding neighbours will experience negligible view loss by the proposed signs. • The proposed signs are primarily located at eye level and will in no way dominate the skyline. • Nearby residential dwellings are elevated above the site and will have minimal impact on views across the site. • Each proposed sign is inoffensive, unobtrusive and sympathetic against surrounding advertisements within Lennox Head. 	
4 - Streetscape, Setting or Landscape		
<ul style="list-style-type: none"> • Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? • Does the proposal contribute to the visual interest of the 	<ul style="list-style-type: none"> • The scale, form and proportion of the proposed signage respects the sites location and visual appearance. • The proposal will contribute to the visual amenity of the site by temporarily activating the North Creek Road site frontage. 	

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Control	Proposal	Compliance
<p>streetscape, setting or landscape?</p> <ul style="list-style-type: none"> • Does the proposal reduce clutter by rationalising and simplifying existing advertising? • Does the proposal screen unsightliness? • Does the proposal protrude above buildings, structures or tree canopies in the area or locality? • Does the proposal require ongoing vegetation management? 	<ul style="list-style-type: none"> • The site does not contain existing advertising. • No. The proposed signage is visually interesting in its design. • No. The proposed signage has been appropriately placed at the site and designed to ensure it does not generally protrude above surrounding buildings, structures, powerlines and tree canopies. • No. No vegetation is proposed as part of the temporary signage. 	
5 - Site and Building		
<ul style="list-style-type: none"> • Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? • Does the proposal respect important features of the site or building, or both? 	<ul style="list-style-type: none"> • The proposed signage has been appropriately designed to ensure it is not of an unsightly bulk, scale or form. The signage is negligible when compared against the total size of the site. • The proposed signage will visually enhance the site during construction. 	
<ul style="list-style-type: none"> • Does the proposal show innovation and imagination in its relationship to the site or building, or both? 	<ul style="list-style-type: none"> • The proposal shows innovation and imagination, as the design of the signage conveys a clear message to the viewer whilst being visually interesting. 	
6 - Associated Devices and Logos with Advertisements and Advertising Structures		
<ul style="list-style-type: none"> • Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? 	<ul style="list-style-type: none"> • None of the signs contain any safety devices, platforms or lighting devices. • Logos displaying the future development at the site and affiliated companies are proposed to be located on each sign. These logos are minor in scale and ancillary to the wider content displayed. • The logos will increasingly inform passers-by of the future development to be contained to the site. 	
7 – Illumination		
<p>No illumination is proposed.</p>	<p>Accordingly, the following assessment criteria does not apply.</p>	<p>N/A</p>
8 - Safety		

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Control	Proposal	Compliance
<ul style="list-style-type: none"> • <i>Would the proposal reduce the safety for any public road?</i> • <i>Would the proposal reduce the safety for pedestrians or bicyclists?</i> • <i>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</i> 	<ul style="list-style-type: none"> • <i>The proposed signage is unilluminated, non-digital, unobtrusive and setback from the road. Accordingly, the temporary signage will not risk passing drivers, pedestrians or cyclists.</i> • <i>The proposed signage is to be located at the site and will not obscure sightlines from public areas. Accordingly, the proposal will not reduce public safety.</i> 	

Considering the above table, the proposed temporary signage is consistent with the aims of SEPP 64.

Comment

The Application Plans (see Attachment 2) propose two temporary real estate signs within the property as follows:

Sign A

Located adjacent to the junction of Hutley Drive, North Creek Road, the Coast Road and Byron Bay Road. The sign has a display area of 10m², an overall height of 4m and it is 2m from the underside of the sign to ground level.

Sign B

Located to the north of the reservoir with the same dimensions as Sign A.

Given the size and location of the proposed signs, they will inevitably have an impact on the landscape and scenic quality of the locality.

However, as they are temporary, non-illuminated and non-digital and ancillary to the proposed development, they are considered to be acceptable subject to a condition requiring the sign to be removed not later than 2 years after the date on which they are erected.

Clause 10 of the Policy prohibits display of an advertisement on land in a residential zone. The subject land is zoned R2 Low Density Residential and R3 Medium Density Residential.

However, the applicant submits that the signs are ancillary to the dominant purpose, being a residential estate (dwellings). It is considered that the temporary signs could be appropriately characterized as development for the purposes of a residential estate (dwellings), which is permissible, with development consent, in the R1 and R3 zones. In this case, signs would be permissible, with development consent, notwithstanding Clause 10 of SEPP64.

In summary, it is considered that the signs are a necessary element of the development and therefore, subject to an appropriate condition limiting their installation to 2 years from the date of installation, the signs are satisfactory on merit. Refer Condition No. 144.

State Environmental Planning Policy No. 71 – Coastal Protection

Section 5.13 of the SEE addresses this SEPP in the following terms:

State Environmental Planning Policy No.71 – Coastal Protection (SEPP 71) was repealed upon commencement of State Environmental Planning Policy (Coastal Management) 2018 on 3 April 2018. Notwithstanding, SEPP 71 remains the relevant environmental planning instrument in accordance with the transitional saving provisions of the Coastal Management State Environmental Planning Policy, as the DA was lodged on 2 March 2018.

State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) aims to protect, manage and preserve the natural, cultural and recreational attributes of the New South Wales coast, and the associated amenity of the coastal foreshore.

The site is identified as located within the area mapped ‘Coastal Zone’ under SEPP 71, as shown below in Figure 9.

Figure 9 – Subject Site Located Within SEPP71 – Coastal Zone



Clause 7(b) of SEPP 71 identifies matters for consideration set out in Clause 8 are
 (b) To be taken into account by a consent authority when it determines a development application to carry out development on land to which this Policy applies.

As such, the following table considers the matters for consideration set out in Clause 8 of SEPP 71.

Table 7 – Matters for consideration

Assessment Criteria	Comment
(a) The aims of this policy set out in Clause 2	<p>The proposed development is consistent with the aims of SEPP 71, in that the type and scale of development is appropriate for the location and is consistent with the surrounding area (predominantly low density residential).</p> <p>The site has not been identified as containing any cultural or heritage significance. Impacts on the natural setting have been considered, and measures have been made to manage the existing wetlands and associated biodiversity within the site.</p>

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Assessment Criteria	Comment
	<p><i>There are no impacts on public access to the coastal foreshores and the site is not identified as having any visual significance or within any significant view corridors.</i></p> <p><i>As such, the proposal is consistent with the aims of SEPP 71.</i></p>
<p><i>(b) Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved</i></p>	<p>Coastal foreshore means land with frontage to a beach, estuary, coastal lake, headland, cliff or rock platform. The site is not located with frontage to either of these land formations.</p> <p><i>Therefore, this provision is not applicable.</i></p> <p><i>However, the subdivision will provide pedestrian and cycle routes, providing greater active access through the wider area and to the nearby coastal foreshore.</i></p>
<p><i>(c) Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability</i></p>	<p><i>As noted above, not applicable.</i></p>
<p><i>(d) The suitability of development given its type, location and design and its relationship with the surrounding area</i></p>	<p><i>The proposed development is consistent with the surrounding residential area, and the zoning of the site for residential purposes. The subdivision has been designed to respond to the topography of the site and reserves the existing wetland for drainage purposes.</i></p>
<p><i>(e) Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore</i></p>	<p><i>The proposed development is located away from the coastal foreshore. The site is not identified as having any visual significance or view corridors. As such, there are no significant losses of views from a public place to the coastal foreshore.</i></p>
<p><i>(f) The scenic qualities of the New South Wales coast, and means to protect and improve these qualities</i></p>	<p><i>The proposed development will not have any detrimental impact on the scenic qualities of the New South Wales coast.</i></p>
<p><i>(g) Measures to conserve animals and plants, and their habitats</i></p>	<p><i>An Ecological Assessment has been undertaken by JWA. A Compensatory Habitat Plan has also been prepared to protect and embellish habitat for Hairy Joint Grass within the RU1 zoned land.</i></p> <p><i>An assessment against NSW Biodiversity Act (2016) and EPBC Act confirm the proposed development has no significant impact on threatened flora or fauna on site.</i></p>
<p><i>(h) Measures to conserve fish and marine vegetation, and their habitats</i></p>	<p><i>The proposed development will have no impact on fish, marine vegetation, or their habitats.</i></p>

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Assessment Criteria	Comment
<i>(i) Existing wildlife corridors and the impact of development on these corridors</i>	<i>The site is not mapped as being located within any existing wildlife corridors.</i>
<i>(j) The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards</i>	<i>The site is not located within the coastal foreshore, and therefore will have no impact, or be impacted by coastal processes or coastal hazards.</i>
<i>(k) Measures to reduce the potential for conflict between land-based and water-based coastal activities</i>	<i>The proposal is within an area of predominantly residential land use. The proposal is not expected to have any conflict with any coastal activities.</i>
<i>(l) Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals</i>	<i>The site is not identified as containing any Aboriginal artefacts, or having any indigenous heritage significance.</i>
<i>(m) Likely impacts of development on the water quality of coastal waterbodies</i>	<i>An appropriate stormwater management system adopting WSUD has been designed as part of the development, to ensure water quality discharging from the site. As such, there are no anticipated impacts on water quality of coastal waterbodies.</i>
<i>(n) The conservation and preservation of items of heritage, archaeological or historic significance</i>	<i>There are no heritage items or archaeological artefacts known on site.</i>
<i>(o) Only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities</i>	<i>The land has been rezoned by Council for the purposes of residential development. The site is within walking catchment of Lennox Head Local Centre, encouraging a compact town.</i>
<i>(p) Only in cases in which a development application in relation to proposed development is determined: i. The cumulative impacts of the proposed development on the environment ii. Measures to ensure that water and energy usage by the proposed development is efficient</i>	<i>The cumulative impacts of residential development on the site were first considered by Ballina Shire Council and Department of Planning and Environment during the rezoning of the site for residential purposes. It is considered that the environmental impacts of the proposed residential development minor, and acceptable. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) was introduced by the NSW Government to ensure homes are designed to use less potable water and emit fewer greenhouse gas emissions. BASIX sets minimum energy and water reduction targets for houses to achieve this goal. There are no physical dwellings proposed for construction as part of this application. BASIX assessment will be undertaken for each dwelling as part of future development.</i>

Clause 18 of SEPP71 states:

18 Master plan required before certain consents may be granted

- (1) A consent authority must not grant consent for:
- (a) subdivision of land within a residential zone, or a rural residential zone, if part or all of the land is in a sensitive coastal location, or
 - (b) subdivision of land within a residential zone that is not identified as a sensitive coastal location into:
 - (i) more than 25 lots, or
 - (ii) 25 lots or less, if the land proposed to be subdivided and any adjoining or neighbouring land in the same ownership could be subdivided into more than 25 lots, or
 - (c) subdivision of land within a rural residential zone that is not identified as a sensitive coastal location into more than 5 lots,
- unless:
- (d) the Minister has adopted a master plan for the land, including any adjoining or neighbouring land in the same ownership, as referred to in paragraph (b) (ii), or
 - (e) the Minister, after consulting the Natural Resources Commission, has, under subclause (2), waived the need for a master plan for the whole or a specified part of the land referred to in paragraph (d).
- (2) The Minister may waive the need for a master plan to be adopted because of the nature of the development concerned, the adequacy of other planning controls that apply to the proposed development or for other such reasons as the Minister considers sufficient.

Clause 18 provides tests to identify if a master plan is required to be endorsed by the Minister prior to a consent authority granting consent to a development application.

We refer to the test under Clause 18(1)(a) being whether the proposed development is located within a sensitive coastal location. We consider the proposal is not located within a sensitive coastal location (in accordance with the definition under SEPP 71).

Clause 18(1)(b) provides a threshold requiring any subdivision creating more than 25 residential lots, must have a master plan adopted by the Minister. The proposed development comprises subdivision to create approximately 99 residential lots. As such, in accordance with Clause 18(1)(b)(ii) and (d), a master plan is required to be adopted by the Minister.

Comment

Appendix O of the revised SEE contains a SEPP71 Master Plan Waiver issued by the DPIE on 12 February 2018.

In summary, subject to the imposition of appropriate conditions, the proposed development is not inconsistent with SEPP71.

State Environmental Planning Policy (State and Regional Development) 2011

State Environmental Planning Policy (State and Regional Development) 2011 nominates a range of developments for which the Minister is the consent authority or determination is to be made by Regional Panels depending on the class of development (type of use and value) and certain developments on specified sites.

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Clause 8 of the State Environmental Planning Policy identifies State Significant Development as development described in Schedules 1 or 2. The development is not caught by any of the provisions in Schedules 1 or 2.

Clause 20 of the State Environmental Planning Policy identifies Regional Development as development described in Schedule 7 of the Policy.

The proposed development is not caught by any elements described in Schedules 1, 2 or 7 of the Policy. In this case Ballina Shire Council is the Consent Authority and Determining Authority for this Development Application.

State Environmental Planning Policy (Primary Production and Rural Development) 2019

This Policy commenced on 28 February 2019. Clause 9 of the Policy provides that the policy does not apply to development applications lodged prior to 28 February 2019. DA 2018/51 was lodged in January 2018 and therefore the policy does not apply.

Ballina LEP 2012

Section 5.14 of the SEE addresses the relevant provisions of BLEP2012. The provisions are reproduced below together with comments.

Zoning (Clause 2.3)

Clause 2.3 - Zoning and Permissibility

Clause 2.3 of the Plan requires the consent authority to have regard to the objectives of the zone in assessment the Application. The site is subject to three land use zones, being R2 – Low Density Residential, R3 – Medium Density Residential, and RU1 – Primary Production. The following section addresses permissibility for each zone.

R2 – Low Density Residential

The majority of the proposed development comprises residential subdivision within the area of the site zoned R2 – Low density residential. This proposed land use is appropriately categorised as development for the purposes of dwelling houses and is permissible with consent within the R2 zone and consistent with the objectives of the R2 zone, which are as follows:

- To provide for the housing needs of the community within a low density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- To provide for development that meets the social and cultural needs of the community.*
- To encourage development that achieves the efficient use of resources such as energy and water.*

Comment

The proposed lots comply with the minimum lot size (600m²) and the project is not inconsistent with the R2 zone objectives.

In addition, a pocket park is proposed within the subdivision to provide additional amenity for local residents and will be dedicated to Council. The proposed use categorised as recreation area is an innominate use and considered permissible with consent.

The proposal will facilitate the construction of new houses with an appropriate density and character consistent with the surrounding residential area. The subdivision has high accessibility to the nearby Lennox Head Local Centre and is also in close proximity to open space.

R3 – Medium Density Residential

This application includes the creation of Lots 100 (4933m²), 101 (2406m²) and 120 which will be subject to future Development Applications. The subdivision of these super lots for medium density dwellings is a permissible use and consistent with the objectives of the zone, which are as follows:

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To provide development that is compatible with the character and amenity of the surrounding neighbourhood.*
- To encourage housing and infrastructure that supports the ageing population.*
- To provide for development that meets the social and cultural needs of the community.*
- To encourage development that achieves the efficient use of resources such as energy and water.*

The subdivision of these lots and construction of medium density dwellings will be subject to assessment under future development applications.

Lots 8 – 15 are mainly located within R3 zoned land, however Lots 8, 13 and 15 are partially within the R2 zoned land because of the irregular zone boundary.

Comment

The proposed lots comply with the minimum lot size (600m²) and are generally consistent with the zone objectives having regard to the irregular slope of the existing R2/R3 zone boundary.

**RU1 – Primary Production Land
Stormwater Drainage Works**

The objectives of the RU1 zone are as follows:

Zone RU1 Primary Production

1 Objectives of zone

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- To minimise the fragmentation and alienation of resource lands.*
- To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- To maintain the rural, cultural and landscape character of the locality.*
- To enable development that is compatible with the rural and environmental nature of the land.*

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- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

This application proposes stormwater drainage works (including stormwater basins) within the portion of the site zoned RU1 – Primary Production Land. In accordance with Clause 7.10 of BLEP, development for the purpose of “stormwater management systems” may be granted development consent on any land.

The proposed stormwater drainage infrastructure including detention basins and freshwater wetland provides appropriate detention and treatment of stormwater associated with the subdivision, prior to discharging from the site. The drainage infrastructure design has been designed in consultation with JWA and in response to findings and recommendations by the HJG Compensatory Habitat Plan. As such, the basins avoid the area of protected HJG.

The basin locations have also been fully considered by Mott Macdonald in terms of their location within RU1 land, and if there were alternative locations. Through the design process, it has been concluded the basins in their proposed location are the highest and best use for the following reasons:

- *The basins have been placed as an end of line treatment and therefore capture and treat the most catchment, reducing the overall site bypass.*
- *From a water quantity perspective, the site naturally flows to 2 outlets. The basins have been placed such that they are at the lowest surface level.*
- *The basins have been proposed in the flatter section of the site which aids constructability. There are some areas on the site [within the R2 zoned land] which would require much more cut and fill.*

It is noted that the site containing the wetlands were not recommended to be zoned for Environmental Protection during the rezoning of the site, or within the Lennox Head Structure Plan 2004. Further, there are no objectives of the RU1 zone identifying or restricting stormwater management systems, or strict environmental protection. As such, it is considered that there was no previous decision made to strictly prevent drainage works occurring within the proposed location.

Notwithstanding, the detailed design in consideration of the HJG Compensatory Habitat Plan does mean the proposed drainage infrastructure is consistent with the RU1 zone objective of development compatible with the rural and environmental nature of the land.

5.14.1.4. Ancillary Signage

The proposed signage within the R2 zoned land is a temporary use for the sole purpose of advertising the proposed subdivision, to facilitate the completion of the development.

Advertising structures are a prohibited use within R2 zoned land under BLEP 2012. However, the prohibition of advertising structures to facilitate residential development is considered an unintended consequence of the prohibition. The prohibition is to restrict the permanent erection of signage within residential land for advertising businesses unrelated to the site.

The proposed dominant use, characterised as residential development for the dominant purpose of dwelling houses is permitted with consent. Considering the integral nature of the signage as a function of residential development (being the dominant use), the proposed signage is therefore subordinate or subservient to the dominant purpose. To put it simply, if a component serves the dominant purpose, it is ancillary to that dominant purpose. As such, the proposed development application seeks consent for advertising signage, being two (2) billboard signs as ancillary to the development.

Planning Circular (PS 13-001) as released by the Department of Planning and Environment (DPE). This Planning Circular outlines several questions that should be considered in determining whether a use has features that are both ancillary and independent.

1. *Is the component going to serve the dominant purpose of the development or is it independent?*

Response: *The billboard advertising signage is ancillary. It will serve the dominant purpose by:*

- identifying and marketing the proposed subdivision, providing details on the progress of the development, and contact details.*
- Facilitating the sale of lots and the completion of residential subdivision of the site.*

2. *What is the amount of land to be used for a certain component, relative to the amount of land proposed to be used for other purposes? If the amount of land is relatively small, it is more likely to be ancillary.*

Response: *The proposed signage will occupy a very small area within the site adjacent to North Creek Road and therefore is consistent with this statement.*

3. *Evidence of a purpose that is inconsistent with the dominant purpose is likely to undermine a claim that a component is ancillary.*

Response: *The proposed signage is only for the purpose of advertising the proposed subdivision and would not exist without it. As such, the purpose is considered ancillary to the dominant use.*

4. *If the component is temporary, it is more likely to be ancillary; if it is regular (that is, will constitute an ongoing use for a long period of time), it is likely to be an independent use.*

Response: *The proposed signage is temporary and solely for the purpose of advertising the proposed subdivision. The signage will be removed once the signage is no longer required to advertise the sale of lots.*

5. *If the component goes beyond what is reasonably required in the circumstances for the development to implement the dominant purpose, it is likely to be an independent use (regardless of whether it has ancillary qualities).*

Response: *The proposed signage is a reasonable use for attracting and facilitating the sale of proposed residential lots within the site and is consistent with the sale of lots within other subdivision development in the LGA.*

6. *Related components of a development are likely to have an ancillary relationship, although this is not necessarily determinative of such a relationship.*

Response: *The proposed signage will occupy a very small area within two parts of the site adjacent to North Creek Road. Therefore, the proposed is consistent with this statement.*

7. *Related components of a development are likely to have an ancillary relationship, although this is not necessarily determinative of such a relationship.*

Response: *The ancillary use is located within the site and will only advertise the sale of the subdivision. The integral relationship between the subdivision of the site, and the advertising to facilitate the sale of created lots means it is appropriate to characterise the advertising as ancillary to the dominant purpose of dwelling houses, to be facilitated by this residential subdivision.*

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Considering the above, the proposed signage is permissible with consent.

Comment

See comments in relation to SEPP64.

Clause 4.1 - Minimum subdivision lot size

The Minimum Lot Size Map in BLEP 2012 indicates two (2) minimum lot size areas within the site. The minimum lot size for all residential zoned land is identified as "M" – 600sqm. The area zoned RU1 is identified as "AB2" – 400000 (40ha).

Comment

All proposed residential lots are 600sqm or greater and therefore comply with the minimum lot size standard in accordance with BLEP 2012. Further, all super lots subject to future development (excluding Lot 104) also comply with the minimum lot size.

Clause 4.2C – Exceptions to minimum subdivision lot sizes for split zones

The subject site legally referred to as Lot 1 DP 517111 consists of more than one zone, being primarily R2 and RU1 land. The RU1 zoned land has a minimum lot size of 40ha required under clause 4.1. The area of the original Lot 1 DP 517111 is less than 40ha and it is not possible for proposed Lot 104 to comply with this minimum lot size requirement.

Clause 4.2C of BLEP 2012 is identified as the mechanism by which the RU1 land can be subdivided with an area less than 40ha. This clause permits the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1 due to not meeting the minimum lot size.

Compliance with the provisions of Clause 4.2C is assessed in the following table:

Clause 4.2C assessment

Control	Comment	Compliance
(1) The objectives of this clause are as follows:		
(a) to permit the creation of lots that support urban development in planned urban growth areas,	The subject site is identified as a planned urban area in the Lennox Head Structure Plan	YES
(b) to provide for the subdivision of lots that are within more than one zone but cannot be subdivided under clause 4.1,	The subject site contains more than one zone. The RU1 zoned land has a minimum lot size of 40ha under Clause 4.1. This minimum lot size cannot be achieved when subdividing the rural land from the residential zoned land.	YES
(c) to ensure that the subdivision occurs in a manner that promotes suitable land uses and development.	Residential zoned land within the site will be subdivided for the purpose of constructing dwelling homes, which are a suitable use of the land. RU1 zoned land will be used predominantly for the retention of existing wetlands and the creation of drainage systems. These uses are permissible with consent within RU1 land.	YES

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Control	Comment	Compliance
<p>(2) This clause applies to each lot (an original lot) that contains:</p> <p>(a) land in a residential, business or industrial zone, and</p> <p>(b) land in Zone RU1 Primary Production or Zone RU2 Rural Landscape, or both.</p>	<p>The subject site contains more than one zone, comprising RU1 – Primary Production, R2 – Low density and R3 – Medium Density</p>	<p>YES</p>
<p>(3) Despite clause 4.1, development consent may be granted to subdivide an original lot to create other lots (the resulting lots) if:</p> <p>(a) one of the resulting lots will contain all of the land in Zone RU1 Primary Production or Zone RU2 Rural Landscape that was in the original lot, and</p> <p>(b) each of the other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.</p>	<p>Proposed Lot 104 contains all RU1 land and a small amount of excess R2 land.</p> <p>All other resulting lots created within the residential land meet the minimum lot size in accordance with clause 4.1 of BLEP 2012. I.e all R2 and R3 lots are greater than 600sqm.</p>	<p>YES</p> <p>YES</p>
<p>(4) Development consent may only be granted if the consent authority is satisfied that the lot to be created under subclause (3) (a):</p> <p>(a) will be created as a result of a subdivision of land for urban purposes involving land in a residential, commercial or industrial zone, and</p> <p>(b) the lot is suitable for environmental protection, environmental management or agriculture.</p>	<p>The proposed subdivision is for the orderly residential development in accordance with the zoning of the site and the strategic planning for Lennox Head.</p> <p>Super Lot 104 is suitable for the management of existing wetlands and new drainage systems for stormwater management.</p>	<p>YES</p> <p>YES</p>
<p>(5) If the area of land that would comprise the resulting lot created under subclause (3) (a) is of a size that is sufficient to allow the creation of more than one lot each of a size that is not less than the minimum size shown on the Lot Size Map in relation to that land, then not more than that number of lots may be created under subclause (3) (a).</p>	<p>The original size of Lot 1 DP 517111 is smaller than the 40ha minimum lot size for the RU1 zoned land.</p>	<p>N/A</p>

Comment

The creation of proposed Lot 104 having an area of 3.6776 hectares is not inconsistent with Clause 4.2C.

Ballina DCP 2012

Section 5.15 of the SEE addresses BDCP2012 in the following terms.

The *Ballina Shire Council Development Control Plan 2012* (BDCP) provides detailed planning controls for specific developments types and locations. Most relevant controls relate to character, streetscape and public domain works. An assessment against the relevant controls in the BDCP indicates that the development is generally consistent with the relevant requirements.

DEVELOPMENT CONTROL	COMMENTS/IS CONSISTENCY WITH THESE PROVISIONS ACHIEVED?
Chapter 2 – General and Environmental Considerations:	
3.3 – Natural Areas and Habitat	
Development that affects land that is shown on the ‘Natural Areas and Habitat Map’ and the ‘Wildlife Corridors Map’ are to be accompanied by an ecological assessment report prepared by an appropriately qualified and experienced professional.	Part of the north-eastern corner of the site is identified on the ‘Natural Areas and Habitat Map’ as being within the 50m natural areas and habitat buffer. Accordingly, an ecological assessment report has been prepared as part of this DA and is attached. Compliance achieved.
3.4 – Potentially Contaminated Land	
Development must be consistent with SEPP 55.	The proposal has been assessed against SEPP 55 within Section 5.11 of the SEE. A Phase 1 Site Contamination Assessment was undertaken during the rezoning process for the site. This has been provided as an appendix to this report along with a cover letter confirming the report remains accurate to the current site conditions. The report confirms the site is suitable for residential development. Compliance achieved.
3.5 – Land Slip/Geotechnical Hazard	
<ul style="list-style-type: none"> • Where there is potential for a development to result in or be impacted by landslide risks, a geotechnical report should be prepared to assess the proposals impact on potential landslide risk. • Ensure that development is designed to minimise risks associated with geotechnical hazards. 	The site falls steeply from east to west. Accordingly, both a Geotechnical Report and Landslip Assessment have been prepared as part of this DA and are attached at Appendix G of the SEE. These reports conclude that the proposal has been designed to minimise potential landslide and geotechnical risks, and that the site is suitable for residential subdivision. Compliance achieved.

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DEVELOPMENT CONTROL	COMMENTS/IS CONSISTENCY WITH THESE PROVISIONS ACHIEVED?
<p>3.6 – Mosquito Management</p>	
<p>Development on land identified as 'Elevated Lands' on the BDCP 'Mosquito Management Map' may require the provision of an entomological assessment that indicates whether there is likely to be a significant mosquito influence.</p>	<p>The site is identified on the 'Mosquito Management Map' as 'Elevated Land (above 10m contour)'. The site also includes low lying wetlands and proposed construction of detention basins within 100m of residential subdivision. However, the proposed detention basins are designed to prevent ponding water for more than 12 hours.</p> <p>A Mosquito Impact Assessment (Appendix J of the SEE) confirms the development will not be impacted by significant mosquito influence.</p> <p>Compliance achieved.</p>
<p>3.7 – Waste Management</p>	
<ul style="list-style-type: none"> • A Site Waste Minimisation and Management Plan (SWMMP) must be prepared and address waste management practices. • Waste should be disposed of in accordance with the relevant legislation and Council's collection and disposal services; and • Waste should be reused or recycled wherever possible. 	<ul style="list-style-type: none"> • A SWMMP has been prepared in accordance with BDCP and is provided in Appendix E of the SEE. • The SWMMP is in accordance with Council's standard waste management practises and the relevant standards. Measures will be put in place to ensure waste is reused or recycled wherever possible. <p>Compliance achieved.</p>
<p>3.9 – Stormwater Management</p>	
<ul style="list-style-type: none"> • The proposal must be designed to manage stormwater discharge in a matter that minimises flood damage and risk to people and property. • Stormwater must be appropriately managed so natural waterways and riparian zones are preserved. • Provide sustainable, low maintenance stormwater infrastructure. 	<ul style="list-style-type: none"> • A comprehensive stormwater management system is proposed to be constructed as part of the development to service future dwellings. This is detailed within the Stormwater Management Report attached at Appendix E of the SEE. • Existing flows to the wetland located at the north-west portion of the site will be maintained in a manner that minimises flood damage and risk to people and property. <p>Compliance achieved.</p>

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DEVELOPMENT CONTROL	COMMENTS/IS CONSISTENCY WITH THESE PROVISIONS ACHIEVED?
3.10 – Sediment and Erosion Control	
All soil erosion and sediment control measures must be designed, installed and maintained in accordance with <i>Managing Urban Stormwater – Soils and Construction</i> (the Blue Book).	A Sediment and Erosion Control Plan has been prepared as part of this DA and is attached at Appendix D of the SEE. The Plan confirms that proposed sediment and erosion control measures are in accordance with the Blue Book. Compliance achieved.
3.11 – Provision of Services	
Ensure adequate water, electricity, sewerage, drainage, road and telecommunication facilities are provided to service the proposed development.	A Services Report has been prepared as part of this DA and is attached at Appendix M of the SEE. The Report confirms that the proposal will provide adequate services to satisfactorily service the site and future residential development. The Northrop Servicing Plans detail the proposed infrastructure subject to this application. Compliance achieved.
3.18 – Protection of Foreshore and Public Open Space Areas	
<ul style="list-style-type: none"> • Public access to public open space and foreshore areas is to be maximised. • Proposed development should be designed to complement the landscape character and public use and enjoyment of adjoining foreshore areas, parks, bushland reserves and other public open spaces. 	<ul style="list-style-type: none"> • The site adjoins two existing public open spaces at 22 Silkwood Road, Lennox Head (west of the site) and Ocean Breeze Drive, Lennox Head (north of the site). The proposal has been designed to be considerate of these public open spaces. • The proposal will increase overall access to the adjoining northern public open space by providing north-south road/footpath connections through the site. These will increase overall site accessibility and allow people travelling along Henderson Lane to more easily access this public open space. <p>Compliance achieved.</p>

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DEVELOPMENT CONTROL	COMMENTS/IS CONSISTENCY WITH THESE PROVISIONS ACHIEVED?
3.19 – Car Parking and Access	
<p>The proposal must provide sufficient on-site car parking to adequately service the needs of the occupants, users, visitors, employees and service and delivery vehicles of a development.</p>	<p>The proposal seeks development consent for subdivision works and does not propose to construct any dwellings. Accordingly, the provision of parking spaces is not required as part of this DA. Notwithstanding, the standard width of local roads will provide on-street parking, and the DCP requirements for setbacks will provide off-street parking in front of garages. Proposed Road 7 has also been tested to ensure adequate street parking for visitors to future dwellings on R3 lots.</p>
3.22 – Road Noise Mitigation	
<p>Road noise shall be assessed in accordance with the criteria in the NSW Road Noise Policy (RNP).</p> <p>Development applications must assess options for feasible and reasonable road traffic noise mitigation measures where known or projected road traffic noise mitigation measures exceed the criteria specified in the RNP.</p>	<ul style="list-style-type: none"> • An Acoustic Assessment has been prepared by CRG Acoustics (Appendix L of the SEE) with two scenarios (being with an acoustic wall along the frontage of Henderson Lane and the future North Creek Road realignment, and without).
	<ul style="list-style-type: none"> • Modelling of the future traffic conditions in accordance with the noise criteria and the likely road noise generated has indicated a 0.3 to 0.8 dB increase from existing levels, which is unlikely to be detectable by the average person and is considered an acceptable outcome. • Nonetheless, an assessment was undertaken on mitigation options to achieve internal amenity for future habitable rooms. CRG has demonstrated the best outcome is for dwellings which are predicted to have road noise impacts are designed with acoustic building shell treatments (i.e. upgraded glazing, external walls/roof treatment) is the most reasonable and effective solution. Therefore, acoustic walls are considered unnecessary within the development and are not proposed. <p>Compliance achieved (See comments regarding public submissions, Issue 2).</p>

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DEVELOPMENT CONTROL	COMMENTS/IS CONSISTENCY WITH THESE PROVISIONS ACHIEVED?
Chapter 2a – Vegetation Management:	
3.1 – Development Consent Requirements applying to Urban Zones	
<p>Development consent is required for vegetation management works on land located within an urban zone when the vegetation management works will affect:</p> <ul style="list-style-type: none"> • Any tree (either native or non-native) with a height of 6 metres or greater; • Any tree of the species <i>Pandanus tectorius</i> (Screw Pine) with a height of 3 metres or greater and located in the localities of East Ballina, Lennox Head or Skennars Head; • Any vegetation located on land identified as Significant Urban Bushland on the Significant Urban Bushland Map; and • Any tree with a height of 3 metres or greater located on land containing an item of Environmental Heritage as specified in Schedule 5 of the BLEP. 	<ul style="list-style-type: none"> • To facilitate the proposal, vegetation is proposed to be removed from the site in accordance with Appendix H of the SEE. The removal of these trees is considered acceptable as: <ul style="list-style-type: none"> - The site is not marked on the BDCP 'Significant Urban Bushland Map'; - The landscape plan included at Appendix C of the SEE proposes to plant an extensive range of new tree and plant species at the site that are appropriate within a residential environment; and - An area of the site is proposed to be retained as a compensatory habitat area. • Potential impacts resulting from the removal of said vegetation at the site has been assessed in detail within the Ecological Assessment. <p>Compliance achieved.</p>
Chapter 3 – Urban Subdivision:	
3.2 – Major Subdivision Requirements	
<ul style="list-style-type: none"> • A vision/concept masterplan must be prepared and presented to Council's Subdivision Panel, prior to being formally proposed as part of a DA. • Proposed subdivision works should be generally designed to comply with the following relevant subdivision design standards: <p><u>Access:</u></p> <ul style="list-style-type: none"> - Maximum 400 metres walk from dwellings to neighbourhood recreation park or equivalent. - Clear, direct walk or cycle access from subdivision to neighbourhood centre. - 90% of all dwellings are within 400 metres of an existing or planned public transport stop. 	<ul style="list-style-type: none"> • The proposal has been designed to generally comply with Council's specified subdivision design standards. This has been addressed throughout the SEE and within each of the attached technical consultant reports. Key design considerations of the proposed subdivision plan comprise the following; <ul style="list-style-type: none"> - Provide a range of road/footpath connections throughout the site that allow for easy access to the Lennox Head local centre. - Existing R3 zoned land is located along existing and proposed roads.

DEVELOPMENT CONTROL	COMMENTS/IS CONSISTENCY WITH THESE PROVISIONS ACHIEVED?
<p><u>Dwelling Density:</u></p> <ul style="list-style-type: none"> - Suburban neighbourhood – average net residential density of at least 15 dwellings per hectare (unless prevented by topography or other constraints). - Higher density residential development is located in and around neighbourhood centres, along connector streets and within 400 metres of transit nodes. <p><u>Street Network:</u></p> <ul style="list-style-type: none"> - Grid pattern or modified grid responsive to site characteristics. - Where slope allows, orientation within 15 degrees of north-south or east-west. - Connector and main streets of centres are orientated to landmarks. - To minimise cut and fill, streets follow ridges, gullies, and/or are perpendicular to slope. <p><u>Streets:</u></p> <p>The street network should include:</p> <ul style="list-style-type: none"> - Neighbourhood streets within neighbourhoods; - Neighbourhood connector streets (approx. 800 metre grid) linking neighbourhoods; - Major connector streets linking groups of neighbourhoods; - Neighbourhood main streets in centres; and - Rear lanes. <p><u>Block Sizes:</u></p> <ul style="list-style-type: none"> - Length should be 100-200 metres. - Mid-block providing a pedestrian link when blocks are over 130 metres. - Depth should be 40-80 metres. <p><u>Urban Neighbourhood Lot Layout:</u></p> <ul style="list-style-type: none"> - Lots intended for mixed use or multiple residential uses take up entire street block or are located on highly accessible block ends, corner lots and lots with dual road frontage. - One lot type is not to dominate a street block. 	<ul style="list-style-type: none"> - Proposed subdivision layout and street pattern appropriately responds to the sites topography to minimise cut and fill. The proposed layout also allows for significant open space and habitat areas to be provided. - Includes a range of local neighbourhood streets that connect each proposed lot to the surrounding road network. - Provides a range of lots that are of varying sizes, shapes and forms in accordance with the requirements of the BDCP. Accordingly, the proposed subdivision plan does not contain one singular dominant lot type. <p>Compliance achieved.</p>

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DEVELOPMENT CONTROL	COMMENTS/IS CONSISTENCY WITH THESE PROVISIONS ACHIEVED?
Chapter 8 – Other Uses:	
3.4.3 – Development Controls (Signage)	
<ul style="list-style-type: none"> • Signage must be designed in accordance with the provisions of SEPP 64. • Signage located within residential zones must; <ul style="list-style-type: none"> - Not adversely impact on the amenity of residential neighbourhoods (considering noise, visual amenity and lighting impacts); - Be located wholly within the boundary of the property to which it applies; and - Be located unobtrusively so as to appear an integrated part of the building or landscape. • Signage must be securely fastened to the structure or building to which it is attached. 	<ul style="list-style-type: none"> • The proposed signage is temporary in nature and to be used for the purpose of marketing the proposed subdivision works. The signs have been assessed in detail against the provisions of SEPP 64 at Section 5.12 of the SEE. • The proposed signage is to be located along the site's North Creek Road frontage, opposite a row of dwellings. To minimise amenity impacts on these dwellings, the proposed signs have been designed to: <ul style="list-style-type: none"> - Be located at eye level to ensure they do not dominate the skyline or surrounding landscape;
	<ul style="list-style-type: none"> - Not be of an unsightly bulk, scale or form; and - Not contain lights or offensive colours, materials or text. • The proposed signs will be designed and constructed to suitably withstand strong winds. <p>Compliance achieved.</p>

Comment

In summary the proposed development is generally consistent with BDCP2012.

Comments from Government Agencies

NSW Office of Water / Natural Resources Access Regulator

The application was lodged as Integrated Development as it also requires approval from the NSW Office of Water (NRAR) under Sections 89, 90 and 91 of the Water Management Act 2000. On 29 March 2018 DPI Water issued GTAs under the Water Management Act in relation to the original Development Application. On 25 May 2020 NRAR advised that in relation to the amended Development Application the previously issued GTAs are adequate and remain current. A copy of the letters are attached to the draft Conditions of Consent.

Engineering Assessment

Based off the trip generation rates provided by the RMS it is anticipated that the revised development will produce an additional 905 vehicles per day and 95 vehicles per peak hour. All vehicular traffic from the development will gain access to the wider road network via Henderson Lane. Traffic could also use Silkwood Road/Hutley Drive.

With the Hutley Drive extension it is anticipated that traffic on Silkwood road has dropped to below previous levels (before the extension was constructed), even with the additional traffic loading from the subject development.

The traffic impact assessment made a number of recommendations regarding the development, including:-

1. The intersections of the new internal roads with Henderson Lane (roads 4 and 5) be sign controlled (Give way) intersections.

This is considered an unnecessary measure given that few existing residential streets intersecting North Creek Road or Hutley Drive current have give-way signs. If post development it is determined that these sign are required they can be provided then.

2. Henderson Lane be widened to provide a minimum 9m wide sealed carriageway from the road 4 intersection to North Creek Road. It is further recommended that only a portion of the cost of widening be attributed to this development, as it contributed only 24% of the potential maximum traffic volume.

A condition will be applied to the consent requiring the construction of kerb and gutter and associated stormwater infrastructure for the full property frontage of Henderson Lane connecting to the existing kerb and gutter and stormwater infrastructure to the west of the site. To allow for a total carriageway width of 11m and comply with the collector road standard. Refer Condition No. 15.

3. A design check shall be undertaken in Henderson Lane in the vicinity of the two proposed intersections to enable suitable access to the development for compliant service vehicle and bus access and egress.

In a response to a Council RFI (25/09/2018) – swept paths were provided for the Henderson Lane intersections. Whilst there swept paths were crude in nature in indicated a minor conflict it is considered that they were sufficient for demonstrating suitable access is achievable. Detailed swept paths to be reviewed at the Construction Certificate stage. This can be addressed by way of a condition.

4. Road 7 – parking shall be controlled (limited to one side only) to permit free movement of vehicles and the road be clearly sign posted as one way.

After discussion with the applicant it was agreed that given that lots 13 and 14 will have their primary frontage off Road 1 and not Road 7 Council would consider a reduced verge width down to 1m for the inner verge of Road 7 directly fronting these lots provided that:-

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- A minimum 3m verge is provided on the outer verge of Road 7 (fronting lots 7-12)
- A minimum road width of 6.5m is maintained

A condition will be applied to the consent reinforcing that road 7 will need to be designed and constructed as a 2 way road.

5. It is recommended that landscaping and signage which can potentially block visibility be kept clear of the sign lines at all intersections.

A condition will be applied to the consent to address this matter.

6. It is recommended that a lane line with turn arrows be provided to reflect the modelled scenario for Henderson Lane at the intersection with North Creek Road (refer to Figure 1 of the Ardill Payne and Partners response to Stage 1 RFI dated 28 August 2018).

A condition will be applied to the consent to address this matter

Flooding and Stormwater Management

Flooding

The site is not flood affected.

Stormwater Management

A Stormwater Management Report has been provided which is considered to be generally acceptable (report by Mott Macdonald Dated 20 January). This plan provides for two attenuation basins to ensure post development peak flows are sufficiently attenuated to pre-development flow rates in accordance with the DCP.

The plan includes a number of water quality treatment measures to ensure stormwater runoff pollutant loads are reduced in accordance with Council's DCP. These include two bioretention basins and a number of filtration swales internal to the development.

The applicant has advised they envisage the proposed stormwater bioretention basins as being temporary with further development on the residue lot necessitating the need to relocate these elsewhere on the site. On this basis the applicant has expressed reluctance to dedicate the areas of the basins as drainage reserve to Council.

From an operational perspective all trunk stormwater drainage infrastructure and associated overland flow paths need to be included within Council owned reserve to ensure the continued maintenance of these devices. Refer Condition No.9.

Water Supply Servicing

Both a potable and recycled reticulation system will need to be provided within the development. A servicing strategy has been provided which is generally acceptable.

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The reservoir inlet pipe encroaches on lots 17 and 18 and will need to be relocated. This may necessitate the provision of an easement over the northern boundary of lot 17.

The scour outlet for the reservoir will need to be connected to the stormwater network for the subdivision and an allowance should be given for a flow rate of 200l/s for the reservoir.

Water Supply servicing can generally be provided by connection to the existing system. Condition will be provided within the consent ensuring that development provides the required infrastructure under the Development Servicing Plans.

A Dual Reticulation Water Supply Service Assessment has been prepared by H2ONE dated Feb 2020 demonstrating that sufficient pressures and flows will be achieved for the proposed development.

Sewer Servicing

Sewer servicing can be provided by connection to the existing system. The applicant has provided a servicing strategy which is generally acceptable. The applicant has provided a plan which demonstrates that sewer main servicing can be provided in Hutley Drive Road Reserve with minimal impact on the adjacent wetland (refer to 20/46552)

Existing Services

The development does not encroach on any easement or the zone of influence of any existing water, sewer or drainage mains. An existing water main clashes with lots 17 and 18 and will need to be relocated as part of this development, a condition will be added to the consent.

Telecommunications

A condition has been applied to the consent requiring the provision of broadband service.

Power Supply Services

The development does not encroach on the minimum safe distance requirements in regard to SEEP Infrastructure 2007 - Reg 45.

Ecological Assessment

Ecological Constraints

An Ecological Assessment (EA) prepared by James Warren and Associates (JWA) supported the development application. The report was found to be deficient as it did not identify the occurrence of two significant ecological entities on the development site (refer to Plate1), being an area of littoral rainforest growing in the central portion of the development site and an extensive area of freshwater wetland habitat located along the western boundary of the development site.

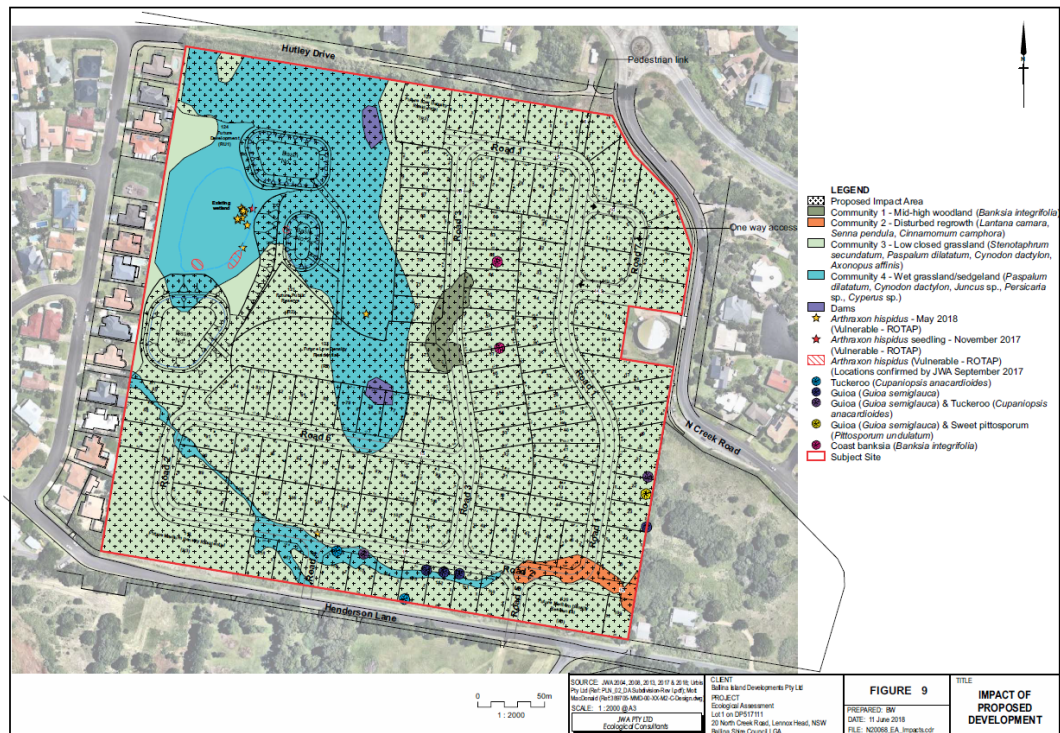


Plate 1: Original Subdivision layout and ecological constraints mapping with stormwater basins located in unmapped Freshwater Wetland EEC.

Both vegetation communities are listed as Endangered Ecological Communities (EECs) pursuant to the then Threatened Species Conservation TSC Act (1995). Littoral Rainforest is also listed as an EEC pursuant to the Environment Protection and Biodiversity Conservation (EPBC) Act 1999.

Hairy Joint Grass (*Arthraxon hispidus*) is also known to occur within the wetter portions of the development site. Hairy Joint Grass (HJG) is listed as a vulnerable species pursuant to both the TSC Act and the EPBC Act.

The impact of the subdivision on the two abovementioned EECs and HJG is discussed in the following assessment.

Occurrence of Freshwater Wetland EEC

The occurrence of the Freshwater Wetland EEC on the development site was not unexpected given it was identified by JWA as an ecological constraint during the rezoning of the land.

During the rezoning process it was concluded (see the attached Plan from Greg Alderson and Associates) the watercourse was to be retained and all stormwater infrastructure was to be located outside of identified Freshwater Wetland EEC and known HJG habitat.



Plate 2: Extract from rezoning documentation confirming stormwater basins should be located outside of known threatened species habitat. The yellow lines represent known ecological constraints.

In addition, during pre and post lodgement meetings held on 15 November 2017 and 24 April 2018 the applicant was informed that Freshwater Wetland EEC occurred on the development site and any application should be designed to avoid impacting on the EEC.

When the development application was submitted to Council the EA did not acknowledge the existence of the Freshwater Wetland EEC on Lot 1. The reasoning for the difference in the applicant's ecological assessment on the conservation value of the wetland between the rezoning and the lodgement of the current development application related to soil type and topography.

While the EA concluded the wetland habitat could not be classified as a Freshwater Wetland EEC, Council's Environmental Scientist did not support this conclusion. Upon third party review and onsite soil testing the area was found to comprise Freshwater Wetland EEC.

Based on that information the applicant modified the located of one of the stormwater basins. While Council recommended that the applicant completely avoid the mapped Freshwater Wetland EEC, part of the repositioned basin is still located within the mapped EEC (Refer Plate 3).

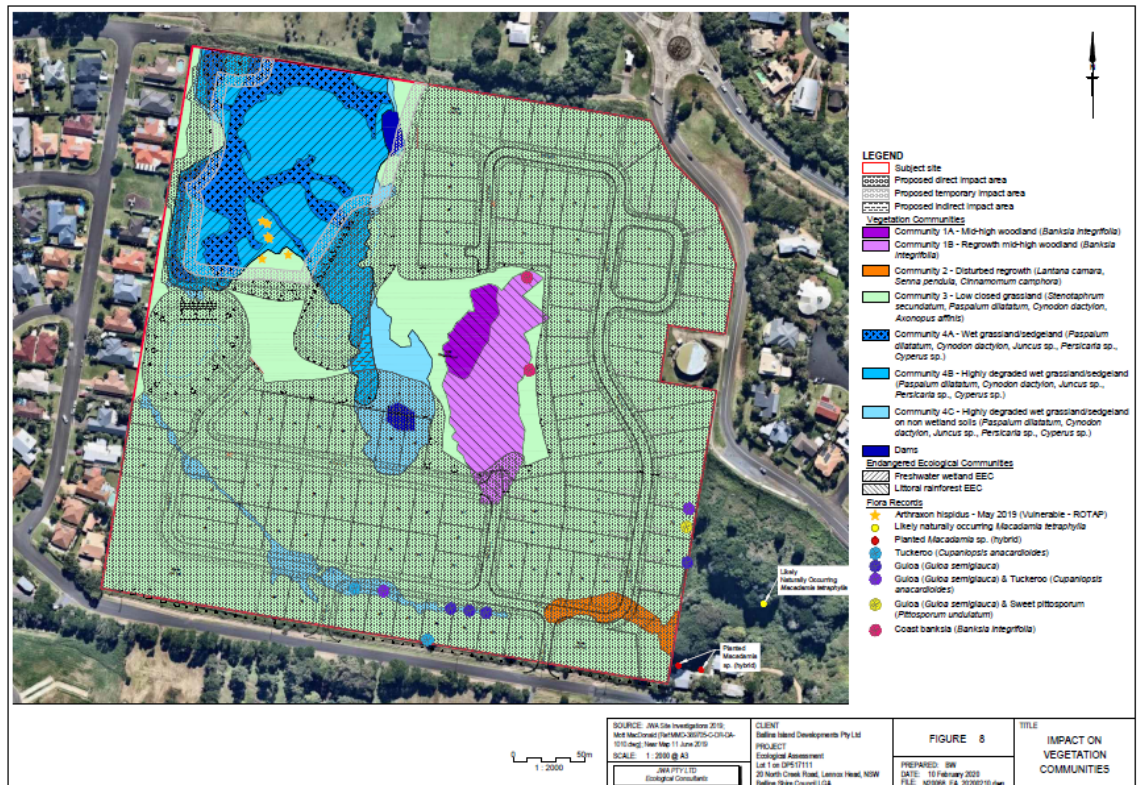


Plate 3: Freshwater Wetland EEC depicted by hatched dark blue polygons. The light blue polygon represents the location where groundwater due to the geology is expressed as surface water.

Existing hydrologically functioning of the wetland

The development site is located on the Lismore Basalt soils, a soil type recognised as a major source in providing groundwater recharge to Groundwater Dependent Ecosystems (GDE's). The onsite Freshwater Wetland EEC is a GDE.

Consequently, while surface water flows contribute to the health of the wetland it is the longer period subsurface groundwater flows into the wetland system that are considered the primary hydrological feature responsible for maintaining the current health of the wetland. During extended dry periods groundwater flows are more important for the health of the wetland.

Due to the underlying geology of the site some of this groundwater transforms into surface water from an existing seepage area located immediately downslope from the patch of littoral rainforest growing on the development site (Plate 3). While existing seepage area is to be filled, it is considered the existing flow path and is an important hydrological feature that needs to be retained as a subsurface structure.

While avoidance of this ecological feature should have been the first option, it is considered the hydrological function of this area can be protected by applying specific conditions of consent which will require the placement of large boulders over the seepage area and the existing topography of the land.

To address the hydrological functioning of wetland pre and post development, the applicant prepared Hydrological Regime Assessment (HRA) and a Wetland Hydrological Monitoring and Management Plan (HMMP). The HRA used a range of methods including, standardized stormwater computer program (MUSIC), onsite permeability testing and data loggers to determine the existing hydrology of the wetland system.

Both reports conclude:

“the results of site soil infiltration testing, together with modelling of conceptual hydrologic management measures (i.e. flow splitters, swales and bio-basins/detention basins) for the proposed development. The results of the assessment demonstrate that, provided the proposed measures are properly located, installed and maintained, the development of the site will not adversely impact the hydrologic regime for the onsite wetland.

The siting of these devices (or where their recharge component enters the landform) is to be targeted toward the near-surface soils in the upgradient catchment to the south and east of the wetland. Further analysis demonstrated that the average annual groundwater baseflow currently reporting to the wetland would be maintained”.

Consequently, post construction the long-term hydrological functioning and health of the retained wetland relies on the installed infrastructure to be working correctly and in perpetuity. Infrastructure to be installed to maintain the existing surface/groundwater flows of the retained Freshwater Wetland EEC includes:

- roadside infiltration swales which are to be installed between the edge of the formed road and residential allotments
- bio filtration basins with seepage areas within the two stormwater basins. Groundwater recharge is achieved by stormwater infiltrating through a sand medium and then through an area consisting of rocks and boulders
- the installation of flow splitters located within the bio filtration where the installation of logs (a piece of timber, concrete, aluminium) are used increase/decrease surface/groundwater flows by adding or removing the logs.
- a stop log weir system which is to be installed downstream of the wetland. Logs (a piece of timber, concrete, aluminium) can either be installed and/or removed to control surface water levels within the retained wetland

The HMMP confirms the developer will implement a 5 year “*on maintenance*” monitoring period to adjust the above mitigation structures to ensure the ongoing health of the wetland. The 5 year “*on maintenance*”, monitoring period is to commence at the completion of the bulk earthworks.

The monitoring program will involve input from a range of suitable qualified and experienced expertise including in the fields of hydrogeology, soil science, ecology, environmental science and engineering. However, while it is considered appropriate to undertake a post development monitoring program to established whether the proposed mitigation are successful a range of uncertainties and/or other actions remain outside of the control of the developer which may impact on the success of the proposed mitigation measures. These include:

- the existing hydrological functioning of the wetland has largely been identified by computer derived program rather than detailed baseline hydrological assessment

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- the siltation of the bio filtration basins from individual allotments as dwellings are erected after the issuing of the subdivision certificate.
- as the roadside infiltration swales are located between the formed road and residential allotments they will be susceptible to damage during the construction and human occupation of the residential allotments
- changes to the floristic structure of wetlands occur over many years as a result of changes to hydrology will only become apparent a number of years after the catchment is fully developed.

It is important to understand the floristic structure of wetland systems are intrinsically linked to hydrological regimes that have existed for an extended period of time and even small changes to established hydrological flow regimes can have a significant adverse impact on the wetland.

These kinds of impacts are expected if the proposed stormwater system does not perform as it is designed to do.

Impact Assessment (Section 5A Assessment)

Statutory Requirements

Under the provisions of Section 5A(1)(b) of the Environmental Planning and Assessment Act 1979 (EP&A Act), any assessment guidelines must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats. For the purposes of section 5A(1)(b), “*assessment guidelines*” is taken to mean those guidelines issued and in force under Section 94A of the Threatened Species Conservation Act 1995 (TSC Act). Thus, for the purposes of assessing the impact of the proposed development, the relevant applicable guidelines are the “*Threatened Species Assessment Guidelines: the assessment of significance guidelines*” (DECC 2007) as gazetted by the Minister 25 January 2008.

Under the Guidelines “*local occurrence*” is defined as:

“the ecological community that occurs within the study area. However the local occurrence may include adjacent areas if the ecological community on the study area forms part of a larger contiguous area of that ecological community and the movement of individuals and exchange of genetic material across the boundary of the study area can be clearly demonstrated”.

In regards to the definition of the Study Site and Study Area the Guidelines state;

Subject site means the area directly affected by the proposal.

Study area means the subject site and any additional areas which are likely to be affected by the proposal, either directly or indirectly. The study area should extend as far as necessary to take all potential impacts into account.

Based on the above definitions the “*local occurrence*” of the Freshwater Wetland EEC is limited to the Subject site (Lot 1). The EA assessment concluded the development will impact on 0.53ha or 25% of the “*local occurrence*” of the Freshwater Wetland with the impacts comprising of:

- the permanent removal of 0.04ha better quality Freshwater Wetland EEC
- the permanent removal of 0.36ha of low quality Freshwater Wetland EEC
- the temporary removal of 0.13ha low quality Freshwater Wetland EEC

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In reducing the level of long-term impact to the wetland the EA identified that 0.13ha of the Freshwater Wetland would be subject to temporary construction impacts, with these areas restored after construction works have been completed. Hence, the long-term the development would impact on 19% or 0.4ha of the wetlands “*local occurrence*”.

The applicant’s approach to assessing impact on the wetland is considered to be inconsistent with both the Scientific Determination for Freshwater Wetlands and the published Guidelines.

While applicant’s ecological consultant based their Freshwater Wetland impact assessment on the presence of low and high quality Freshwater Wetland habitat the Scientific Determination does not differentiate between low and high quality habitats.

Legislative wise, Council’s impact assessment has not been based on a differentiation of “*low and high quality Freshwater Wetland habitat*” as detailed in the EA.

In regard to the temporary construction impacts given the undulating and soft ground conditions associated with the Freshwater Wetland it is expected any construction works/ access will require the formation of construction access tracks. Post construction the reinstatement of these areas to their former condition cannot be guaranteed. In these circumstances, the Threatened Species Assessment Guidelines state:

“Proposed measures that mitigate, improve or compensate for the action, development or activity should not be considered in determining the degree of the effect on threatened species, populations or ecological communities, unless the measure has been used successfully for that species in a similar situation.

In many cases where complex mitigating, ameliorative or compensatory measures are required, such as translocation, bush restoration or purchase of land, further assessment through the species impact statement process is likely to be required”

Consequently, Council is required to assess the applicant’s termed “*temporary impact*” of the wetland habitats as a permanent impact to the wetland.

One matter that was not addressed in either the stormwater and/or ecological reports is that the proposed stormwater discharge swales through the Freshwater Wetland EEC may adversely impact the retained wetland by draining groundwater and surface waters into the swales. The reports also do not clearly consider the practicality and/or clearly discuss the impact of installing the stormwater pipes through the wetland.

While the applicant’s ecological consultant identified the development would impact on 0.53ha, aside from those written statements, the EA did not include any area measurements where Council could confirm or otherwise the accuracy of identified impact footprint. Although this information was requested it was not supplied by the applicant.

As a result, Council digitalised the ecological mapping contained in the EA to Council’s GIS system. The results of that process are depicted in Plates 4 and 5 and Table 1.



Plate 4: Digitalised location of the Freshwater Wetland on the development site sourced from the EA.

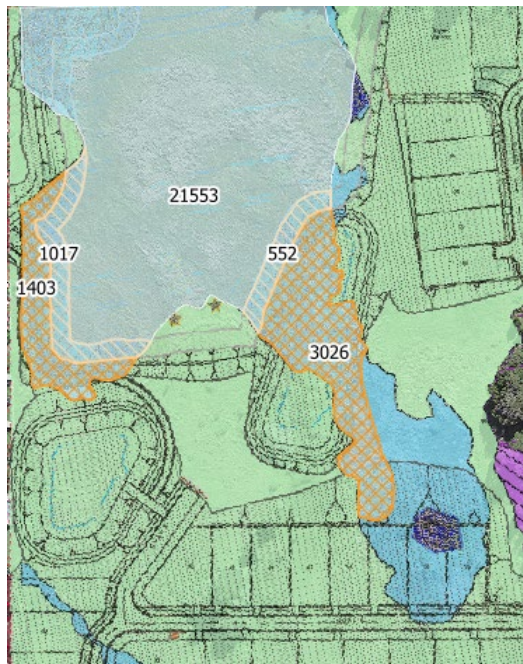


Plate 5: Depicting the areas of Freshwater Wetland EEC to be impacted by the development. Orange crosshatching depicts permanent loss. Fawn colour with hatching depicts applicant's temporary impacts. The light blue polygon is the approximate location of the existing seepage area.

	Wetland area (m ²)	Area impacted (%)	Notes:
Direct impact	4429	20.5	20.5% of the wetland will be permanently impacted from the development
Temporary impact	1569	7.3	An additional 7.3% of the wetland will be temporarily impacted by the development
(total impact)	5998	27.8	27.8% of the wetland will be affected by the development
Total area	21553		

Table 1: Council's area calculations of the impact the development will have on the Freshwater Wetland.

Based on Council's mapping the development will impact on 0.59ha or 27.8% of the "local occurrence" of the Freshwater Wetland EEC. Consequently, on the evidence available to Council, the applicant's ecological consultant has underestimated the level of impact the development will have on the Freshwater Wetland EEC.

In determining whether a development will have a significant impact on the "local occurrence" of an EEC the Assessment Guidelines state:

Making an assessment of significance

The threatened species assessment of significance should not be considered a 'pass or fail' test. Instead, consideration of the factors will inform the decision-making process of the likelihood of significant effect. Where necessary, the process will trigger further assessment in the form of a species impact statement.

All factors should be considered as well as any other information deemed relevant to the assessment. The assessment of significance should not be used as a substitute for a species impact statement. Application of the precautionary principle requires that a lack of scientific certainty about the potential impacts of an action does not itself justify a decision that the action is not likely to have a significant impact. If information is not available to conclusively determine that there will not be a significant impact on a threatened species, population or ecological community, or its habitat, then it should be assumed that a significant impact is likely and a species impact statement should be prepared.

Proposed measures that mitigate, improve or compensate for the action, development or activity should not be considered in determining the degree of the effect on threatened species, populations or ecological communities, unless the measure has been used successfully for that species in a similar situation.

In many cases where complex mitigating, ameliorative or compensatory measures are required, such as translocation, bush restoration or purchase of land, further assessment through the species impact statement process is likely to be required.

In determining the nature and magnitude of an impact, it is important to consider matters such as:

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- *pre-construction, construction and occupation/maintenance phases*
- *all on-site and off-site impacts, including location, installation, operation and maintenance of auxiliary infrastructure and fire management zones*
- *all direct and indirect impacts*
- *the frequency and duration of each known or likely impact/action*
- *the total impact which can be attributed to that action over the entire geographic area affected, and over time*
- *the sensitivity of the receiving environment*
- *the degree of confidence with which the impacts of the action are known and understood.*

Recovery and threat abatement plans, priorities action statements, threatened species profiles and other fact sheets prepared by DECC and DPI may provide further guidance on whether an action or activity is likely to be significant.

A 27.8% impact to the “local occurrence” of the Freshwater Wetland is an exceptionally high level of impact to the point it warrants the preparation of a Species Impact Statement (SIS). In addition, to the above direct impact, the long-term health of the wetland system is somewhat uncertain given:

- the fact the health of the retained wetland is reliant on the maintenance in perpetuity of installed stormwater infrastructure
- the development will also fill the known seepage area which provides a source of water to the downstream wetland
- the uncertainty what impacts the installation of stormwater pipes and the downstream swale system will have on the wetland

In an attempt to reduce the overall impact on the development on the Freshwater Wetland EEC a range of mitigation measures, need to be implemented to reduce the impacts of the development to an acceptable level. These include:

- the removal of all temporary construction impacts from the Freshwater Wetland
- the steepening of the stormwater batters will reduce the footprint of the stormwater basin 2
- the relocation of the access tracks stormwater pipes and swale so they are located on the edge of the Freshwater Wetland
- the identification of measures implemented during construction and operation to prevent groundwater and surface waters of the wetland system draining into subsurface gravel material installed as part of the stormwater system and/or the constructed swale system

If these mitigation measures are adopted it is predicted the direct impacts to the wetland will be reduced below a 20% threshold. It is considered, these mitigation measures are not only feasible but are required to negate the need for the applicant to prepare a SIS.

In addition, given the uncertainty surrounding the long- term preservation of the retained Freshwater Wetland and given the developer has chosen not to avoid impacting on this known ecological constraint, it is further recommended the following safeguards should be applied to the consent:

- an increased offset ratio of 10:1 to secure an offsite restoration area for all areas of Freshwater Wetland impacted by the development.
- a bond applied over the remainder of the wetland system to ensure if the wetland’s health declines as urban development proceeds the bond will be used to restore other EEC’s under the care and control of Council

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- given the impact of the development on the wetland will not be apparent until well after the catchment is fully developed the annual hydrological and vegetation monitoring programs need to be extended for a period until five years after the registration of the plan of subdivision for the 90th residential lot
- the preparation a Wetland Monitoring and Adaptive Management Plan (WMAMP) to assess the existing health and monitor ongoing health of the retained wetland during and post development

It is considered the development application can only be supported if all of the above mitigation/safeguards are implemented otherwise the development is likely to have a significant impact on the "*local occurrence*" of the Freshwater Wetland such the development application will be required to be refused as it is not supported by an SIS. It must be noted, even if the above strategies the long-term survival of the wetland is still somewhat uncertain.

Rainforest EEC

As previously advised the EA failed to identify the occurrence of an area of regenerating littoral rainforest EEC growing on Lot 1. The rainforest is located within the central portion of the development site and occupies an area of 0.72 hectares.

The patch of rainforest is isolated from surrounding areas of rainforest and as the applicant could not demonstrate genetic exchange was occurring, it was concluded the development as proposed would have a significant impact on the "*local occurrence*" of the littoral rainforest EEC. Consequently, the development application was required to be supported by an SIS.

As the development did not include a SIS, the application was amended to exclude the majority of the littoral rainforest growing on Lot 1 and incorporate it into proposed Residual Lot 102. As a result, the current development application will impact on 0.008ha or 3% of the rainforests "*local occurrence*". This impact is considered acceptable.

However, all areas of littoral rainforest will need to be offset in the ratio of 5:1 (that is 5m² of offset is required for 1m² of impact). Consequently, a littoral rainforest offset totally 400m² (0.04ha) is required. This is additional to the other offset requirements required by this assessment.

The long-term protection of the retained rainforest is not guaranteed, as applicant has lodged a separate development application to remove the remainder of littoral rainforest pursuant to the Biodiversity Conservation Act (2016).

In addition, an area of significant vegetation occurs on an adjoining property (Lot 1 DP 878933) which is not subject to the current development application. To ensure the vegetation is protected a Condition of Consent has been applied requiring a 20m buffer zone to be established from the vegetation's dripline. Only limited earthworks and no buildings are permitted within the 20m buffer zone.

Hairy Joint Grass

HJG has been detected at the site since 2008. Since, its detection the applicant's ecological consultant has undertaken numerous surveys for the species. The EA concludes the 2.76ha of known/ or potential HJG habitat occurs on the development site with the development removing 0.98ha or 36% of the species "*local population*" as defined by the Scientific Guidelines. The filling of the creek and the construction of one of the stormwater basins will remove small areas of known HJG habitat. The area of retained HJG habitat is to be restored as part of a wetland restoration plan, which is discussed later in this assessment.

While some of the above surveys were undertaken at inappropriate times for the species peak detection period, HJG has consistently been recorded growing as small isolated clumps on the development site primarily growing within the Freshwater Wetland EEC.

Council surveys undertaken in 2020 generally confirmed location of HJG detected by the applicant's ecological consultant. Given the amount of survey effort, undertake at the site the applicant's conclusion the development will remove 36% of the local HJG population is a considered conservative given it is primarily "*potential*" habitat, which will be removed. That being said, all areas of potential HJG located outside Freshwater Wetland ECC will need to be offset in the ratio of 5:1 (that is 5m² of offset is required for 1m² of impact).

Outside of the Freshwater Wetland EEC the development will result in a loss of an additional 5300m² (0.53ha) of HJG habitat. Consequently, an HJG offset totally 26,500m² (2.65ha) is required. This is additional to the other offset requirements required by this assessment

Wetland Management Plan (WMP)

As part of the development application package the applicant lodged a Wetland Management Plan to rehabilitate the area of retained Freshwater Wetland EEC. While the restoration of this area is welcomed to be acceptable, the plan needs to be modified. While a range of the changes is of a technical nature, the more significant changes needed to be applied to the plan include:

- if restoration area is to be retained in private ownership it needs to be attached to a residential allotment within the subdivision to ensure it will be managed and protected in perpetuity.
- currently the WMP only has a working life of 5 years. Consequently to align with the requirements the HMMP and the WMAMP the restoration program needs extended until a period of five years after the registration of the plan of subdivision for the 90th residential lot.
- confirmation that if the performance criteria is not achieved within the restoration period, the Developer will extend the restoration project until the performance criteria are achieved or forfeit the Freshwater Wetland Bond. In this regard, all forested areas are to achieve a 90% native vegetation canopy coverage within a minimum five year period. All wetland areas are to achieve a 90% native coverage. All vegetation stratas are to be free of all environmental and noxious weeds.

It is recommended that these changes are included into the submitted Wetland Management Plan.

Conclusion

The subject application seeks consent for a residential subdivision and subdivision works at Lot 1 DP 517111, 20 North Creek Road, Lennox Head.

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

Having regard for the outcomes of the assessment, it is recommended that the application be determined by way of approval, subject to the conditions attached and the General Terms of Approval issued by the NOW/NRAR.

Council has the following options with regard to determining the subject application:

Option 1 – Grant consent to the application

It is recommended that Council grants consent to the application subject to the conditions attached.

Option 2 – Refuse the application

Council could determine that application by way of refusal. This option is not recommended given that the assessment has concluded that the application meets the applicable planning requirements and conditions can be imposed to ensure potential impacts are considered acceptable in this instance.

Option 3 – Defer determination of application

Council could defer determination of the application to obtain additional information or hold a Councillor briefing of the matter. This option is not recommended on the basis that sufficient information has been submitted for Council to undertake an accurate assessment of the application and Councillors have previously been brief on the application.

RECOMMENDATIONS

That Development Application 2018/51 for a residential subdivision and subdivision works at Lot 1 DP 517111, 20 North Creek Road, Lennox Head be **APPROVED** subject to the attached conditions, and the General Terms of Approval issued by the NOW/NRAR.

Attachment(s)

1. Locality Plan
2. Proposed Subdivision Plans and Signage Plans
3. s4.15 Planning Assessment DAC
4. DPI Water & NRAR General Terms of Approval
5. DA 2018/51 - Round 1 Submissions
6. DA 2018/51 - Submission Round 1 Confidential Submission
7. DA 2018/51 - Submissions Round 2
8. DA 2018/51 - Submissions Round 2 Confidential
9. DA 2018/51 - Draft Conditions of Consent

8.2 DA 2019/694 - 841 Fernleigh Road, Brooklet

8.2 DA 2019/694 - 841 Fernleigh Road, Brooklet

Applicant	Planners North on behalf of Greta and Perry Smith
Property	Lot 17 DP 1031242, No. 841 Fernleigh Road, Brooklet
Proposal	Tourist and Visitor Accommodation comprising eight holiday cabins, Communal Recreation Building and an Information and Education Facility for the purposes of a Cooking School
Effect of Planning Instrument	The land is zoned RU1 Primary Production under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan in Attachment 1 and in Figure 1.

Introduction

Council is in receipt of Development Application 2019/694 for Tourist and Visitor Accommodation comprising eight holiday cabins, a Communal Recreation Building and an Information and Education Facility for the purposes of a Cooking School on Lot 17 DP 1031242, No. 841 Fernleigh Road, Brooklet.

The location of the land is shown in Attachment 1 and Figure 1 below.



Figure 1: Site Locality Plan

The purpose of this report is to seek Council's determination of the subject application.

Details of Proposal (as amended)

Following exhibition of the original proposal (received in October 2019) and inspection of the site by staff, the application was amended.

The application was amended to:

1. Include a disabled access/pathway between the tourist and visitor accommodation cabins and the communal recreation building.
2. Delete the dual key option between Villas. All Villas amended to Cabin Type 2.
3. Relocate the communal recreation building to south east which is closer to the access road.

The three components of the proposal are detailed below:

Tourist and Visitor Accommodation

The application seeks consent for the development of eight tourist and visitor accommodation cabins in four separate buildings. The cabins are located directly to the west of existing tennis courts on the site and have a northerly outlook. Civil works include driveway, accessible pathway and carpark construction.

Each building comprises a two bedroom cabin and a one bedroom cabin (Cabin Type 2). The two bedroom cabins (cabins 2, 4, 6 and 8) contain two bedrooms, two ensuites, living area, entry, porch and terrace. The one bedroom cabins (cabins 1, 3, 5 and 7) contain one bedroom, ensuite, living area, kitchen, entry, porch and terrace. Cabin 1 which is the closest to the recreation building, is nominated on the plans as an accessible cabin.

Each cabin has a gross floor area of 75m² and a terrace area of 30m². The total footprint of the four buildings is 840m².

Lounge/Recreation Building

The application seeks consent for a communal lounge/recreation building for use by guests of the tourist and visitor accommodation which comprises:

- portico and entry area
- an office and reception area
- communal lounge/recreation for guests
- storeroom, linen and laundry facilities
- toilet facilities, including separate male, female and disabled facilities
- covered deck and access ramp to guest's pool area
- breezeway/deck which connects to the information and education facility

The recreation building has a floor area of approximately 190m² and surrounding deck areas of 155m².

Information and Education Facility

The application seeks consent for an information and education facility for the purpose of conducting the Bhavana Organic Farm and Cooking School to teach cooking and to promote on-site produce and Northern Rivers produce to guests of the tourist and visitor accommodation, and also to the public. It is proposed to hold classes, with a maximum of 12 participants, up to three times per week. Classes are available to either guests or the public. Staff will comprise three to four people including a chef, owner and two kitchen hands.

The Information and Education Facility is connected to the lounge/recreation building by a covered deck/breezeway. The building comprises:

- a commercial kitchen
- pantry
- cool room, and
- external area for services

The information and education facility has a floor area of approximately 60m².

Together, the recreation building and information and education facility, decks and breezeway have a total footprint of approximately 405m². The proposed development, including the tourist and visitor accommodation has a total footprint of approximately 1,245m².

Plans of the proposed development are provided as Attachment 2.

Description of the Subject Site

The subject land is located approximately three kilometres to the south west of Newrybar Village and approximately 15 kilometres to the north west of Ballina. The north western property boundary adjoins Skinners Creek and the Byron Shire Local Government Area.

The subject property has a total area of 47.27ha and is currently utilised for low intensity grazing cattle.

The property contains a three bedroom dwelling house, an in-ground swimming pool, tennis court, farm shed and one existing two bedroom farm stay accommodation unit. A small produce garden is located adjacent to the dwelling house.

A gravel driveway extends from the front entrance on Fernleigh Road to the existing dwelling house and farm stay accommodation unit.

The surrounding locality is characterised by small lot primarily lifestyle subdivisions, macadamia plantations and horticultural uses. The Gaia Resort is located on the property directly to the north east.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition from 20 November 2019 to 6 December 2019. A total of 10 submissions were received, including five objections and five letters of support.

The amended plans were considered to comprise minor changes which are not of relevance to submissions and the application was not re-advertised.

A copy of the submissions are provided in Attachment 3, 4 and 5.

A summary of the issues raised are provided below.

1. Inconsistent with RU1 zone objectives

- No quantification of existing primary industry/agricultural use of the land
- Fragments the agricultural land into two unconnected sections reducing viability of the land for agricultural use
- Potential to create land use conflict
- Development does not maintain the rural and landscape character of the locality
- Development not compatible with the rural and environmental nature of the land

COMMENT: The applicant provided the following response to the issues raised in regard to inconsistency with the BLEP 2012:

As detailed in the submission to Council the proposed accommodation will enable the existing agricultural uses to be enhanced and the re-vegetation works presently undertaken on the site to continue. The proposal is for tourist and visitor accommodation and is not required to be ancillary to the agricultural production of the land.

The proposed buildings have been sited within that part of the site presently associated with the existing dwelling house adjacent to the tennis court and shed. The location and siting of the tourist accommodation provides for the maintenance of existing agricultural pursuits undertaken on the land while also providing for opportunities for increased agricultural activity.

The existing adjacent rural tourist facility is not visible from the subject land and is considered to be entirely compatible with the adjacent tourism land use. Further, A Land Use Risk Assessment (LUCRA) has been provided in relation to surrounding agricultural land uses.

The purpose of a Land Use Conflict Risk Assessment (LUCRA) in accordance with the provisions of 3.1 Chapter 2 of BDCP12 is to specify the minimum buffer distances of urban/residential areas, dwelling houses and rural tourist facilities from agricultural land uses, extractive industries, saw mills, intensive plant agriculture, waste and resource management facilities etc.

The purpose of a LUCRA is not to address the potential conflict between residential properties and residential properties. Notwithstanding this, it is proposed to seal the internal access driveway for a length of 160m as shown on Layout Plan Drg No C1 (Rev A) by SDS Civil which will result in reducing the potential impacts on the closest dwelling house particularly in terms of dust.

The proposed development has been sited on the land in a manner which is clustered within essentially an enclosed visual catchment. The maintenance of existing areas of re-vegetation and existing farmland is consistent with maintaining the rural and landscape character of the locality.

The proposed development will not adversely impact on agricultural production or the scenic or environmental values of the land. Agricultural production will continue on the land and the proposal provides for increased opportunities in this regard. The proposed visual catchment of the land is contained and the proposal will not impact on the scenic or environmental values of the land.

Low intensity cattle grazing (35 head) is the only agriculture undertaken on the subject land currently. The owners have indicated their intention to continue this practice and have sited the proposed development to allow this. It is considered that the development has been appropriately sited, given the topography of the land, existing structures and vegetation.

The zone objectives seek to maintain the rural, cultural and landscape character of the locality, and ensure that development is compatible with the rural and environmental nature of the land. Given that surrounding development comprises the Gaia Resort directly to the north east, and a large commercial nursery directly to the south west, along with other small rural allotments, macadamia plantation and horticultural uses, it is considered that the proposed development is compatible with the landscape character of the locality.

It is recognised that this type of development has the potential to create land use conflict and the application is supported by a LUCRA. The LUCRA concludes:

“This LUCRA has concluded that the subject site is suitable for the proposed development as identified in Appendix A subject to the recommendations provided below:

A vegetated buffer (as per Appendix C) based on the following criteria be installed on the subject site along the western side of the proposed development:

- contain random plantings of a variety of tree and shrub species of differing growth habits, at spacing's of 1–2 m for a minimum width of 10m.*
- include species with long, thin and rough foliage which facilitates the more efficient capture of spray droplets;*
- provide a permeable barrier which allows air to pass through the buffer. A porosity of 0.5 is acceptable (approximately 50% of the screen should be air space);*
- foliage is from the base to the crown;*
- include species which are fast growing and hardy;*
- have a mature tree height at least 3m;*
- include an area of at least 5m clear of western boundary and 5m clear of the proposed development.*

The proposed development should be designed to minimise instances of incompatibility such that normal farming practice are not inhibited. Where such instances do arise, measures to ameliorate potential conflicts should be devised wherever possible.

When considering potential land use conflict between rural dwelling and agricultural activities it is important to recognise that all agricultural activities:

- should incorporate reasonable and practicable measures to protect the*
- environment in accord with the Protection of the Environment Operations Act (POEO) and associated industry specific guidelines; and*
- are legally conducted as required by other legislation covering workplace health and safety, and the use and handling of agricultural chemicals.*

Nevertheless, certain activities practised by even the most careful and responsible farmer may result in a nuisance to adjacent residential areas through, for example, unavoidable odour drift impacts.”

Refer to the BLEP section of the report for further discussion in relation to these issues.

2. Inconsistent with Clause 7.9 of the BLEP 2012

- Nature and scale of development not consistent with agricultural use of the land
- Not small scale and low impact
- Development will dominate the landscape
- Adverse impact on amenity
- Development not complementary to rural/agricultural attributes of landscape but rather it would be the dominant land use
- Cumulative impact of existing and proposed use detracts from rural amenity

COMMENT: The applicant provided the following response to the issues raised in relation to Clause 7.9:

The proposal will complement the existing agricultural use of the land providing guests with the opportunity to experience the operation of a working farm first-hand. Further, it is proposed that produce grown on the site will be utilised in the cooking classes.

Council’s Development Control Plan clearly articulates the permissible number of cabins and bedrooms permitted in relation to tourist and visitor accommodation. The DCP provisions detail the scale of development which is considered to comprise small scale.

In addition to this the proposed cooking school is modest in terms of the number of people potentially catered for.

The traffic report submitted clearly demonstrates the minimal impact resulting from the proposed development. Additional information has been provided to Council in relation to water supply.

The proposal is consistent with Council’s LEP and DCP provisions in relation to the scale of development permissible on the subject land.

Clause 7.9 provides that all services and facilities are provided for tourists in rural and natural areas and that development does not adversely impact on agricultural production, scenic or environmental values. Development consent must not be issued unless there is adequate access, the development is small scale and low impact and complementary to the rural or environmental attributes of the land.

The technical assessment indicates that the proposed development is compliant with Clause 7.9.

Refer to the BLEP section of the report for further discussion in relation to these issues.

3. Noise

- Noise impacts from internal gravel access road
- Noise from recreation building

COMMENT: A Noise Impact Assessment (NIA) was requested following the site inspection and submissions from adjoining owners. The applicant provided the following response to the issues raised regarding noise.

“An acoustic assessment was not initially prepared given the substantial separation distances of the proposed development from surrounding properties. The Noise Impact Assessment prepared by Tim Fitzroy and Associates following a request from Council officers clearly demonstrates that the proposed development will not result in adverse impacts on surrounding properties in terms of noise.”

Noise sources identified and modelled in the NIA include patrons (raised voices), air conditioning plant, coolroom plant, kitchen exhaust fan and car movements on the internal driveway, the location of which are illustrated in Figure 2 below.



Figure 2: Location of noise sources

The location of nine sensitive receivers used in the NIA modelling is illustrated in Figure 3 below.



Figure 3: Location of sensitive receivers

The NIA concluded that noise levels for all specified sources are predicted to be within criteria at all sensitive receivers during all time periods modelled (i.e. day, evening, night).

The Council officer assessment is that potential noise from vehicle movements, as well as dust, from the unsealed internal driveway is not acceptable. This can though be addressed by a condition requiring the sealing of the internal driveway to the creek (CH 280). The imposition of conditions requiring a Noise Management Plan and Operational Management Plan is also recommended in relation to this issue.

Refer to the DCP section of this report for further discussion in relation to the issue of noise.

4. Visual impact

- Visual impact from surrounding and adjoining properties

COMMENT: The applicant provided the following response to the issues raised regard to visual impact.

Concerns regarding the visibility of buildings from a vegetated walking track on an adjoining property used for tourist and visitor accommodation are not

considered to have merit. The site is well screened from the existing Gaia tourist development adjoining the site.

Having regard for the characteristics of the landscape it is expected that the visual impact of the development from the Gaia Resort will be minimal. It is acknowledged that the proposed development may be visible from some parts of the walking tracks along the south western boundary of that property, however due to the topography of the land, existing vegetation and buildings it is considered to be minimal.

No buildings within the Gaia Resort are visible from the site of the proposed development. Furthermore, while the proposed development may be visible from other surrounding properties there is large distance between any visible dwelling houses and the proposed development and therefore the visual impact is considered to be minimal.

5. Services – water, wastewater

- Source and quantity of supply
- Size of OSSM system

COMMENT: Further information was requested regarding water supply and OSSM following the site inspection and submissions from adjoining owners. The applicant provided a Water Balance Assessment report prepared by SDS Civil Enterprises dated 1 April 2020 which provides detailed information on existing water supply and future requirements for the proposed development, including for bush fire-fighting purposes. The OSSM report was also revised.

Having reviewed the revised reports, it has been demonstrated there is adequate water supply for the proposed development and the proposed OSSM systems are suitable.

See further discussion regarding water and wastewater in the BLEP and DCP sections of this report.

6. Traffic and Access

- Increased traffic on Fernleigh Road which is a narrow sealed road in poor condition
- Insufficient sight distance at entry to property
- Dust, light and noise impact from traffic on internal access road
- Traffic report does not take into account all uses

COMMENT: The applicant provided the following response to the issues raised in relation to traffic and access:

The report submitted to Council prepared by SDS Civil Enterprises demonstrates that the traffic generated by the proposed development is able to be adequately accommodated on the local road network subject to recommendations in terms of required upgrades at the entrance. It is also noted that it is proposed to seal the entry driveway for a distance of 160m to address issues particularly in relation to potential impacts of dust.

Trip generation for the proposed development equates to 18 trips per day for the tourist and visitor accommodation and 10 trips for the information and education facility (at peak demand).

Sight distance at the property entry is compliant with AS 2890.

It is acknowledged that dust and noise from traffic movements on the internal access road are potentially an issue and should the application be approved, a condition is recommended to require sealing of the internal driveway from the entry to the creek.

Refer to the DCP section of this report for further discussion in relation to traffic and access.

7. Heritage

- Heritage issue not addressed

COMMENT: Further information was requested regarding Aboriginal cultural heritage. The applicant provided the following response.

The siting of the site on the AHIMS site was identified and the site inspection undertaken by a representative from Jaali [sic] Local Aboriginal Land Council was organised as a result. The claim in the Statement of Environmental Effects is accurate and reflects the outcome of that site visit. A letter from Jali has been provided to Council.

An AHIMS search undertaken on the Environment & Heritage website identified an Aboriginal site within 50m of the subject land. The applicant contacted Jali Local Aboriginal Land Council who undertook a site inspection and concluded that due to the topography, soil type and that the land is highly disturbed it is highly unlikely to contain Aboriginal objects.

An Aboriginal Sites Monitor was not required to be onsite during any construction works, however should the application be approved, it is recommended the consent be conditioned to ensure appropriate measures are undertaken should Aboriginal objects be uncovered.

8. Incorrect definition

- Recreation building/kitchen incorrectly defined as a “information and education facility”

COMMENT: The applicant provided the following response.

The proposed small cooking school is considered to be consistent with the definition of information and education facility. This position is supported by legal advice which has been provided to Council.

Refer to BLEP section of this report for further discussion.

9. Management issues

- Existing dwelling house being used for short term accommodation
- Guest behaviour including riding of trail bikes and ATVs

COMMENT: The applicant provided the following response in relation to management issues.

The main dwelling house is resided in by the owners of the property.

The proponent has no intention of enabling guests to do this. In addition to any practical issues there would be insurance implications for the owners of the subject land.

In relation to management issues, the tourist and visitor accommodation cabins require an on-site manager and an Operational Management Plan (OMP), and it is recommended that any consent issued be conditioned accordingly. The existing dwelling house has been nominated as the manager's residence for the purpose of the tourist and visitor accommodation.

Applicable Planning Instruments

The proposed development application has been assessed under the matters for consideration in Section 4.15 of the Environmental Planning and Assessment Act 1979. The assessment has identified the following key issues which are elaborated upon for Council's consideration.

Ballina Local Environmental Plan (BLEP) 2012

Clause 2.3 – Zone Objectives and Permissibility

The subject land is zoned RU1 Primary Production under the provisions of the BLEP 2012. The zone objectives are as follows:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural, cultural and landscape character of the locality.*
- *To enable development that is compatible with the rural and environmental nature of the land.*
- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

In addressing the zone objectives, the only agriculture practice undertaken currently on the subject land is low intensity cattle grazing (35 head). While the property meets the minimum lot size of 40 hectares (47.27 hectares) the additional development, in particular the information and education facility, provides diversity, sustainability and a potentially viable option for the land owners in addition to agriculture.

It is also the land owners' intention to continue revegetation and rehabilitation of the property. It is considered that the proposed development has been sited such that the current agricultural activity can be continued and the proposed development will not further fragment or alienate any agricultural resource lands for future productive agricultural purposes.

The applicant has provided a LUCRA which demonstrates that the proposed development, with suitable management, retention of existing vegetation and provision of an additional vegetated buffer, and sealing of internal driveway can minimise any potential land use conflict.

The landscape in the locality is characterised by a mix of small lot rural allotments, macadamia plantations, horticultural uses, as well as Gaia Resort and a large commercial nursery. Given the diversity and mix of land uses in the surrounding locality, the overall landscape in which the proposal is located and the siting and design of the proposed development it is considered that the proposal maintains the rural, cultural and landscape character of the locality and is be compatible with the rural and environmental nature of the land.

The proposed development has been assessed to be consistent with the zone objectives.

Under the provisions of the BLEP 2012, the proposed uses are defined as:

“Tourist and Visitor Accommodation” means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,
but does not include -
- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

“Information and Education Facility” means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Tourist and Visitor Accommodation and Information and Education Facilities are permissible in the RU1 zone with consent.

A pre-DA lodgment meeting was held with the applicant and owners on 19 November 2018 at which time the definition of the information and education facility was discussed. Extracts of the minutes of that meeting provided by Council are below:

- *It was clearly and strongly outlined that the scale of the “recreation building” was more akin to a “function centre” which is prohibited in the zone, and given the size of the recreation building and kitchen building, it is important to define the uses clearly in the application.*
- *The applicant suggested that the kitchen building could be defined as an “Information and Education Facility” for cooking classes associated with the vegetable garden for guests as this was permissible in the zone. It was outlined that if it were for small classes and space utilised it may be considered as a “home business” type use (within the existing dwelling house or cabin). However, given the size of the building it could not be defined as such. An “Information and Education Facility” would generally be for larger scale development in urban centres. There are options within either the existing dwelling house (manager’s residence), the existing cabin or one of the proposed cabins to reasonably allow small scale cooking classes to occur without the need for additional kitchen facility and recreation space. It is also noted that there was generally nothing on-site (intensive rural business/activity of the farm/natural based environment) that would require such use as an “Information and Education Facility”.*
- *The proponent was clear on the permissibility issues regarding a Function Centre and understands that definitions of the use of the “Recreation” and kitchen building will be important. Council officers consider the “Recreation” building is not necessary in the context of the proposed tourist cabins (i.e. they are self-contained) and each contain all required facilities. Recreational facilities (i.e. pool, spa, tennis court) can be enjoyed without the need for such a large communal facility. Based on this the “Recreation” building is more akin to a “Function Centre” which is prohibited in the zone.*

The applicant sought legal advice following the pre-DA meeting and a full copy of that advice is provided as Attachment 6. An extract is provided below:

"...A "function centre" is not nominated as permissible with consent in the Ballina LEP: it is innominate. Innominate uses are prohibited (pursuant to paragraph 4 of the Land Use Table to the RU1 zone).

As identified above, it is proposed that a large part of the 'recreation building' is intended to be used as a lodge for guests staying on the property. That part of the building can be said to be for the purpose of tourist and visitor accommodation.

It would be possible to characterise the kitchen and cooking school as being ancillary to the tourist and visitor accommodation and therefore permissible (Foodbarn). However our mutual clients are being very "up front" about their proposed operation. They wish to use the recreation building and particularly the kitchen for the purposes of a cooking school. That is, that use is to be independent of the tourist and visitor accommodation: the school is not solely for use by guests staying in the accommodation. It must therefore be permissible in its own right as a separate and independent use.

The definition of "information and education facility" in the Ballina LEP should be kept in mind. At its simplest it means a building or place used for providing information or education to visitors; there can be associated aspects of such a use, including the exhibition or display of items. The list of examples ("art gallery, museum") is not exhaustive.

In my opinion this seems to be exactly what our clients are proposing. Cooking classes, involving local produce (indeed produce that may be sourced from the very property itself) will be provided to visitors staying on the property and/or people who drive to the property expressly for that purpose. Clients will be taught cooking skills (educated) in the context of, and will receive information about, ingredients sourced from the locality. It is likely that they will be able to buy local food placed on display in conjunction with the cooking school.

The facts of the matter, and particularly the plans, are entirely consistent with this proposed use.

To go further and enquire as to whether the use might also be characterised as being for the purpose of a "function centre" is not permissible by law...."

The application states that the applicant has no intention to provide for functions in the recreation building. Any consent issued for the proposed development would be conditioned accordingly.

Clause 4.3 - Height of Buildings

The subject land has a maximum building height of 8.5m. Based on the information and plans provided the proposed development has a maximum building height of 7.2m for the tourist and visitor accommodation cabins and the recreation building and is therefore compliant with Clause 4.3.

Clause 7.4 – Drinking Water Catchments

The subject land is located within the Wilsons River Catchment and Skinners Creek borders the property. The application was referred to Rous County Council who provided the following comments:

i. On-site sewage treatment

Rous has reviewed the application (and the On Site Wastewater Land Capability Assessment prepared for Bhadra Property Holdings) and assessed the application against the requirements of the Rous Water On-site Wastewater Management Guidelines (the Rous Guidelines). Overall, based on the statements and commitments made in the application, Rous considers that the proposed systems shall provide for an appropriate level of treatment for this location and situation.

It is stated in the report that the evapotranspiration absorption (ETA) beds are proposed to be located at a distance that exceeds 100m to the nearest waterway (which is minor drainage line that flows in a north-westerly direction through the property, discharging to Skinners Creek). This would normally indicate that Table A2 of the Rous Guidelines should apply. It is noted that for the systems proposed, Table A2 indicates that the pathogen removal capability is Medium, and that the overall suitability of the system would be Medium.

Whilst the general design of the on-site sewage management system described is considered acceptable, Rous does have some comments regarding important aspects to be addressed in any subsequent approval. Therefore, whilst Rous is agreeable to the proposed systems, Rous recommends the following conditions/issues be included/addressed:

- it is assumed that the development consent shall require the adoption of water efficient fittings/fixtures throughout the development to minimise the hydraulic loading on the system. It is understood that this will include the combined use of reduced flush 6/3 litre water closets, shower-flow restrictors, aerator faucets, and flow/pressure control valves on all water-use outlets.*
- diversion swales should be installed to prevent the run-on of surface water runoff into the ETA.*
- as the proposed on-site sewage management system is reliant on mains power to operate the AWTS and associated systems, there is a risk that the system could overflow. To safeguard against this risk, Rous considers it important to ensure that (i) that there is an alarm system that monitors any such failure; and (ii) that any overflow from the system (in the event of failure or extended power outage) be directed to the sub-surface irrigation areas. Normally, Rous would require all treatment vessels to be appropriately bunded where there is a risk of failure, however the combination of a visual alarm and the overflow to absorption areas is considered appropriate.*
- Rous is concerned to ensure that the ETA is not damaged by stock or vehicle access and requests that a permanent fencing arrangement be installed. It is recommended that the ETA and immediate surrounds be fenced and sign-posted to keep children and vehicles out.*

- *Due to the scale of the on-site treatment and the fact that the ETA beds actually appear to be close to the 100 m buffer required from all surface water drainage features (including the abovementioned drainage line that is shown in Council's GIS system), the areas surrounding and downgradient of the ETA beds – extending between the ETA beds and the receiving waters should be vegetated by native vegetation – this can be a combination of appropriate native trees or groundcovers (Lomandras or equivalent), which would assist with evapotranspiration of any surcharge. It is further noted that the fencing should also fence off the native vegetation areas to be established to similarly ensure that these plantings are not damaged by vehicle/stock access.*
- *The On site Wastewater Land Capability Assessment states that "Wastewater sourced from cooking classes is suspected to be higher than domestic effluent in Fats, Oils & Grease (FOG). However, the use of a septic tank treatment with the suggested scum and sludge storage will be adequate to cater for the FOG." Given that the wastewater sourced from cooking classes is suspected to be higher than domestic effluent in Fats, Oils & Grease, then Council should specify a requirement for the quarterly service and inspections completed by the servicing agent for the AWTS also include inspection and pump out of the scum and sludge storage.*

ii. Mitigating scale of development

A second issue identified by Rous is the overall scale of site disturbance and development, both during construction/operation. Whilst it is acknowledged that information provided by the proponent indicates that "stormwater drainage is able to be adequately accommodated on the subject rural allotment", there will still be runoff to receiving waters from roadways and hard surfaces to the adjacent slope. It is recognised that the vast majority of the stormwater generated from roof runoff is harvested for the water supply to the proposed development. Nevertheless, it is recommended that - in order to meet contemporary standards and minimise the impact on receiving waters – that consideration should be provided to the opportunity to apply water sensitive design elements such as grassed swales to encourage infiltration of any such runoff. If integrated with landscaping/stormwater plantings it may be possible to improve water quality and biodiversity outcomes arising from the proposed development. Such enhancement could also be integrated with the recommended planting between the ETA areas of the on-site sewage management systems and the drainage lines at the property.

The application was supported by an Onsite Wastewater Land Capability Assessment prepared by Tim Fitzroy dated 17 October 2019. Further information was requested by Council's OSSM Technical Officer and a revised report was submitted on 4 June 2020. The revised report is supported and any OSSM Approval to Install would be conditioned according to the reporting recommendations and Rous County Council conditions.

Clause 7.7 – Essential Services

Clause 7.7 provides that all essential services, including water, electricity, disposal and management of sewage, stormwater, access and telecommunication services are available to the subject land. See Clause 7.4 above regarding OSSM. Electricity, telecommunications and stormwater are adequate for the proposed development. Water and access are addressed specifically below.

Water

The subject land is not connected to Council's reticulated water supply. A Water Quality Assurance Program prepared by Tim Fitzroy & Associates dated 21 October 2019 in accordance with the NSW Health (2008) Private Water Supply Guidelines and the NHMRC (2011) Australian Drinking Water Guidelines, to satisfy Public Health requirements, was submitted with the application.

An Engineering Services Report prepared by SDS Civil Enterprises dated October 2012 was submitted with the application which indicated that rainwater tanks would be installed for the cabins (2,100L/cabin), the education and information building (4,050L) and a 10,000L tank for bush fire-fighting purposes. Further information was requested and provided by SDS Civil Enterprises dated 1 April 2020 which confirmed the following supply would be provided on-site:

- Two 25,000L tanks dedicated for bush fire-fighting purposes located to the west of cabin 7 and 8
- One 60,000L tank dedicated for bush fire-fighting purposes located beneath the car park adjacent to the recreation building
- Two 110,000L below ground tanks for potable supply.

The proposed supply is considered adequate for the development.

Access

A submission suggests that there is insufficient sight distance at the entry to the property. Sight distances are approximately 700m to the southwest and 160m to the North East, which are compliant with AS 2890.

The existing access and internal driveway from Fernleigh Road is unsealed and the application proposes to seal the entryway and upgrade the existing driveway to a 3m seal on a 4m formation standard to CH160 as per Figure 4 below. It is also a requirement of NSW Rural Fire Service to provide a 4m gravel or sealed carriageway for the internal driveway.

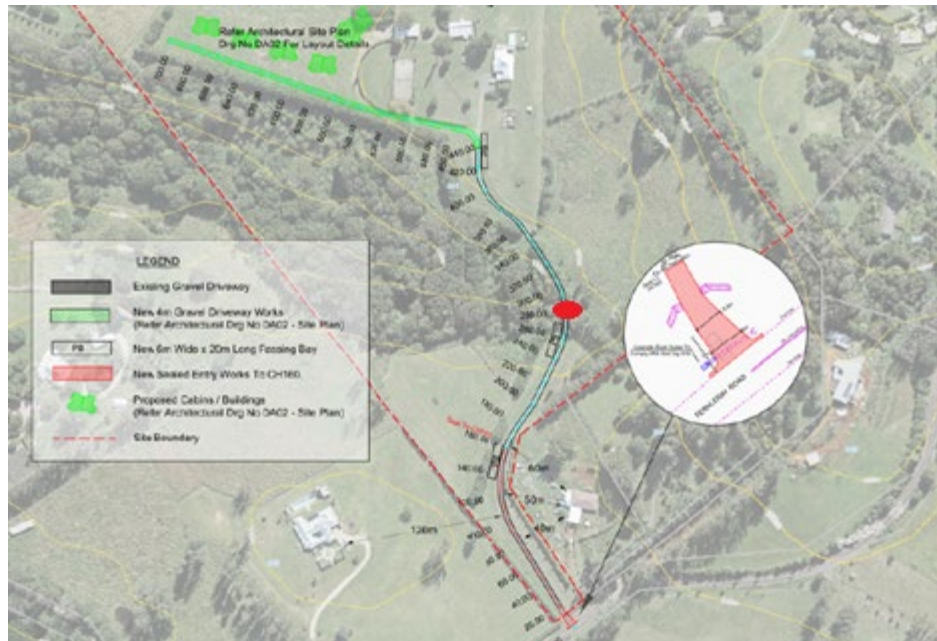


Figure 4 – Driveway access details and location of creek (red dot)

Notwithstanding the above, there are dwelling houses in close proximity to the internal driveway of the subject land and traffic noise and dust have been raised as potential issues. Council's Environmental Health Officer has recommended that a condition be imposed requiring that the driveway be constructed of a sealed, all weather, dust free construction from Fernleigh Road to the creek which is approximately 280m into the property. The creek is located at approximately CH280 which would necessitate the driveway sealing to be undertaken for approximately an additional 120m than that proposed.

Given that the internal access driveway passes within 40m, 120m and 90m of adjacent dwelling houses, the size of the development and traffic impacts, it is considered reasonable to require that the internal driveway access is sealed from the entry to the location of the creek being a length of approximately 280m (i.e. CH280).

Clause 7.9 – Rural and Nature-Based Tourism Development

Clause 7.9 provides that all services and facilities are provided for tourists in rural and natural areas and that development does not adversely impact on agricultural production, scenic or environmental values of the land. Consent must not be granted to tourism development unless:

- (a) *there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and*
- (b) *the development is small scale and low impact, and*
- (c) *the development is complementary to the rural or environmental attributes of the land and its surrounds, and*
- (d) *the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.*

Comment: Vehicular access is considered suitable for the proposed development and compliant with Clause 7.9 (a).

In determining, compliance with clause 7.9(b), small scale is defined in Clause 7.9(6):

“Small scale means a scale that corresponds to that of residential uses in a rural or environmental locality.”

“Tourism development means development for any of the following purposes—

- (a) caravan parks,*
- (b) cellar door premises,*
- (c) charter and tourism boating facilities,*
- (d) home industries that provide services, or the sale of goods, on site to visitors,*
- (e) information and education facilities,*
- (f) kiosks,*
- (g) markets,*
- (h) recreation facilities (major),*
- (i) recreation facilities (outdoor),*
- (j) rural industries that provide services, or the sale of goods, on site to visitors,*
- (k) tourist and visitor accommodation.”*

Small scale tourist and visitor accommodation is development that is predominantly residential in character and scale and that does not consist of larger commercial activities such as boarding houses, backpackers accommodation or hotel or motel accommodation.

The proposed development comprises five buildings including four buildings containing the eight cabins, and the recreation/kitchen building. While the development of eight holiday cabins could be considered small scale as a stand-alone development, the total footprint of the buildings proposed in this development equals 1,245m².

The footprints of existing buildings on the subject land are approximately 328m² (dwelling house); 170m² (holiday cabin); and 195m² (farm shed); a total of 693m². Should this application be approved, buildings would comprise approximately 2,000m² or 0.423% of the entire property. There is also one existing swimming pool adjacent to the dwelling house. Plans have also recently been lodged (DA 2020/409) with Council for an inground swimming pool located adjacent to the recreation building/cooking school for the use of guests.

The existing property currently provides accommodation for 10 people i.e. six (existing dwelling) and four (existing holiday cabin). The proposed tourist and visitor accommodation has the ability to house an additional 24 people (at full capacity). Cooking classes are proposed for a maximum of 12 people. Staff have been estimated at four people (including the owners). At full capacity the proposed development has the potential to increase the number of people onsite from 10 to 46, not taking into account external staff.

Submissions raised the issue of the scale and nature of the proposed development.

In comparing surrounding land uses, directly to the north east of the subject land is the Gaia Resort which, while approved under previous planning instruments, has a total of 24 accommodation units, four office spaces, storerooms, kitchen/amenities, yoga rooms, restaurant, day spa, machinery shed, tennis court, pavilion and sauna. The land upon which Gaia Resort is located has a total area of 8.136 hectares and the footprint of its development comprises approximately 1.8% of the land area. Further, the commercial nursery to the south west of the subject land appears to have a greater percentage of land area developed.

Therefore the size and scale of the development is generally consistent with the surrounding development and is considered to be small scale having regard to the size of the property and nature of surrounding development.

It is acknowledged that given the nature and scale of the proposed development there is potential for land use conflict, and impact to neighbouring properties. However, with appropriate management and mitigation measures, such as vegetated buffers and sealing of the internal driveway, it is considered that impacts will be suitably minimised and the scale of the development is appropriate relative to the locality.

With regard to the rural or environmental attributes of the land, the only rural pursuit undertaken currently on the subject land is the grazing of approximately 35 cattle. The owners have indicated that they intend to continue this production. The proposed development has been sited in close proximity to existing structures and as such will not be detrimental to the rural attributes of the subject or surrounding lands, and will not be highly visible from immediately adjacent properties due to the topography of the land. The proposed development is sited on cleared land and away from the significant features of the natural environment.

The proposed development is considered to be compliant with Clause 7.9 of the BLEP 2012.

Ballina Development Control Plan 2012

Council's assessment staff have undertaken an assessment of the application against the relevant provisions of the Ballina DCP 2012. The following areas are of particular relevance for Council's consideration.

Chapter 2 – General and Environmental Considerations

3.1 Land Use Conflict

The proposed development does not meet the minimum land use buffers, and as such, the proposal is supported by a Land Use Conflict Risk Assessment (LUCRA) prepared by Tim Fitzroy & Associates dated 17 October 2019. The LUCRA identifies two potential sources of land use conflict with operations on adjoining land including the macadamia plantation to the north west, and the plant nursery to the south west of the proposed development. The LUCRA concludes that the subject site is suitable for the proposed development with the installation of a vegetated buffer.

The LUCRA was reviewed by Council's Environmental Health Officer who also recognised the potential impacts of emissions, noise, dust and odour from the macadamia plantation to visitors of the proposed development. There is a separation distance between the tourist and visitor accommodation and the plantation and some vegetation already in place.

Should approval be granted it is recommended the consent be conditioned to retain the existing vegetation as a buffer as recommended in the LUCRA and by Council's Environmental Health Officer.

Noise

- Noise impacts from internal gravel access road
- Noise from recreation building

A concern of submitters was potential noise impacts from the proposed development including noise from vehicle movements on the internal accessway and the use of the recreation building.

A Noise Impact Assessment (NIA) was requested following the site inspection. Noise sources identified and modelled in the NIA includes patrons (raised voices), air conditioning plant, cool room plant, kitchen exhaust fan and car movements on the internal driveway. Modelling considered both the tourist and visitor accommodation and recreation building. Modelling included shielding effects from topography, existing and proposed structures and considered nine sensitive receivers.

The NIA concluded that noise levels for all specified sources are predicted to be within acceptable criteria at all sensitive receivers during all time periods modelled (i.e. day, evening, night).

Council's Environmental Health Officer provided the following comments following submission and review of the Noise Impact Assessment:

"The use of the tourist facility may result in noise emissions which are well in excess of the current noise levels and characteristics at the site. In such instances, although certain noise emissions may be relatively noticeable, the emissions may well in fact be lawful in accordance with current legislation within a quiet rural setting.

Noise from overnight visitors, music, voices and traffic are likely factors which could adversely impact the amenity of the immediate area. The sound of vehicles accessing the site in early mornings and late into the evening when background noise levels are low, with both engine noise and noise from the unsealed road are factors which might create a nuisance to adjoining households.

The vehicle traffic has been considered within an acoustic study which was requested for this development. The findings of the noise study did not indicate that the road traffic would not impact unlawfully in regard to noise on the associated dwellings. However, as discussed above, in the environment of the development, traffic movements with noise and dust may well be considered annoying to nearby residents.

In association with noise, air quality impacts have not been addressed by the applicant to any great extent. The amount of vehicles which are expected to utilise the entrance way is discussed in the submitted Engineering Services Report. The report suggest that the eight cabins will generate 18 trips per day and an average of six trips per day is expected to be generated by the cooking school.

In addition to the use of the cabins and cooking school traffic, the traffic generation of the existing dwelling should also be considered where it would be safe to assume four vehicle movements per day which in total equates to 28 vehicle movements per day. It should be noted that there has been no requirement or obligation placed on the proponents to maintain the access way to a reasonable standard. Given reasonable traffic movements, gravel roads can quickly deteriorate and expose underlying soils and corrugations greatly increasing noise and dust emissions.

In dry times, the amount of dust which may be generated by this amount of traffic is expected to be noticeable and may directly impact on the air quality and subsequent health of residents located adjoining the entrance roadway. Additionally, surface water is impacted during rain events as deposited dust and soil particles are washed from vegetation and shed to nearby waterways affecting water quality. The surrounding households and environment will benefit from the requirement to seal the surface of the roadway to a point past the creek located some 280 metres within from Fernleigh Road.

Given that the internal access driveway passes within 40m, 120m and 90m of adjacent dwelling houses, the size of the development and traffic impacts, it is considered reasonable to require that the internal driveway access is sealed from the entry to the location of the creek being a length of approximately 280m (i.e. CH280) to mitigate potential impact of dust and noise from vehicular movements on the internal access road.

In relation to noise generated from the Recreation Building, should the application be approved an Operational Management Plan and Noise Management Plan will be required. There is also a requirement for an on-site manager to be in attendance.

It is acknowledged that the proposed development has the potential to create land use conflict, however with appropriate management and mitigation measures such as vegetation buffers, sealing of the internal driveway, implementation of an Operational Management Plan and Noise Management Plan, the potential conflict can be suitably mitigated and managed.

Clause 3.8 On-site Sewage Management Systems

Clause 3.8 provides that all development not connected to Council's reticulated sewerage system must comply with the Ballina Shire Council's On-Site Sewage and Wastewater Strategy.

Concerns were raised in submissions regarding the disposal of wastewater, and in particular the size of the systems required for the development.

The application was supported by an OSSM report prepared by Tim Fitzroy & Associates dated 17 October 2019. Further information was requested and submitted following the site inspection. Following submission of amended plans, which changed all cabins to Cabin Type 2, the report was further revised and concluded that the site is suitable to assimilate wastewater from:

- “1. Proposed Cabins 1 to 8 (inclusive) to be serviced via a 100mm gravity pipe to a 5,000L septic tank and thereafter an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 15.0m long x 2m wide x 0.45m deep) ETA beds.*
- 2. Proposed Recreation Building and Commercial Kitchen will flow by gravity in 100mm pipe to a septic tank system (with outlet filter) with a total capacity of 10,000L, an Aerated Wastewater Treatment System (AWTS) and disposal through common (2 x 16.0m long x 2m wide x 0.45m deep) ETA beds.”*

Council’s OSSM Officer is supportive of the revised report and conclusion. The application was also referred to Rous County Council. The County Council identified conditions recommended for application to a Section 68 Approval to Install, should the application be approved.

Clause 3.10 Sediment and Erosion Control

Concerns were raised by submitters regarding the generation of dust from increased traffic on the internal driveway. Council’s Environmental Health Officer also raised these concerns and provided the following comment:

“The amount of dust which may be generated is expected to be noticeable and may directly impact on the air quality of residents located adjacent to the entrance at Fernleigh Road. Additionally, surface water may be impacted in rain events and shed the dust and exposed soils to waterways affecting water quality of nearby streams. The immediate surrounding environment and the development will benefit from the requirement to seal the surface of the roadway to a point at the creek located some 300 metres from Fernleigh Road to prevent nuisance dust emissions and noise.

The creek is located at approximately CH280 which would necessitate the driveway sealing to be undertaken for approximately 120m extra distance than that proposed.

Given that the internal access driveway passes within 40m, 120m and 90m of adjacent dwelling houses, the size of the development and traffic impacts, it is considered reasonable to require that the internal driveway access is sealed to the location of the creek (i.e. CH280).

Clause 3.19 Car Parking and Access

Car Parking

The proposed development requires twelve car parks. It is proposed to provide a car park adjacent to each cabin (i.e. eight) and five additional car parks adjacent to the recreation building, therefore 13 car parks will be provided, inclusive of two accessible spaces.

Car parking requirements of the proposed development have been assessed in accordance with Chapter 2 and Chapter 7 of the DCP. The tourist and visitor accommodation requires eight car parking spaces, inclusive of one accessible space. The information and education facility requires four spaces inclusive of one accessible space. The 13 car parks proposed are therefore compliant.

Access

The site is accessed from Fernleigh Road via an unsealed driveway. It is proposed to seal the access driveway from the existing pavement edge of Fernleigh Road to CH160. However, should the application be approved it is recommended this be extended to require sealing of the internal driveway access to CH280 to prevent potential dust, noise, erosion and sediment issues. NSW Rural Fire Services "Planning for Bush Fire Protection" also requires a 4.0m gravel or sealed carriageway for the remainder of the internal driveway.

Concerns were raised in submissions in relation to sight distance, however Council Engineers suggest that there is sufficient sight distance, being approximately 700m to the south west and 160m to the north east, which are compliant with AS2890. Council Engineers also agree that Fernleigh Road, which has a 6.5m wide sealed carriageway is constructed to a suitable standard to service the proposed development.

Traffic Generation

The application was supported by an Engineering Services Report prepared by SDS Civil Enterprises dated October 2019. Trip generation for the proposed development was calculated as:

"The RTA Guide to Traffic Generating Development advises that tourist facilities are quite varied in their operation and ideally, comparison to similar local developments be had. A review of Ballina Shire Council and Tweed Shire Council Section 94 trip generation tables, lists a rate of between 2.3 to 2.48 trips per day per bedroom, thereby adopting 2.3 trips per bedroom is a reasonable assessment. For the eight cabins there are eight bedrooms x 2.3 trips/day = 18 trips per day.

The information and education facility (cooking school) would service 12 participants and have an instructing chef. Adopting 50% of the onsite cabin attendees as being cooking school participants (i.e. four people), thereby 8 people (one car per two people) may arrive via car including the instructing chef or similar. Summary of attendee trips would be:

<i>4 people onsite</i>	<i>=</i>	<i>Nil additional trips</i>
<i>8 people at 1 car per 2 people</i>	<i>=</i>	<i>four trips in and four trips out</i>
<i>1 instructing person</i>	<i>=</i>	<i>one trip in and one trip out</i>
<i>Total peak trips</i>	<i>=</i>	<i>10 trips</i>

Whilst the peak generation for the information and education facility (cooking school) would be 10 trips per day, allowing for an average operational participation demand of 60% (i.e. average use at four days per week or similarly 60% average attendance), this equates to an operational demand of six trips per day for S94 contribution purposes.”

Council Engineers have reviewed the Engineering Services report and are satisfied that trip generation figures are correct and that Fernleigh Road is suitable to service the proposed development.

Chapter 7 – Rural Living and Activity

Clause 3.3 Rural Tourist and Visitor Accommodation

The planning objectives of Clause 3.3 state:

- a. Provide for the establishment and operation of diverse small scale tourist and visitor accommodation within rural and environmental protection zones within Ballina shire;*
- b. Ensure that facilities are designed and constructed so as to maintain rural character and amenity, productive agricultural use of land and environmental values;*
- c. Encourage visitor interaction with the rural and natural environment;*
- d. Ensure the provision of a satisfactory level of service to guests and that such premises meet acceptable access, community health and fire safety standards; and*
- e. Encourage environmental repair, restoration and management activities in conjunction with rural tourist development.*

The proposed development has been assessed as consistent with these objectives as it will provide for diverse small scale tourist and visitor accommodation, it maintains the character of the rural landscape, provides visitor interaction with the rural environment and provides a satisfactory level of services to guests.

Small scale tourist and visitor accommodation is development that is predominantly residential in character and scale. The development proposes eight tourist and visitor accommodation cabins. There is also one existing accommodation cabin. The DCP considers that, as a guide, not less than three and not more than eight accommodation units are best suited to meet the planning objectives of Clause 3.3.

In considering the scale in proportion to the land size, and the surrounding development in the locality, the proposed development is of a reasonable scale and is compatible with the characteristics of the site and its surrounds.

In terms of the configuration of the proposed development, it has been designed within a clustering radius of 90m, i.e. the cabins, recreation building and information and education facility. The development control required for seven or more cabins is that the clustering radius be 90m plus 10m for each additional unit.

While the proposed development is compliant with this control, the existing holiday cabin is outside this cluster by approximately 50m. The existing holiday cabin was approved via DA 2012/465 on 21 February 2013 and was at that time compliant with all the relevant DCP and LEP provisions. If the proposed cabins were to be clustered around the existing cabin, it is considered that the visual impact of the proposed development, particular from the adjoining property to the north, would be greater. This departure is therefore considered acceptable.

Rural and nature based tourism activities vary significantly in their nature and scale and it is considered that the information and education facility (cooking school) component of the proposed development will provide visitor interaction with the rural and natural environment by allowing visitors to experience rural land and farm produce, from the subject land or the wider surrounding agricultural lands.

Should the application be approved, conditions are recommended to ensure that the existing dwelling house is maintained as a manager's residence and that the tourist and visitor accommodation is temporary in accordance with the relevant development controls.

It is therefore considered that the proposed development is consistent with the objectives of Clause 3.3 and acceptable when assessed against the relevant development controls.

Conclusion

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

A copy of the Section 4.15 Assessment is provided as Attachment 7.

In addressing submissions, two main issues that need to be considered in relation to the current proposal are the scale of the overall development and the impact on adjoining properties.

1. Is the nature and scale of the development considered suitable?

This issue was raised in a number of submissions including in the Rous County Council submission which identified the overall scale of site disturbance and development, both during construction and operation as an issue.

In considering this issue, Council must consider in particular Clause 7.9 of the BLEP 2012 and Clause 3.3 of the DCP in relation to the scale of the development.

Clause 7.9 expressly states that consent must not be granted unless the consent authority is satisfied that the proposed tourism development is *small scale and low impact*.

Consideration should be given to the existing development footprint (693m²) and the proposed development footprint (1,245m²), a total of almost 2,000m². Relative to the size of the land parcel on which the development is located, the proposed development comprises only 0.423% of the land area, whereas neighbouring developments comprise a greater percentage of adjoining lands.

2. The impact on adjoining properties and amenity of the locality.

Council staff have reviewed the proposal with respect to amenity impacts including noise, traffic and visual impact which were identified by submitters as part of the public exhibition of the proposal and were also comprehensively addressed by the applicant in the statement of environmental effects and additional information submitted during the assessment of the application.

Noise sources identified and modelled in the Noise Impact Assessment (NIA) include patron noise, air conditioning, coolroom, exhaust fan and vehicle movements. The NIA concluded that noise levels from the specified sources are predicted to be within criteria at all receptors (i.e. 9 surrounding properties) during all time periods.

Noise may be generated from guests, music, voices and traffic. Traffic noise on the unsealed internal driveway was identified as a potential issue and it is intended to impose a condition to seal the access driveway to the creek should the application be approved, to mitigate this issue.

Council's Engineer has reviewed the proposal and Engineering Services report submitted with the application, and considers that Fernleigh Road is of a suitable standard to service the proposed development and that there is sufficient sight distance compliant with AS2890 and that trip generation provided is correct.

Having regard for the outcome of the assessment undertaken, Council has the following options with regard to determining the subject application.

Option One – Approval with Conditions

That Council approve all aspects of the development application, subject to applicable conditions of consent (refer to Attachment 8) for this type of development and conditions addressing particular matters outlined in this report. Attachment 8 includes the various recommended conditions set out in this report.

This would include conditions to retain the existing vegetation in the south west of the proposed development, provision of a further vegetated buffer and sealing of the internal driveway to mitigate potential noise impacts and land use conflict.

Should the application be approved, the consent would also require the submission and approval of an Operational Management Plan for the approved land use.

This is the recommended approach for the reasons outlined in the report.

Option Two - Refusal

That Council refuse the development application. Council could refuse the application if it is not satisfied that the proposed development satisfactorily addresses relevant environmental planning considerations, in particular Clause 7.9 of the BLEP 2012 and Chapter 7 of the DCP in relation to the scale of the proposed development and potential impacts on neighbours. As per this assessment report, refusal is not recommended.

Option Three - Deferral

Council may defer determination of the application in order to seek additional information. This option is not recommended as sufficient and suitable information has been provided by the applicant and the technical assessment is complete.

RECOMMENDATION

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)

1. Locality Plan
2. Plans of Development
3. Public Submissions
4. Confidential Submission
5. Confidential Submission
6. DA 2019/694 - Legal Advice from Applicant
7. Section 4.15 Assessment
8. Draft Conditions of Consent

8.3 DA 2019/799 - 18 Johnston Road, Newrybar

8.3 DA 2019/799 - 18 Johnston Road, Newrybar

Applicant	Mr P & Mrs E A Hudson
Property	Lot 7 DP 606566 – 18 Johnston Road, Newrybar
Proposal	To formalise and expand an agricultural produce industry (macadamia nut processing and value adding facility) and to carry out associated works
Effect of Planning Instrument	The land is zoned RU1 Primary Production under the provisions of the Ballina LEP 2012.
Locality Plan	The subject land is depicted on the locality plan in Attachment 1 and Figure 1.

Introduction

Development consent is sought via DA 2019/799 to formalise and expand an agricultural produce industry (macadamia nut processing and value adding facility) and to carry out associated works on the subject land.

The purpose of this report is to seek Council's determination of the subject application. The application is being reported to Council for determination due to the number and nature of submissions received.

To assist Council in determining this application, this report provides an assessment of the key relevant matters of the proposal under Section 4.15 of the Environmental Planning and Assessment Act (EP&A Act) 1979.

The full Section 4.15 report, which provides an assessment of all required matters under the EP&A Act 1979, is contained in Attachment 4.

Background

Macadamia processing currently occurs on the subject property. Some of the existing operations and existing structures have not been authorised by Council through the issue of development consent, construction and occupation certificates. There has not been any separate approval issued for the use of any of the farm buildings on the site for any purposes other than those which are ancillary to the current agricultural use of the land as a macadamia plantation.

The subject application is seeking to legitimise the existing operations and also expand the storage and value adding facilities associated with the processing of macadamias on the site as an agricultural produce industry. Should development consent be granted, a Deferred Commencement condition is recommended requiring a Building Information Certificate to be submitted to Council for unauthorised building works on the site.

Description of the Subject Site

The subject land is Lot 7 DP 606566, 18 Johnston Road, Newrybar. The site is shown in Attachment 1 (cadastral plan) and Figure 1 below (aerial photo):



Figure 1: Aerial image of subject site

The subject site is 6.81 hectares in area. A portion of the site to the west of Skinners Creek (approximately 3 hectares) is located within the Byron Shire Local Government Area (LGA). However, the proposed buildings are to be located within the area of the property located within the Ballina Shire LGA. The application was referred to Byron Shire Council for comment on 3 January 2020. No response was received. A dwelling house (c1980) is located on the southern boundary of the property. The property has frontage to and obtains vehicular access via Johnston Road.

Surrounds

The subject land is located in a rural locality that is characterised by a mix of smaller rural allotments (primarily lifestyle) and larger rural allotments (macadamia production). The site is located approximately 800 metres to the south west of Newrybar village. Distances of the facility to nearby properties (and land uses) are shown as follows.

Property address	Legal description	Distance
No. 25 Boormans Road, Newrybar	Lot 3 DP 244148	240 metres to dwelling
No. 21 Boormans Road, Newrybar	Lot 2 DP 244148	245 metres to dwelling
No. 26 Boormans Road, Newrybar	Lot 5 DP 244148	300 metres to dwelling
No. 14 Boormans Road, Newrybar	Lot 1 DP 244148	325 metres to dwelling. Also note tourist and visitor accommodation approved via DA 2016/161
No. 19 Johnston Road, Newrybar	Lot 6 DP 606566	400 metres to dwelling

8.3 DA 2019/799 - 18 Johnston Road, Newrybar

Property address	Legal description	Distance
No. 1 Johnston Road, Newrybar	Lot 5 DP 606566	200 metres to tourist and visitor accommodation approved via DA 2015/300 and temporary function centre approved via DA 2017/662
No. 108 Brooklet Road, Newrybar	Lot 1 DP 253857	240 metres to dwelling
No. 116 Brooklet Road, Newrybar	Lot 2 DP 253857	250 metres to dwelling

Existing operations

The site contains an existing macadamia orchard comprising approximately 2,000 trees that produce approximately 30 tonnes of nut-in-shell (NIS) per annum. 970 tonnes of NIS are imported from other farms, resulting in a current annual production of 1,000 tonnes. The current macadamia processing includes 5 to 7 hours of loading per week.

The development plans at Attachment 2 show the existing floor plans of the buildings currently used for macadamia processing on the site. Building A is a single storey building used as an office and for the processing of macadamia nuts (i.e. cracking, sorting, treating and packaging). Building B is a single storey building used for the storage of processed macadamia nuts and farm machinery.

There are currently eight nut-in-shell and nut shell storage silos of various sizes at the processing facility.

The applicant has indicated that harvested nuts from the farm and other suppliers are currently de-husked at the House With No Steps facility at Alstonville or when supplied by supplier growers, de-husked at Alstonville or at other facilities in the region and transported to the facility. No de-husking is proposed on site as part of the subject application.

De-husked nut-in-shell is temporarily stored in the silos prior to processing. Nuts are then cracked, sorted, processed and packaged in Building A and/or Building B. Packaged nuts are temporarily stored prior to transport from the facility in Building B.

Existing Approvals

Application No.	Date Determined	Development
BA 1980/879	5 September 1980	Dwelling house
DA 2000/532	14 January 2000	Farm shed and extensions/additions to existing farm shed on the site
DA 2003/654	13 January 2003	Farm shed and additions to farm shed
DA 2004/704	16 February 2004	Tractor shed
DA 2009/196	Determined 4 November 2008. This consent lapsed on 4 November 2013	Dwelling house. Remove 1980 dwelling
DA 2016/525	Determined 24 October 2016	Dwelling house and tennis court. Remove 1980 dwelling

Details of Proposal

Development consent is sought via DA 2019/799 to formalise and expand an agricultural produce industry (macadamia nut processing and value adding facility) and to carry out associated works. The development plans are provided at Attachment 2.

The existing macadamia nut processing facility currently processes up to 1,000 tonnes of nuts per year (comprising 30 tonnes produced on the site and 970 tonnes imported from other farms). It is proposed to increase the capacity to up to approximately 3,000 tonnes per year, all due to additional import of nuts from other farms. Nuts are transported with a small tip truck or with truck and dog.

The applicant has indicated that the nuts processed on site are both nuts grown at the subject site as well as nuts that were grown elsewhere. The processing of nuts does not include dehusking. All dehusking is carried out off site. On site, the nuts are dried, some are roasted, and all nuts are packaged and transported for wholesale, both locally and overseas.

It is proposed to construct two additions to the sheds with associated hardstand and truck manoeuvring area and use the sheds for macadamia processing, packing and storage.

Generally, the macadamia harvesting season runs from April through to August, and the processing of nuts allows the facility to operate a few more months at the end of the season. Current operating hours are from Monday to Saturday, 6.00am to 8.30pm.

The proposal seeks consent to process 3,000 tonnes nut-in-shell per annum. Approximately 2,970 tonnes nut-in-shell will be grown on other farms.

The 3,000 tonnes nut-in-shell is placed into the drying silos, where there is a 20% weight/moisture loss and approximately 2,400 tonnes is available to process.

The 2,400 tonnes will be processed as follows:

- Approximately 1,200 tonnes to be processed for kernel, and
- Approximately 1,200 tonnes of packaged bulk nut-in-shell.

The 1,200 tonnes bulk nut-in-shell is expected to yield approximately 400 tonnes of processed kernel.

Processed kernel is made into a variety of products, including packaged plain and seasoned nuts and nut bars/snacks.

The residual shell of approximately 1,100 tonnes will be temporarily stored in silos prior to being used in the burners to generate heat for the dryers (approximately 660 tonnes or 60%) and 320 tonnes sent to a Casino livestock feed manufacturer.

The applicant has described the proposal as follows:

Building 1 (dwelling house)

No changes are proposed to Building 1 and it remains an approved dwelling providing on-site accommodation for the Hudson family.

Building A

This building is and will continue to be used for an office and the processing (i.e. cracking, sorting, treating and packaging) of macadamia nuts.

The applicant has indicated that macadamia nut-in-shell is moved by conveyors from the silos to the 'crackers' located on the mezzanine floor. The cracked nut is then conveyed to the 'grader' before colour sorting and grading. These activities occur in an isolated room with sealed concrete floor and lined with 'bondor' panelling.

The graded nut then moves to another room where final quality inspection occurs followed by batching, weighing and pre-packaging. Depending on product, the packaged kernels are then vacuumed sealed and boxed prior to removal to the storage building. These activities occur in an isolated room with sealed concrete floor and lined with 'bondor' panelling.

Kernels to be valued added are taken to the kitchen room where further processing and packaging occurs, prior to removal to the storage building.

Building A is on a concrete slab and constructed using steel frame, with 'bondor' panelling and Colorbond roof. It has a floor plan area of approximately 282m². No changes to the building height or setback of Building A is proposed.

Building B

Existing Building B is primarily used for packaging bulk nut-in-shell, packaging and storage of final products and storage of machinery.

Building B is on a concrete slab and constructed using steel frame, with 'bondor' panelling and Colorbond roof. The building has a floor area of approximately 274m². No changes to the building height or setback of Building B is proposed.

Building C

Building C is an extension to Building B and will be used for storage of packaged final products. The building will be on a concrete slab, steel framed, clad with 'bondor' panelling and Colorbond roof. The building will have a floor area of approximately 145m².

The setback from the southern boundary of proposed Building C is variable from 1.1 metres to 1.9 metres. Minor excavation earthworks are required to provide the platform for Building C. The depth of works is approximately 0.3m and extends for approximately 130m².

The proposed building is approximately 7 metres in height (from the existing ground level).

Building D

Proposed Building D is an extension to Building B and will be used for storage of packaged final products. The building will be on a concrete slab, steel framed, clad with 'bondor' panelling and Colorbond roof. The building will have a floor area of approximately 274m².

The setback from the southern boundary of proposed Building D is variable at approximately 10 metres to 13 metres.

Some filling earthworks are required to provide the platform for Building D and for the relocation of the internal driveway. The depth of works is approximately two metres and extends for approximately 280m². The proposed building is approximately seven metres in height (from the existing ground level).

Materials and colours

There is no change to the external building materials and colours of the existing Buildings A and B. The external building materials and colours of the proposed Buildings C and D are to match existing Building B.

Hours of operation

The agricultural produce industry will generally not be receiving nut-in-shell for processing between September and April and will be operative 6 months of the year, Monday to Sunday. The facility will operate during the following hours:

Monday to Sunday 6.00am – 8.30pm

Processing activities may occur on-site throughout the year, depending on harvest and demand for product.

Staff numbers

The applicant has indicated that the total number of staff (in season) are as follows:

Total numbers of staff include:

- Office and sales – four full time (including Mr and Mrs Hudson) and
- Process and storage – eight full time.

The numbers of staff on duty at any one time include:

- Office and sales – four full time (including Mr and Mrs Hudson) and
- Process and storage – four full time.

Out of season the facility is typically operated by Mr and Mrs Hudson only.

The applicant has indicated that the facility does not have a retail outlet, and only receives wholesale customers. In this regard, the maximum number of clients/customers expected is one per month.

Staff amenities

Staff amenities include a toilet, shower, locker and staff room.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition from 8 January 2020 to 29 January 2020. Following this exhibition period, a total of nine public submissions were received, with one in support. Copies of the submissions are included as Attachment 3.

The key matters raised in these objections are summarised and addressed as follows:

1. Incorrect characterisation as an ‘ancillary’ land use

Comment: The applicant is seeking consent for an agricultural produce industry, which is a standalone, separately defined land use in the Ballina Local Environmental Plan (BLEP) 2012:

***Agricultural produce industry** means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.*

Note. *Agricultural produce industries are a type of rural industry—see the definition of that term in this Dictionary.*

Concerns have been raised that the proposed use is not subordinate or subservient to the dominant purpose (being intensive plant agriculture for the purposes of macadamia production) as indicated within the Statement of Environmental Effects submitted with the application.

Agricultural produce industries are permissible with consent within the RU1 zone. This is considered to be an appropriate land use characterisation for such activities. In this regard, the development is not reliant upon being ‘ancillary’ to the agricultural use of the land for the purposes of permissibility, and therefore consent is being sought for this specific and defined use.

2. Land use conflict – suitability of proposal in RU1 zone and protection of existing approved residential and tourist land uses

Concerns have been raised regarding land use conflict issues associated with the development. The subject and surrounding land is zoned RU1 Primary Production under the Ballina LEP 2012. The development is permissible within the zone.

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The objectives of the RU1 zone make reference to the minimisation of land use conflict, maintenance of rural character ensuring compatibility with the rural and environmental nature of the land.

The applicant has provided a Land Use Conflict Risk Assessment (LUCRA) as part of the application. Council's Public and Environmental Health Section has carried out an assessment of the proposal in relation to land use conflict.

Chapter 2, Section 3.1 of the DCP requires that agricultural produce industries be positioned at least 300 metres from urban areas and rural tourist facilities (not on the same land) and 150 metres from unrelated rural dwellings. In the instance of the proposal, there is no urban zoned area in proximity to the site. The facility will be located over 800 metres from Newrybar Village.

The facility is also located approximately 240 metres from the nearest rural dwelling (No. 25 Boormans Road, Newrybar – Lot 3 DP 244148), as shown in Figure 2 as follows:



Figure 2: Distance from facility to adjoining dwelling house at No. 25 Boormans Road, Newrybar

The facility is located approximately 245 metres from the dwelling house at No. 21 Boormans Road, Newrybar (Lot 2 DP 244148), as shown in Figure 3 as follows:

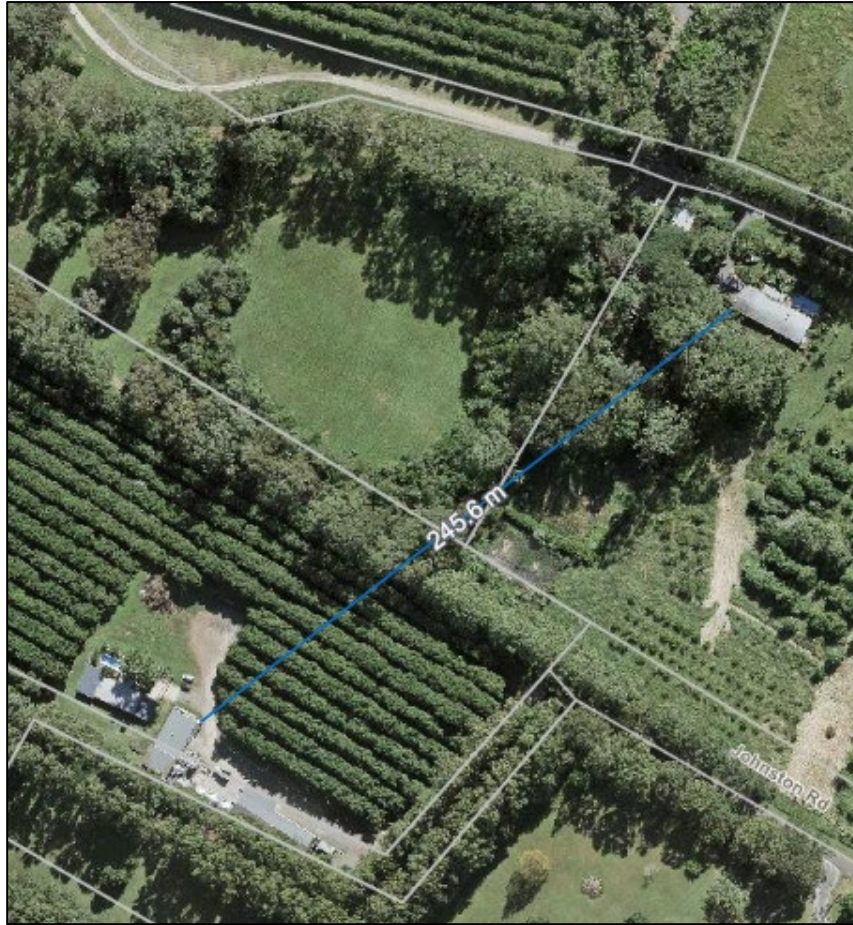


Figure 3: Distance from facility to adjoining dwelling house at No. 21 Boormans Road, Newrybar

With respect to tourist and visitor accommodation, the facility is located approximately 200 metres to No. 1 Johnston Road, Newrybar (Lot 5 DP 606566). Tourist and visitor accommodation was approved on the land via DA 2015/300. The temporary use of the land as a function centre was also approved via DA 2017/662.

The facility does not comply with the minimum 300 metre separation distance to this land use. Variance to this is permitted under the development control plan through the consideration of a land use conflict risk assessment.

Noise impacts are considered to be one of the main sources of potential land use conflict in this instance. Within the Noise Impact Assessment prepared by Ingen Consulting dated 10 June 2020, the premises at No. 1 Johnston Road was identified as a commercial (non-residential) receiver and therefore the intrusiveness noise levels do not apply. Only the amenity noise levels are applicable.

This approach has been accepted by Council's Public and Environmental Health Section.

The Noise Impact Assessment has demonstrated that the facility can be operated in such a way that the likely noise impacts of the proposed operations will be acceptable under the 2017 EPA Noise Policy for Industry.

In this regard, the non-compliance with the minimum 300 metre separation distance is considered acceptable in relation to the proposal.

The facility is also located approximately 325 metres to the dwelling at No. 14 Boormans Road, Newrybar (Lot 1 DP 244148). Tourist and visitor accommodation was approved on the site via DA 2016/161. The proposal meets the minimum buffer distance specified in the DCP.

In this regard, the proposal is considered acceptable with regard to land use conflict.

Notwithstanding this, it is noted concerns have been raised with respect to amenity impacts (particularly noise) associated with the development. These matters are discussed further below.

3. Noise – noise impacts on surrounding properties from heavy vehicle movements and operation of the agricultural produce industry (macadamia processing), particularly residential and tourist uses.

Comment: The submissions received raised concerns regarding noise impacts from the expanded facility as proposed.

The application was supported with the submission of a Noise Impact Assessment (NIA) prepared by Ingen Consulting.

It is noted that two submitters engaged an acoustic consultant to conduct an independent review of the submitted NIA. Copies of each review are attached to submissions contained in Attachment 3. These submissions have been reviewed by Council's Public and Environmental Health Section.

Additional information was requested from the applicant during the assessment of the application requiring additional consideration and analysis be carried out to determine what noise mitigation measures can be reasonably and feasibly implemented on-site to reduce the noise impacts to the identified sensitive receivers.

Council's Public and Environmental Health Section have carried out an assessment of the proposal and the associated NIA as amended (Revision C dated 10 June 2020) and advised that the NIA has generally been prepared in accordance with the requirements of the Noise Policy for Industry (2017).

The noise impacts associated with the proposal are discussed in further detail later in this report (Chapter 7 of the Ballina DCP 2012).

A number of submissions raised concerns with respect to noise impacts associated with increased road traffic noise. The NIA states that the acoustic assessment addresses noise emissions from on-site operations. Due to the low volume of traffic generated by the development (average 3 truck movements per day), it was stated that a road traffic noise assessment is not warranted.

This has been accepted by Council's Public and Environmental Health Section. It is noted from the submitted Traffic Impact Assessment (TIA) that overall vehicle trips are to decrease (compared to the existing situation) as part of the proposed development.

A condition is recommended to be imposed on any consent granted to ensure the development does not cause a noise nuisance to any other person:

- *The development shall not cause a noise nuisance to any other person. Following occupation, should complaints of a noise nuisance be justified, an acoustic assessment shall be conducted by a qualified consultant and report provided to Council. The applicant shall then implement all recommendations provided under the assessment within a timeframe set by Council, to the satisfaction of Council and comply with any additional direction given by Council.*

Subject to compliance with the recommended conditions of consent, it is expected that noise impacts associated with the proposal can be suitably managed.

4. Proposal is best defined as a 'light industrial' activity

Comment: Concerns have been raised that the proposal comprises a 'light industrial' activity and should therefore be located within an industrial zoned area.

The proposal is most appropriately defined as an 'agricultural produce industry', which falls under the broader definition of 'rural industry' under the BLEP 2012. The land use definitions are reproduced below:

Agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

Note. *Agricultural produce industries are a type of rural industry—see the definition of that term in this Dictionary.*

Rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

- agricultural produce industries,*
- livestock processing industries,*
- composting facilities and works (including the production of mushroom substrate),*
- sawmill or log processing works,*
- stock and sale yards,*
- the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

Note. *Rural industries are not a type of industry—see the definition of that term in this Dictionary.*

As an agricultural produce industry is not a type of industry, the proposed land use is therefore distinct from light industrial activities.

Agricultural produce industries are permissible within the RU1 zone. Council has consistently characterised this type of land use as an agricultural produce industry.

5. Increase in traffic and resulting impacts on amenity and the environment

Comment: Concerns have been raised with respect to the traffic generated by the development and resulting impacts on amenity and the environment.

The application has been accompanied by a Traffic Impact Assessment (TIA) prepared by Ingen Consulting (Revision C, dated 11 June 2020). The traffic report submitted with the application indicates that due to increased mechanisation, the number of staff reduces from eight to four per shift and two shifts to one shift per day, resulting in a decrease in generated traffic of 18% compared to the existing trip generation. There is a small increase in daily truck movement generation (from 1.9 per day to 3.0 per day during the season).

Council's Civil Services Division has carried out an assessment of the proposal and no issues have been raised with respect to traffic matters.

One submission received raised concerns regarding vehicle emissions and resulting impacts on the environment. As the TIA indicates that the overall traffic movements are to decrease, vehicle emissions are not expected to increase as a result of the proposal.

This submission also made reference to financial impacts on an approved tourist and visitor accommodation development on their property. These issues primarily related to noise and traffic issues. It has been assessed that the anticipated impacts of the development can be suitably addressed and are able to be managed by way of conditions.

6. Suitability of Brooklet Road to service the development

Comment: Concerns have been raised with respect to the suitability of Brooklet Road to support the proposed development and stated that that this road is narrow and in poor condition.

Council's Civil Services Division has determined that the existing external road network is constructed to a suitable standard to service the proposed development. All vehicles can enter and exit the site in a forward direction.

7. Sight distances insufficient

Comment: One submission received stated that the sight distance at the intersection of Brooklet Road and Johnston Road has been overestimated in the Statement of Environmental Effects and is approximately 80m to the north-east towards Newrybar and 150m towards the south-west towards Brooklet. The submission stated that this is substantially less than the 180m required under Austroads Standards for an 80km/h speed environment and does not allow a driver on Brooklet Road sufficient distance to avoid a collision with a vehicle egressing Johnston Road.

Council's Civil Services Division has reviewed the proposal and the contents of this submission.

It is acknowledged that the Austroad design guidelines do recommend a minimum stopping sight distance of 181m for a speed of 80km/hr. However, it was commented that the recommended sight distance requirements in the Austroad guidelines are relatively conservative and a large percentage of the existing intersections within the Ballina Shire would fail to meet these requirements.

The guidelines relate to the desirable sight distances for the design of new intersections and are frequently difficult to achieve in practice.

In comparison, the Australian Standards for sight distances at driveways for commercial properties are significant lower with a minimum recommended sight distance of 111m in an 80km/hr speed zone.

Although the intersection in question is a public road, these values have been provided as an alternate source of reference regarding the minimum safe sight distance requirements at points of intersection.

The sight distances at this intersection are approximately 160m in each direction which is well in excess of the minimum requirements of the Australian Standards and not significantly less than the minimum recommended sight distances specified with Austroads.

Considering this, the intersection is not considered to present a significant safety risk particularly given the proposed decrease in traffic associated with the development.

8. Visual amenity impacts – appearance of the building and light spill concerns

Comment: Concerns have been raised that the proximity of the proposal to existing dwellings and approved tourist accommodation has the potential to result in light and other visual impacts to adjoining properties.

With respect to light spill, Council's Public and Environmental Health Section has recommended a condition be imposed requiring compliance with AS 4282:1997 "Control of the Obtrusive Effects of Outdoor Lighting".

With respect to the appearance of the building, the applicant has indicated that the access shaft has been planted with bamboo to screen and provide separation between the driveway and existing buildings. It was also indicated that additional lilly pillies can be planted between the new building and the boundary.

A condition is recommended requiring additional plantings to be provided in this location to soften the appearance of the building.

Matters for consideration

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

The proposal has been assessed as being generally compliant with the Ballina Local Environmental Plan 2012, Council's DCP 2012 and relevant State Environmental Planning Policies.

The assessment has identified the following key issues which are elaborated upon for Council's information and consideration. Further matters are addressed in the Section 4.15 assessment report.

This report should be read in conjunction with the Section 4.15 assessment report (Attachment 4).

Applicable Planning Instruments

Ballina Local Environmental Plan 2012

The proposed development is generally consistent with the relevant requirements of the Ballina Local Environmental Plan 2012. Suitable conditions of consent have been proposed to address specific provisions contained in the plan, where required.

Clause 2.3 of the Ballina Local Environmental Plan 2012 is discussed below.

Zoning (Clause 2.3)

The subject site is zoned RU1 Primary Production under the Ballina LEP 2012. The proposal is defined as an 'agricultural produce industry' which fits under the broader 'rural industry' definition:

Rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

- (a) *agricultural produce industries,*
- (b) *livestock processing industries,*
- (c) *composting facilities and works (including the production of mushroom substrate),*
- (d) *sawmill or log processing works,*
- (e) *stock and sale yards,*
- (f) *the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

Agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

Agricultural produce industries are a permissible land use within the RU1 Primary Production zone.

Zone objectives (Clause 2.3)

The objectives of the RU1 Primary Production zone are as follows:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To maintain the rural, cultural and landscape character of the locality.
- To enable development that is compatible with the rural and environmental nature of the land.
- To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.

The proposed development is considered to be consistent with the zone objectives given it will encourage diversity in primary industry enterprises (agricultural produce industry comprising macadamia nut processing and value adding facility). The potential for land use conflict and impacts on the amenity of the locality (as identified in the submissions received) can be suitably managed via appropriate mitigation measures, which are to be imposed on any consent granted.

Subject to compliance with the recommended conditions, the proposed development is considered to be in accordance with the aims and objectives of the RU1 zone.

Ballina Development Control Plan 2012

The proposed development is consistent with the relevant requirements of the Ballina DCP 2012. Suitable conditions of consent have been proposed to address specific provisions contained in Chapter 2 – General and Environmental Considerations of the plan, where required.

Chapter 7 – Rural Living and Activity of the Ballina DCP 2012 is of particular relevance to the application and has therefore been discussed in detail below.

Chapter 7 – Rural Living and Activity

Part 2 Chapter Planning Objectives

The proposal generally complies with the overarching objectives of this chapter.

Part 3 General Controls

The proposal generally complies with the controls of this chapter, with the exception of building setback requirements. This non-compliance is discussed in further detail in Section 3.7 below.

Section 3.1 – Residential Development in Rural Areas

The applicant has indicated that no changes are proposed to the existing, lawful approved dwelling on the subject site as part of the application. In this regard, no issues raised in relation to this section.

Section 3.2 – Rural Subdivision

Not applicable – no subdivision proposed.

Section 3.3 – Rural Tourist and Visitor Accommodation

Not applicable – no rural tourist and visitor accommodation proposed.

Section 3.4 – Rural Industry

3.4.2 Planning Objectives

- a) *Ensure siting and physical form of rural industries is compatible with the character and environmental values of the locality;*

Comment: The facility is not visible from the public domain and existing vegetation within the site will continue to soften and screen the development from public view.

However, it is noted that the facility is visible from the adjoining property (No. 9 Johnston Road, Newrybar) and that concerns have been raised from the property owners regarding visual impact. In response to this matter, the applicant has indicated that the access shaft has been planted with bamboo to screen and provide separation between the driveway and existing buildings. It was also indicated that additional lilly pillies can be planted between the new building and the boundary. A condition is recommended on the consent requiring additional plantings to be provided to soften the appearance of the building.

- b) *Ensure that rural industries are designed so to ensure acceptable levels of amenity for occupants of adjacent premises; and*

Comment: It has been assessed that the agricultural produce industry will ensure acceptable levels of amenity, subject to the recommended conditions of consent. Visual amenity impacts are discussed above. Refer to discussion below with respect to noise impacts.

- c) *Ensure that safe and adequate infrastructure is available to the premises.*

Comment: It has been assessed that adequate infrastructure and services are available (or can be made available) to the site to support the proposed use.

3.4.3 Development Controls

- i. *Buildings and other structures associated with the operation of the rural industry are to be designed so as to be:*

- *Sympathetic to the visual amenity of the area;*

8.3 DA 2019/799 - 18 Johnston Road, Newrybar

The existing buildings/operations are not visible from Brooklet Road. The applicant has indicated that the existing building setbacks will remain unchanged with existing landscaping to be retained. In this regard, it has been determined that the potential for visual impact is minimal.

With regard to the properties to the north (i.e. Lot 2 DP 244148 – No. 21 Boormans Road, Lot 3 DP 244148 – No. 25 Boormans Road and Lot 5 DP 244148 – No. 26 Boormans Road), it is considered the operations are adequately screened by the existing macadamia trees on the subject property.

However, it is noted that the facility is visible from the adjoining property (No. 9 Johnston Road, Newrybar) and that concerns have been raised from the property owners regarding visual impact. In response to this matter, the applicant has indicated that the access shaft has been planted with bamboo to screen and provide separation between the driveway and existing buildings.

It was also indicated that additional lilly pillies can be planted between the new building and the boundary. A condition is recommended on the consent requiring additional plantings to be provided to soften the appearance of the building.

The buildings comply with the building height provisions contained within BLEP 2012. However, the setbacks of the existing buildings (and proposed Building C) do not comply with the side building line requirements within Chapter 7 – refer to discussion within Section 3.7 below.

- ii. Where there is potential for the proposed rural industry to generate noise and/or odour impacts, a noise and/or odour impact assessment must be carried out by a suitably experienced and qualified person(s) and provided with the development application.*

Odour

The proposal is not expected to result in the generation of odour impacts. As such, an odour impact assessment was not required.

Noise

With respect to noise impacts, a Noise Impact Assessment (NIA) prepared by Ingen Consulting was submitted with the application.

Council's Public and Environmental Health Section has carried out an assessment of the proposal and the associated NIA (Revision C, dated 10 June 2020) as amended. It was advised that the NIA has generally been prepared in accordance with the requirements of the Noise Policy for Industry (2017).

A combination of on-site measurements and historic data were used to establish a reasonable rating background level, which was used to develop project specific noise targets for the residential receivers for each time period (i.e. day, evening and night). The amenity criteria was used for the non-residential (commercial) receivers.

The NIA considered two scenarios which related to the noisiest processing occurring on the site. Scenario 1 considered the noise generated from the drying silos, which operate 24 hours seven days per week during the macadamia season. Scenario 2 considered the operation of the drying silos combined with the use of the hopper, which is limited to two hours per day during the daytime period.

The assessment shows the identified noise criteria for each time period (day, evening and night) can be achieved for scenario 1, drying silos only and scenario 2, drying silos and hopper.

The hopper noise only occurs for approximately two hours per day and is proposed to be limited to between the hours of 7.00am and 6.00pm weekdays and Saturdays and 8.00am to 6.00pm Sundays, with no operation on public holidays.

A number of submissions raised concerns with respect to noise impacts associated with increased road traffic noise. The NIA states that the assessment addresses noise emissions from on-site operations and due to the low volume of traffic generated by the development (average 3 truck movements per day), a road traffic noise assessment is not warranted. Council's Public and Environmental Health Section has advised that this was not assessed due to the low traffic volumes projected for the project. It is noted from the submitted Traffic Impact Assessment (TIA) that overall vehicle trips are to decrease overall (compared to the existing situation) as part of the proposed development.

The NIA concluded that the site is suitable for the proposed operations, subject to the recommendation that the use of the hopper be limited to the following periods:

*Weekdays and Saturdays: 7.00am to 6.00pm
Sundays: 8.00am to 6.00pm*

No use of the hopper is to take place on public holidays.

A condition to this effect is recommended should consent be granted.

A condition is also recommended to ensure the development does not cause a noise nuisance to any other person:

- *The development shall not cause a noise nuisance to any other person. Following occupation, should complaints of a noise nuisance be justified, an acoustic assessment shall be conducted by a qualified consultant and report provided to Council. The applicant shall then implement all recommendations provided under the assessment within a timeframe set by Council, to the satisfaction of Council and comply with any additional direction given by Council.*

Subject to compliance with the recommended conditions of consent, it is considered noise impacts associated with the proposal can be suitably managed.

- iii. Where a rural industry includes an industrial retail outlet:
- a. The retail activity is to be contained within, or attached to, or within the curtilage of, a building utilised for the rural industry;
 - b. Visitor parking and pedestrian access is to be physically separated from loading/unloading facilities in a manner that maintains public safety; and c.
 - c. Where food items are sold in an industrial retail outlet this must not comprise a food and drink premises.

Not applicable – the proposal does not include an industrial retail outlet.

Having regard for the above, the proposal is considered to comply with the requirements of Section 3.4 within Chapter 7 of the DCP.

Section 3.5 – Roadside Stalls

Not applicable.

Section 3.6 – Mining and Extractive Industry

Not applicable.

Section 3.7 – Building Lines and Setbacks

All buildings and structures in rural areas must comply with the minimum building line or setback requirements set out in Table 7.2:

Table 7.2 – Minimum Setbacks – Rural Land General	
Location	Setback
Front Boundary	20m from a sealed road. 50m from an unsealed road (applies only to uses which are likely to be adversely affected by dust nuisance such as dwellings and visitor accommodation). 28m from Pacific Highway and Bruxner Highway.
Side Boundary	10m
Secondary Frontage Setback	10m
Water and Sewer Mains	Refer to Policy for Building over Council Assets

Existing Buildings A and B

Existing buildings A and B do not comply with the 10m side setback control. No changes to the existing building setbacks are proposed as part of the subject application.

The application was accompanied by a Fire Safety Upgrade Report prepared by BCA Check dated 16 June 2019. This report has indicated that the existing boundary setback is adequate to restrict the spread of fire from the building to other buildings nearby. This has been accepted by Council’s Building Services Section, subject to compliance with the recommended conditions of consent (including the requirement for a Building Information Certificate to be obtained for any unauthorised works). Given existing buildings A and B have the ability to meet the relevant building requirements, no issues are raised in relation to the side setback control in this regard.

The existing buildings are visible from the adjoining property at No. 19 Johnston Road, and concerns have been raised regarding the visual impact of the development. The dwelling house on the adjoining property is located approximately 400 metres from the development, with no direct line of sight to the buildings due to the irregular configuration of this allotment. In this regard, the potential for any overlooking or visual privacy issues is minimal.

However, there is opportunity for additional plantings in this area to soften the appearance of the development as viewed from the adjoining property. A condition is recommended to require additional plantings to be provided between buildings A, B and C and the southern property boundary. This will assist in softening and partially screening the development when viewed from the adjoining property at No. 19 Johnston Road.

Having regard for the above, the location of existing Buildings A and B is considered to be acceptable subject to compliance with the applicable recommended conditions of consent.

Proposed Building C

The applicant has indicated that the setback of proposed Building C (an extension of existing Building B) is between 1.1m to 1.92m from the southern property boundary, which does not comply with the minimum setback control.

The applicant has indicated during an inspection of the site that the continuation of the existing building footprint in this location is required to enable the functionality of the additional storage space (i.e. pallets and forklifts).

It is considered the location of Building C as proposed will assist in containing the development footprint and will ensure safe vehicular access to the facility is not compromised.

It is noted a submission has been received from the adjoining property owner (No. 9 Johnston Road) in relation to the visual impact of proposed Building C.

As discussed previously in this report, a condition is recommended to be imposed on the consent requiring additional plantings to be provided to soften the appearance of the building.

The setback from the southern boundary of proposed Building D is between 10 metres and 13 metres, which complies with the minimum setback control.

Having regard for the above, the proposal is considered acceptable with regard to building lines and setbacks, subject to compliance with the recommended conditions of consent.

Section 3.8 – Roads, Vehicular Access and Parking

The application was accompanied by an Engineering Services Assessment and Traffic Impact Assessment prepared by Ingen Consulting. Council's Development Engineer has completed an assessment of the proposal which is generally consistent with the development controls within this section.

3.8.2 Planning Objectives

a) *Provide adequate on site car parking for all types of rural development;*

- b) *Ensure car parking is designed in accordance with relevant standards and has adequate space and provision for vehicular turning areas to ensure all vehicles can enter and leave the site in a forward direction;*
- c) *Ensure access to the site has the capacity to cope with likely traffic loads including heavy vehicles;*
- d) *Ensure site accesses have adequate sight distances and are designed to ensure that all vehicles are able to safely enter and exit the site to maintain the safety and integrity of the road network; and*
- e) *Minimise disturbance to landform.*

Comment: It is considered the application is consistent with the planning objectives of this section.

3.8.3 Development Controls

- i. *Where a proposed development has the potential to generate significant additional traffic and require substantial car parking, a traffic study will be required.*

Comment: A Traffic Impact Assessment (TIA) prepared by Ingen Consulting dated 10 December 2019 was submitted with the application. Council's Civil Services Division have carried out an assessment of the report and no issues are raised with respect to traffic impacts.

- ii. *External vehicular access must:*

- a) *not compromise the safety and efficiency of the road network;*
- b) *be suitable for use by emergency service vehicles; and*
- c) *be suitable for traversing in all weather conditions.*

Comment: Council's Civil Services Division has advised that the existing external road network is constructed to a suitable standard to service the proposed development.

- iii. *External road access is generally to be sealed for the following land uses:*

- *Tourist and visitor accommodation;*
- *Recreation facilities (major and outdoor);*
- *Restaurants or cafes;*
- *Intensive livestock agriculture;*
- *Aquaculture;*
- ***Rural industries and industrial retail outlets;** [emphasis added]*
- *Mining and extractive industries;*
- *Passenger transport facilities; and*
- *Vehicle repair stations.*

Comment: The use of the site for a rural industry requires that external road access is to be sealed. Access to the property occurs via Johnston Road, which is a sealed road. No issues are raised in this regard.

- iv. *Internal vehicular access must:*

- *be suitable for the access of emergency service vehicles;*

Comment: The internal vehicular access is considered suitable for the access of emergency service vehicles.

- *be of all weather dust free construction and be suitable for traversing by standard 2 wheel drive vehicles;*

Comment: The application proposes sealed internal driveways. Conditions are recommended requiring internal road access to be designed and constructed to AS 2890.1 and that the driveways and parking bays within the development are constructed of sealed paved material.

- *be sealed in sections where grade exceeds 12%; and*

Comment: The driveway grade does not exceed 12%. No issues raised in this regard.

- *not exceed a grade of 25%.*

Comment: The driveway grade does not exceed 25%. No issues raised in this regard.

- v. *A suitable and safe connection must be provided between the existing road network and any proposed internal vehicular access infrastructure.*

Comment: The existing driveway is located at the end of Johnston Road. Council's Civil Services Division have advised that sight distances at the access point are compliant with AS 2890.1.

- vi. *A development application must address any potential environmental impacts caused by vehicular accesses (both internal and external) including erosion and sedimentation, dust, noise, traffic generation, amenity and visual impacts and vegetation removal with appropriate mitigation measures identified.*

Comment: Conditions are recommended to be imposed on the consent in relation to erosion and sediment control.

A condition is also recommended requiring the driveways and parking bays within the development to be constructed of sealed paved material.

In this regard, dust generation is considered to be minimal.

Existing vegetation on the site will continue to screen the development from Brooklet Road.

In this regard, no concerns are raised with respect to visual impacts.

- vii. *Development must comply with the following on site vehicle parking requirements:*

- *Adequate on site car parking must be available to accommodate all users of the site including residents, visitors or employees.*

Comment: A total of 13 car spaces (inclusive of one accessible space) are required to be provided for the agricultural produce industry in accordance with Chapter 2 Section 3.19 of the DCP.

- *On site car parking for a proposed land use must comply with the applicable car parking requirements specified in any other chapter of this DCP.*

Comment: A total of 13 car spaces (inclusive of one accessible space) are required to be provided for the agricultural produce industry in accordance with Chapter 2 Section 3.19 of the DCP.

Conditions are recommended to be imposed to ensure the design of all car parking spaces is in accordance with the Australian Standards AS/NZS 2890.1:2004 and AS/NZS 2890.6:2009.

Design plans are to be certified by a suitably qualified professional and approved by the Principal Certifying Authority prior to issue of the Construction Certificate.

Conclusion

The subject application seeks consent to formalise and expand an agricultural produce industry (macadamia nut processing and value adding facility) and to carry out associated works at No. 18 Johnston Road, Newrybar.

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

Having regard for the outcomes of the assessment, it is recommended that the application be determined by way of approval, subject to the draft conditions contained at Attachment 5.

Options

Option 1 – Approval with Conditions

This is the recommended approach for the reasons outlined in the report, inclusive of the conditions set out in Attachment 5.

Option 2 – Refusal

Council could determine that application by way of refusal. This option is not recommended given that the assessment has concluded that the application meets the applicable planning requirements and conditions can be imposed in this instance to suitably address potential impacts associated with the development.

Option 3 – Deferral

Council may defer determination of the application in order to seek additional information. This option is not recommended as sufficient and suitable information has been provided by the applicant and the technical assessment is complete.

RECOMMENDATION

That Development Application 2019/799 to formalise and expand an agricultural produce industry (macadamia nut processing and value adding facility) and to carry out associated works at No. 18 Johnston Road, Newrybar be **APPROVED** subject to conditions contained in Attachment 5.

Attachment(s)

1. Locality Map
2. Plans
3. Public Submissions
4. Section 4.15 Assessment
5. Draft Conditions of Consent

8.4 DA 2020/33 - Club Lennox - 10 Stewart Street, Lennox Head

Applicant	Planners North on behalf of Club Lennox
Property	Lot 31 DP 11905, No. 10 Stewart Street, Lennox Head
Proposal	To undertake the use of an outdoor area adjacent to bowling green No. 2 for outdoor seating and dining during Club opening hours and including every Sunday during daylight saving hours between 4pm and 7pm with amplified music.
Effect of Planning Instrument	The land is zoned RE1 Public Recreation under the provisions of the Ballina Local Environmental Plan 2012
Locality Plan	The subject land is depicted on the locality plan in Attachment 1 and Figure 1.

Introduction

Council is in receipt of Development Application 2020/33 for the use of an outdoor area adjacent to Club Lennox's Bowling Green No. 2, for outdoor seating and dining during Club opening hours and including every Sunday during daylight saving hours between 4pm and 7pm with amplified music on Lot 31 DP 11905, No. 10 Stewart Street, Lennox Head.

To assist Council in its consideration and determination of this application, this report outlines the background of the proposal and the key relevant matters of the proposal under Section 4.15 of the *Environmental Planning and Assessment Act* (EP & A Act) 1979.

The full Section 4.15 report, which provides an assessment of all required matters under the EP & A Act 1979, is contained in Attachment 2.

Background

Issues arising from the operations of Club Lennox have previously been reported to Council at its Ordinary Meetings of 22 August 2019 and 26 September 2019. Council resolved at the 26 September 2019 Ordinary Meeting to provide landowner authority to lodgement of a development application for the "Sundays on the Green" initiative. An extract of that resolution is below:

"4. That in relation to the proposed Sundays on the Green initiative, that Council as landowner and lessor agrees to the lodgement of a development application for the ongoing use of the greens for this purpose."

The application was subsequently lodged. The purpose of this report is to seek Council's determination of the subject application. A number of submissions either raising objection, or in support, have been received.

8.4 DA 2020/33 - Club Lennox - 10 Stewart Street, Lennox Head

The location of the land is shown in Attachment 1 and Figure 1 below.



Figure 1: Site Locality Plan

Details of Proposal

The proposal seeks consent for the use of an outdoor area of Club Lennox which is adjacent to bowling green No. 2. The proposal seeks consent for the use of this area for outdoor seating and dining during Club opening hours. The proposal also seeks consent for the “Sundays on the Green” events to be held every Sunday during daylight saving hours between 4pm and 7pm. These events on a Sunday will comprise amplified music comprising solo or duo acoustic based music. The maximum attendance is 108 patrons.

The proposal seeks to:

1. Use the nominated area for outdoor seating and dining during club opening hours (until 9pm Tuesday to Thursdays and 10pm Fridays and Saturday nights)
2. Formalise and enable the “Sundays on the Green” events which have been held on Sundays from 4pm to 7pm during the previous summer.

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Previously approval was issued by Council via its Council's Events on Public Land Policy for the "Sundays on the Green" events held on the first and third Sunday of each month during December 2019, January and February 2020 between 4pm and 7pm. This was intended as a short term arrangement whilst a development application was prepared and assessed.

Plans submitted for this application nominate a food van, which can be operated as exempt development under Subdivision 27A *Mobile Food and Drink Outlets* of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. No assessment is therefore necessary to be undertaken as part of this application.

A plan of the proposed area of the Club to be used is provided in Figure 2 below.



Figure 2: Area proposed to be used.

Figure 3 below shows the indicative seating plan for the proposed area.

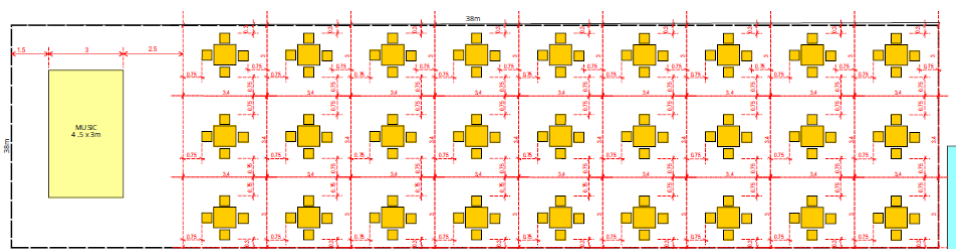


Figure 3: Indicative seating plan for outdoor area (108 seats)

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The Club currently has 320 internal seats with 40 seats in the existing approved alfresco dining area. There is also approximately 100 seats which surround the perimeter of the bowling green area (bench type seating).

It is the intention of the Club to relocate indoor seating so that the capacity of the venue does not increase. The application proposes to relocate 108 seats (as per Figure 3 above) during “Sundays on the Green” events and at other times (i.e. during Club opening hours) 80 seats, dependent on demand.

Description of the Subject Site

The subject land is located within the village of Lennox Head and is bounded by Lennox, Gibbon, King and Stewart Streets.

The subject property has a total area of 6,012m² and has two bowling greens between the club house and King Street.

The Club comprises a bar area, bowlers area, offices, poker machine areas, dining area, kitchen and alfresco/outdoor dining area and children’s playground.

The area proposed to be used for the outdoor seating, dining and music is the area adjacent to bowling green No. 2 (i.e. eastern green) which is located closer to Stewart Street.

The Club is surrounded by residential properties characterised by one and two storey residential developments with a mix of older fibro beach cottages and newer brick and tile constructions. Refer to Figure 4 below.



Figure 4: Aerial of subject land and surrounding residential development

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil (or state otherwise if this is not the case)

Public Exhibition

The application was placed on public exhibition from 26 February 2020 to 12 March 2020. A total of 47 submissions were received, of which six were objections and the remainder expressed support.

The main concerns raised in submissions relate to noise, traffic and parking, lighting, security, accountability, permissibility and the playground.

The key matters raised within objections are summarised and addressed in the Matters for Consideration section of this report.

A copy of all submissions are provided in Attachments 3 to 9.

The applicant's response to submissions is provided as Attachment 10.

Report

Matters for Consideration

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

The assessment has identified the following key issues in relation to this development application which are elaborated upon for the consideration of the elected members of Council.

This report should be read in conjunction with the attached Section 4.15 assessment report (refer to Attachment 2).

Attachment 3 to 12 contain the submissions received and other information associated with the assessment of the key issues identified in relation to the application.

Section 4.15(1)(a)(i)

State Environmental Planning Policies (SEPP)	
<ul style="list-style-type: none">• SEPP 55 – Remediation of Land• SEPP – (Coastal Management) 2018	No issues are raised in relation to any applicable SEPP. Refer to Attachment 2 for further comment and assessment.

Ballina Local Environmental Plan 2012	
<ul style="list-style-type: none"> • Clause 1.2 • Clause 1.4 • Clause 2.3 • Clause 4.3 • Clause 7.1 • Clause 7.2 • Clause 7.7 	<p>The proposal generally complies with the aims and objectives of the BLEP 2012 and the objectives of the RE1 zone.</p> <p>Refer Attachment 2 for further comment and assessment of the relevant controls (Clauses 1.2, 1.4, 2.3, 4.3, 7.1, 7.2 and 7.7).</p>

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

<ul style="list-style-type: none"> • Draft State Environmental Planning Policy - Remediation of Land. • Draft Amendment to State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007. • Draft Amendment to State Environmental Planning Policy (Short-term Rental Accommodation) 2019. 	<p>No issues raised in regard to any Draft SEPP.</p>
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Section 4.15(1)(a)(iii) provisions of any development control plan

Ballina Shire Development Control Plan 2012	
<p>Chapter 2 – General and Environmental Considerations</p> <ul style="list-style-type: none"> • 3.4 – Potentially Contaminated Land • 3.7 – Waste Management • 3.11 – Provision of Services • 3.15 Crime Prevention through Environmental Design • 3.19 – Car Parking and Access 	<p><u>Part 2 Chapter Planning Objectives</u> The overarching objectives have been considered in relation to the proposal. It is considered that the proposed development is generally consistent with these objectives.</p> <p>Refer to the Attachment 2 for an assessment of the clauses that are relevant to this application.</p>
<p>Chapter 8 – Other Uses</p>	<p><u>Part 2 Chapter Planning Objectives</u> The overarching objectives have been considered in relation to the proposal.</p> <p>The proposed development is compatible and complementary with the established bowling club facility, and it provides opportunity for a different type of use to occur. The use provides some diversity to its traditional use and undertaking some alternate approach to attract a different clientele. However, it is clear from</p>

<ul style="list-style-type: none">• 3.1 – Temporary Use of Land	<p>some objectors that there is a view that the amenity of the neighbourhood is compromised during events held on the greens and there is a potential for adverse impact from noise.</p> <p>Temporary use is interpreted by Council as an infrequent use of land or a time limited use of land. A time limited arrangement may arise where a trial period is proposed for a land use. While the application seeks consent for the ongoing use of the outdoor area as a dining area, the “Sundays on the Green” component is only for Sundays during daylight savings, it is recommended that should the application be approved, the consent be time limited to allow for a trial period.</p> <p>Refer to Attachment 2 for an assessment of the controls that are relevant to this application.</p>
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4.15 (1) (a) (iiia) – any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

Comment: None Applicable.

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

Comment: No issues raised. Refer to Attachment 2 for further comment.

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

Comment: The proposal has the potential for adverse impacts to the environment or broader locality due to a level of non-compliance with noise exceedance criteria.

Refer to Attachment 2 for further assessment in relation to the likely impacts of the development.

The issues of Noise and Car Parking are discussed in more detail below, being critical issues for Council in its consideration and determination of the subject application.

Noise

A Noise Impact Assessment (NIA) dated 18 December 2019 and a Noise Management Plan dated 22 October 2019 prepared by Tim Fitzroy & Associates, supported the development application.

The NIA states that's its purpose is to:

1. Establish existing background noise levels across the subject site;
2. Examine the likely impacts of the proposed development on the existing surrounding residences in accordance with the NSW Independent Liquor and Gaming Authority requirements; and

8.4 DA 2020/33 - Club Lennox - 10 Stewart Street, Lennox Head

3. Report on noise levels and provide recommendations to ensure that the proposed use of the outdoor area complies as far as practicable with the intent of the NSW Independent Liquor and Gaming Authority requirements.

The NIA considered noise from live music and patron noise from the outdoor area. Noise sources are illustrated in Figure 5 below.



Figure 5: Location of noise sources (NIA, Tim Fitzroy & Associates)

The noise modelling considered 16 sensitive receivers in locations surrounding the subject land. See Figure 6 below.



Figure 6: Location of sensitive receivers (NIA, Tim Fitzroy & Associates)

CRG Acoustics was engaged by Council to undertake a peer review of the NIA. This peer review provided the following comments:

"The report discusses various noise control legislation, and concludes the most appropriate noise limit criteria is pursuant to typical liquor license conditions set by Liquor and Gaming NSW. This criteria is typically a limit of 5 dB above the octave band centre frequency (31.5 Hz – 8k Hz) when noise occurs between 7am to midnight. I agree with this conclusion. By applying the Liquor and Gaming NSW criteria, low frequency sound is taken into account; as low frequency noise is often the source of noise complaint associated with amplified music, a frequency analysis can assist in managing this noise.

A discussion is put forward that the case studies of the NSW Noise Guide for Local Government are a valid basis for managing noise from the subject site. Examples given are inner city locations in Sydney. We do not believe that the means of management of these venues can be compared to the subject site, given the quieter urban nature of Lennox Head. It is likely that there was controlled testing to determine placement of speakers and source noise levels prior to commencement of use in the venue, and that treatments / controls stemmed from this testing. Further, these venues may have less regularity of events occurring than that proposed.

Long term background noise measurement and frequency analysis of background noise has been undertaken, and the data is considered a good basis for setting noise limits.

The assessment has been based upon noise prediction modelling; whilst this is an acceptable means of estimating noise impacts in situations where measurement is not possible, there is likely the potential for actual measurement under a controlled experiment using a portable PA system, with some simpler modelling to determine impacts from the addition of patron voice to music noise impacts.

The advantages of undertaking an actual test are as follows:

- Provision of certainty in determination of impacts;*
- Allowing investigation of the effect of directivity in positioning & aiming of speakers. During a test, speakers can be moved around to optimise positioning to minimise impacts at nearest dwellings (e.g. facing speakers west, away from the nearest dwellings);*
- Setting of noise limits at 3m from speakers in octave bands to comply at nearest dwellings once speaker aiming has been refined.*

It is suggested that the report should set recommendations similar to the following:

- Speakers be located and aimed as per a diagram;*
- Sound levels be limited to an octave band spectrum between 31.5 – 8,000 Hz, assessed at 3m from speakers. This limit will ensure compliance at nearest noise sensitive premises;*
- Management principles to ensure compliance with the numeric criteria, including:
 - Having a Staff member use a sound level meter to check sound levels from the PA during system setup;**

- *Making a contractual agreement with entertainment providers stating the sound limits at 3m from speakers, and stipulating that compliance with the limit is a requirement of engagement.*

I note that the Noise Management Plan includes a variety of other management items that are useful in managing noise, but the critical item is setting firm noise limits.

Overall, I recommend that an actual experimental test be conducted of amplified music under controlled conditions, with an assessment of this coupled with the additive effect of patron voice. The recommendations of the report should include noise limits set at 3m from speakers to demonstrate compliance with the requirements of Liquor and Gaming NSW. By approaching the limits this way, the Operator will also have more certainty that if a noise complaint is lodged with Liquor and Gaming NSW, that they manage noise to the requirements of Liquor and Gaming NSW already.

The applicant's Acoustic Consultant (Tim Fitzroy & Associates) responded to the peer review and Council's further requests for additional information as follows:

As noted in section 4 Conclusions of our Noise Impact Assessment (Ref: 50/2019, 2 December 2019) for the use of the outdoor area and patrons on the first, third and fifth Sunday during daylight savings (commencing at 4pm and concluding at 8pm).

- *A noise model has been constructed to predict the propagation of noise from the outdoor entertainment area at Club Lennox. The model includes shielding effects from topography and existing structures. Topography information included in the model was sourced from the NSW Government.*
- *Noise levels from patrons and entertainment noise at a level of 85dBA @ 3m from the speakers are predicted to exceed relevant criteria* by up to 25 dB (at 2kHz).*
- *Noise levels from patrons and entertainment noise at a level of 75dBA @ 3m from the speakers are predicted to exceed relevant criteria* by up to 21 dB (at 2kHz).*
- *The addition of a 2m high acoustic barrier as presented in Section 3.4.7 is not shown to provide significant noise reductions at the receivers, and in some cases noise levels are increased with the barriers in place.*

Note: *I am advised that hours have been further restricted from 4pm to 7pm.*

**The Liquor and Gaming Authority imposes specific noise requirements on licensed venues, such as the proposed restaurant. The noise limits require that:*

- *The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 07:00am and 12:00 midnight at the boundary of any affected residence.*
- *The LA10* noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12:00 midnight and 07:00am at the boundary of any affected residence.*

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00am.

In addition as an Addendum (copy attached) to the NIA we have modelled the predicted noise impacts up to 150 patrons + staff outdoor without outdoor music.

Noise levels from outdoor patrons only at a level of 75dBA are predicted to exceed relevant criteria by up to 21 dB (at 2kHz).*

i. Conclusion

ii.

Clearly the use of outdoor music + patrons and indeed up to 150 outdoor patrons (without outdoor music) will not comply with the LDNSW guidelines for certain frequencies given the close proximity of adjoining sensitive receivers. These predictions align with other licenced premises in Ballina Shire that have outdoor venues with and without music.

Given that the use of the outdoor area is intermittent and of limited duration (only to be conducted 3 hours per week during daylight savings and prior to 7pm (ie less than 1% of weekly hours)) for either solo or duo acoustic guitar within an already disturbed noise catchment it is my considered view that the noise impact is reasonable in the circumstances.

The noise impacts can be readily addressed through the application of a robust noise management plan.”

Council leases the premises to Club Lennox and Clause 6.02 of the lease states:

Clause 6.02 – Not to carry on in part of the premises any annoying, noxious, offensive or illegal business, occupation or practice and the Lessee shall in the course of his permitted use keep noise, odours, vibration or otherwise to a minimum so as not to be an annoyance, nuisance, grievance, damage or to neighbouring area or people.

Council therefore is required to determine whether it is reasonable to approve a use that will not comply with the relevant noise limit criteria (typical license conditions set by Liquor and Gaming NSW). As stated by the proponents acoustic consultant there is some precedent for this in the Noise Guide for Local Government (NSW EPA, 2013) when looking at outdoor sporting and music venues.

However, in considering such a deviation from the noise limit criteria Council needs to carefully consider all the potential ramifications which include:

- the potential impact on nearby residents,
- the ongoing nature of a development approval and potential changing of opinions in the noise catchment over time,

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- the ability for NSW Liquor and Gaming to regulate a premises that has an approval to exceed their noise criteria,
- the difficulty in monitoring compliance with the approval when it heavily relies on management actions and
- the potential compliance burden created for Council in complaint management, monitoring and enforcing compliance.

Given the above, Council's Environmental Health Officer is not supportive of the outdoor seating and dining use as proposed.

Should Council choose to issue an approval it is recommended that the consent is time limited to enable the use for 12 months only and for conditions to be imposed to ensure ongoing monitoring of noise levels, management of compliance and results reporting after each event. This will allow the impacts of the activity to be reviewed. Should the Club wish to continue the use at the end of this period, a new development application would be required to be submitted to Council.

Car Parking

Council has previously granted a number of development consents for alterations and additions to the club facilities since its original construction in 1960. Under these approvals, car parking for the development has been approved within the King Street, Gibbon Street and Stewart Street road reserves in addition to the on-site car park located adjacent to the western boundary of the site.

Under the most recent consent where significant alterations and additions to the club were approved (DA 1991/266), the following car park arrangements were approved by Council:

- 39 spaces provided within King Street along the sites Northern frontage
- 14 spaces provided within Stewart Street along the sites eastern frontage
- 30 spaces provided in the onsite carpark located adjacent to Gibbon Street

This equated to a total of 83 spaces. These spaces were not however all constructed as per the plan approved under DA 1991/266.

The current parking provision for the site consists of the following:

- 39 spaces provided within King Street along the sites Northern frontage
- 14 spaces provided within Stewart Street along the sites eastern frontage
- 22 spaces provided in the onsite carpark located adjacent to Gibbon Street.

The combination of these spaces equates to a total car parking provision for the development of 75 spaces.

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The current application states the following “no additional seating will be provided for the proposal with tables and chairs relocated from the main lounge, function room and bistro. This ensures there is no requirement for additional parking”.

Council's parking requirements are described in DCP Chapter 2, Section 3.19 Car Parking and Access. The following requirements apply:

Council Requirement		Proposed Gross Floor Areas	Required Number of Parking Spaces
Use	Rate		
Registered Club (Internal GFA)	1 spaces per 25m ² gross floor area	1,420 m ²	56.8
External Alfresco	1 spaces per 15m ² GFA or 1 per 3 seats (whichever is greater)	279 m ² or 108 seats	11.16 or 36
		Total required	93 spaces

The current car parking provided for the development does not therefore technically comply with the minimum car parking requirements of Council's DCP with a deficiency of 18 spaces below the minimum DCP requirement.

This assessment is however based on both the internal and external areas of the development operating at full capacity at the same time. No additional seating will be provided for the proposal, with tables and chairs relocated from the main lounge, function room and bistro to operate the new alfresco area. The proposed development is not expected to generate a demand for the 93 car parking spaces as per the DCP requirements nominated in the table above.

Should there be occasions where the development does generate this car parking demand, there is additional on street parking available within the direct street frontage of the site, with approximately 13 spaces available in Lennox Street and 6 spaces in Gibbon Street. Should Council wish to consider this additional on street parking along the sites direct frontages, the total parking capacity available for the site is 94 spaces being one space in excess of the minimum car parking requirements of Council's DCP.

Having regard for the circumstances, the car parking capacity available for the development has been assessed as sufficient to meet the demands of the development.

Contributions

The proposed development would attract contributions as per below if the capacity of the venue is increasing.

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Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Contribution Units Payable	TOTAL COST
Roads Contribution Plan V4.1 (2018)	5206	equivalent residential allotment	\$12,704.00	3.5676	\$45,323.14
Roads Administration V4.1 (2018)	5207	equivalent residential allotment	\$190.00	3.5676	\$677.85
Lennox Head Wastewater Services (DSP Area B)	3004	equivalent tenement	\$5,301.00	2.8764	\$15,247.80
Lennox Head Water Supply (DSP Area B)	2004	equivalent tenement	\$3,463.00	2.8764	\$9,960.97
Rous Water 2016	5001	equivalent tenement	\$8,872.00	2.8764	\$25,519.42
TOTAL					\$96,729.18

However, the Club is only proposing to provide an alternate space (to indoors) for dining and/or music. Consent is required for the use of the bowling green for which there has been no prior use approved of this space as an outdoor dining area. The Club currently has 320 internal seats and 40 existing approved alfresco seats. The Club intends to relocate internal seating to the proposed outdoor dining area and thus contributions are therefore not applicable on the basis that the proposal is not expanding the operation of the site; it is simply using an alternate area for the same use as previously approved.

Should the application be approved, the consent will be conditioned to ensure that the capacity of the Club is not increased and that internal seating is relocated for the proposed outdoor dining area. No information has been provided by the applicant as to how this would be managed and it would be required as a condition of approval that a detailed management plan addressing this be provided to Council for approval prior to commencement of use.

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

Comment: The proposal seeks to diversify and effectively use land associated with Club Lennox. The facility is centrally located in the village of Lennox Head. Consideration for the diversification of the use of the existing Club and its accessibility to the local community is to be balanced against the potential amenity impacts arising from the proposed use.

Refer to Attachment 2 for further assessment of the suitability of the site for the development.

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

Is advertising required because the development is designated or “advertised” development?	No
Is advertising required in accordance with established Council policy and practice?	Yes
If YES, how many submissions were received?	47 of which six are objections

Public Submissions:	
Issues Raised:	Response:
<p>Noise Live music outside unacceptable Beer garden noise generally unacceptable, particularly Friday, Saturday & Sundays late afternoons and evenings Club is generally noisy – i.e mowers, brush cutters, leaf blowers Unacceptable noise in midst of residential No limit on noise levels associated with amplified music Amplified music not in accordance with Liquor & Gaming guidelines No survey or residents undertaken by Club during temporary events No restrictions on patron noise</p>	<p>The applicant has advised that having regard for the frequency of events, restricted hours and proposed management measures the impacts are acceptable. Further, the number of submissions of support received indicates the level of support of the local community.</p> <p>The application is supported by a Noise Impact Assessment and Noise Management Plan prepared by Tim Fitzroy & Associates. Live music and patron noise from the outdoor area were modelled and considered 16 sensitive receivers in the surrounding residences.</p> <p>The documentation was peer reviewed by CRG Acoustics.</p> <p>Noise levels from patrons and entertainment noise at a level of 85dBA @ 3m from the speakers are predicted to exceed relevant criteria* by up to 25 dB (at 2kHz).</p> <p>Noise levels from patrons and entertainment noise at a level of 75dBA @ 3m from the speakers are predicted to exceed relevant criteria* by up to 21 dB (at 2kHz).</p> <p>Noise levels from outdoor patrons only at a level of 75dBA are predicted to exceed relevant criteria* by up to 21 dB (at 2kHz).</p> <p>Noise levels from outdoor music + patrons and indeed up to 150 outdoor patrons (without outdoor music) will not comply with the Liquor and Gaming NSW guidelines for certain frequencies given the close proximity of adjoining sensitive receivers.</p>

<p>Traffic and Parking</p> <ul style="list-style-type: none"> - Additional traffic generated - No traffic report provided - No parking assessment 	<p>The applicant advised that events are for a limited time period, aimed at local residents, many live within walking distance and therefore no requirement for parking or traffic studies.</p> <p>No traffic report was submitted or requested.</p> <p>The proposed development has a shortfall in on-site car parking spaces if calculated based on the area to be used for outdoor dining, however given that the proposal is to relocate and utilise existing internal seating only, there is no increased capacity of the venue and therefore no requirement for additional car parking spaces.</p>
<p>Excessive Lighting</p> <ul style="list-style-type: none"> - Excessive lighting installed - No lighting report provided 	<p>Lighting is not proposed as part of this application. At the time of site inspection there appeared to be new security lighting installed at the Stewart Street entrance, which is considered reasonable for the safety of patrons and visitors, and which would not require the consent of Council. The proposed Sundays on the Green events are to occur during daylight hours and would not require lighting, however the application is also for the use of the outdoor area during opening hours and as such lighting may be required.</p> <p>Should the application be approved, a condition will be imposed to ensure light spillage is minimised.</p>
<p>Security</p> <ul style="list-style-type: none"> - Patron behaviour in beer garden - Unsupervised children on greens 	<p>The applicant advised that there are other licensed venues in the Shire with similar outdoor areas.</p> <p>The application was referred to NSW Police who supported the application and reported that there were no recorded incidents relating to excessive noise or disturbances. Police reported attending Club Lennox on three occasions between December 2019 and March 2020 to conduct general business inspections and there were no adverse findings.</p> <p>It is assumed that younger children would be supervised.</p>

<p>Club Accountability</p> <ul style="list-style-type: none"> - Club's financial survival/viability of events - Lack of financial documentation provided - Is the Club "Not for Profit"? 	<p>Club Lennox is recognised as an important and highly valued asset of the Lennox Head community, however this application must be assessed as per Section 4.15 of the Environmental Planning and Assessment Act. Financial viability is not a requirement which Council is legally required to evaluate.</p>
<p>Permissibility</p> <ul style="list-style-type: none"> - Beer garden/outdoor seating inconsistent with Zone - Live music/outdoor entertainment prohibited in Zone - No approval for beer garden - Hours of beer garden use should be regulated 	<p>The applicant advised that the existing and proposed land use is permissible with consent, that the proposal is consistent with providing the social and cultural needs of the community and that the use is ancillary to the Bowling Club which provides for the recreational needs of the community.</p> <p>The subject land is zoned RE1 Public Recreation under the Ballina Local Environmental Plan 2012.</p> <p>This application seeks consent for the use of the outdoor area adjacent to bowling green 2 for outdoor seating and dining during Club opening hours, and for the use of this area for "Sundays on the Green" events during daylight savings. While the area is licensed, it is a new use of the subject land for which this application seeks consent.</p> <p>The lease over the subject premises, which expires on 31 December 2024, includes the following:</p> <p><i>Clause 6.01 – To use the premises only for the purpose of a bowls and sports club and for no other purpose without the express written consent of the Lessor, which consent may be given or refused at the absolute discretion of the Lessor.</i></p> <p>Should this application be refused compliance action both from the perspective of Council as a lessor and conformity with planning provisions will need to be considered.</p>
<p>Playground</p> <ul style="list-style-type: none"> - Prohibited in Zone - DA not notified - No Noise report 	<p>No playground proposed as part of this application.</p> <p>DA 2018/785 approved the existing playground on 14 March 2019 under delegated authority. The consent approved:</p>

	<p><i>Alterations and additions to the Lennox Head Community Sports and Recreational Club involving the extension of an existing deck, construction of a new roof over the extended deck, provision of a new children's play area, a new shadeway between the existing bowling greens and removal of one Pandanus tectorius (Screw Pine) tree.</i></p> <p>At the time of that application (DA 2018/785) there was a children's play area within the existing deck/alfresco dining area. The play area was considered unsafe by Club Lennox management and an approval for a new area was sought. The application was considered minor development and was not notified. No noise report was submitted with the application.</p>
<p>Smokers Area - Designated smokers area</p>	<p>In regard to a designated smoker's area, under the Smoke-free Environment Act 2000 and the Smoke-free Environment Regulation 2016 smoking and using e-cigarettes is not permitted in commercial outdoor dining areas. Should the application be approved, an advisory note would be included in the consent.</p>

4.15(1) (e) The public interest

Comment: The discussion provided above in relation to noise and car parking and in response to the issues raised in public submissions, is considered to satisfactorily address the public interest and the proposal.

Refer to Attachment 2 – Section 4.15 Assessment for further comment.

Conclusions

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

Forty seven submissions were received in total. Six objections were received with the issues identified primarily as noise, traffic and parking, excessive lighting, security, club accountability and permissibility of the beer garden and playground.

Forty one submissions of support were received. Supporters included residents who reside in the streets which surround the Club. The following points were raised in submissions:

- Club Lennox is a valuable asset to the Lennox Head community making significant contributions to local sporting and community organisations

8.4 DA 2020/33 - Club Lennox - 10 Stewart Street, Lennox Head

- provides a family friendly entertainment venue
- venue is unique in Lennox Head, no other outdoor eating area where adults can eat and relax, while children play
- hours in which amplified music is offered is minimal and acceptable
- patrons (including children) are well managed, no offensive or unruly behavior witnessed
- ensures the long term viability of Club Lennox.

The matters raised within the submissions received in relation to the proposal have been addressed within this assessment and the Section 4.15 assessment report contained in Attachment 2.

The main issues that need to be considered in relation to the current proposal are the impact on the amenity of adjoining properties, particularly in terms of noise and parking.

Should Council wish to approve the proposed development the following conditions are recommended, along with other standard conditions of consent.

Temporary Use

This consent authorises the use of the outdoor area adjacent to bowling green No. 2 for outdoor seating and dining during Club opening hours and for "Sundays on the Green" events for a limited time period of one year commencing from the first use of the proposed area. The proponent shall provide Council with a detailed Patron Management Plan for approval prior to the first use of the proposed area. Should the proponent intend to continue the approved use beyond the one year period, a new development application shall be lodged with Council. Council will consider the new development application on its merits, having regard to the performance of the development over the initial operating period and the applicable environmental planning instruments and local development plans at the time.

Capacity

This consent authorises the placement, by way of relocation, of a maximum of 108 seats/chairs from within the Club's internal areas for the purpose of outdoor dining and seating during "Sundays on the Green" events, and a maximum of 80 seats/chair during Club opening hours.

The seating capacity of the Club is restricted to 360 seats in total at any one time. This includes indoor and outdoor seating comprising the internal areas, existing alfresco and the proposed outdoor dining area. Note: Bench type seating provided for bowlers around green perimeters is excluded.

No part of the outdoor dining area (including tables, chairs or any other improvement) or any other activities associated with or conducted therein shall extend beyond the area as delineated on the approved plans.

Patron Management Plan

A detailed Patron Management Plan (PMP) shall be prepared and submitted to Council for approval prior to the commencement of the proposed development. The PMP shall address the measures that will be implemented by the Club to ensure the behavior of patrons is monitored and managed to an appropriate standard when using the outdoor area.

The PMP shall include, but not be limited to plans which:

- clearly delineate the area to be used for outdoor seating and dining,
- location of performers,
- location and direction of speakers,
- location of tables and chairs
- barriers or other installation in place to direct patrons
- signage
- details of security
- details of how capacity of Club will be managed, such as sign in etc.

Noise

The event shall not result in the emission of offensive noise. Offensive Noise means noise:

That, by reasons of its level, nature, character or quality, or the time at which it is made, or any other circumstances;

- a) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted;
- b) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort of repose of a person who is outside the premises from which it is emitted; or

That is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

Noise Management Plan

The event shall be managed generally in accordance with the requirement of the Noise Management Plan prepared by Tim Fitzroy & Associated dated 22 October 2019, including but not limited to:

- The sound equipment and other noise sources shall be located, orientated and managed to minimize any noise nuisance to nearby residential premises.
- Amplified acoustic music (duo/solo) is only permitted to be played on Sundays on the Green days and only between 4pm and 7pm
- Music is to cease at 7pm and all patrons are to vacate the outdoor area by 8pm
- Other noise sources shall be kept to a minimum prior to 4pm and after 7pm on Sundays on the Green days.
- Noise generation shall be minimised during the set up and pack down periods to minimise any potential impacts on nearby residential premise.
- Alcohol consumption and patron behavior to be managed by staff in accordance with NSW Responsible Service of Alcohol regulations.

- Musical performances to cease if they are found not to be complying with the requirements of the Noise Management Plan or if found to be causing a noise nuisance.
- Speakers shall be limited to 75dB(A) at three metres and speakers shall be located and angled to minimise noise transmission
- Any food vans/vendors attending shall not use generators and instead shall be provided with access to a suitable electricity supply from the Club.
- A suitably qualified sound technician/acoustic consultant shall be onsite to monitor the sound emissions and adjust the speakers volume if necessary to minimise any impact on nearby residential receivers. The technician must keep records on monitoring and these monitoring records will be provided to Council after each Sunday on the Green event.

Having regard for the outcomes of the assessment undertaken, Council has the following options with regard to determining the application:

Options

Option 1 – Refusal

That Council refuse the development application on the grounds that the proposal will have unreasonable impacts on the amenity of the neighbourhood in terms of noise.

Option 2 – Approval (Time Limited)

That Council approve the development application for a 12 month period subject to conditions of consent as outlined. Should Council choose to proceed with this option, the consent would be conditioned to ensure that ongoing noise monitoring is undertaken and results provided to Council after each event. Should the Club wish to continue the use at the end of this period, a new development application would be required to be submitted to Council.

Option 3 – Approval (Without a Time Limit)

That Council approve the development application subject to conditions of consent as outlined. Should Council choose to proceed with this option, it must be satisfied that the proposal is generally consistent with the provisions of the relevant Environmental Planning Instruments (EPIs), Ballina Shire Development Control Plan 2012 and the likely impacts on the neighbourhood.

Option 4 – Deferral

That Council defer the determination of the development application to obtain further information. This is not recommended as suitable information has been provided by the applicant, the technical assessment is complete and the applicant is seeking a decision prior to the commencement of the next daylight savings period on Sunday 4 October 2020

Option 2 is the recommended approach having regard to the assessment of the relevant considerations outlined in this report. This approach also provides for a reasonable balance in response to the potential benefits associated with the proposed development and the potential impacts on surrounding residents and amenity that may arise.

RECOMMENDATION

That DA 2020/33 To undertake the use of an outdoor area adjacent to bowling green No. 2 for outdoor seating and dining during Club opening hours and including every Sunday during daylight savings hours between 4pm and 7pm with amplified music be **APPROVED**, for a 12 month period only, subject to the imposition of standard conditions for this type of development and the conditions in response to key issues as outlined in this report.

Attachment(s)

1. Locality Plan
2. Section 4.15 Assessment
3. Submissions
4. Confidential Submission of Support
5. Confidential Submission Objection
6. Confidential Submission Objection
7. Confidential Submission Objection
8. Confidential Submission Objection
9. Confidential Submission Objection
10. Applicant's Response to Submissions
11. Noise Management Plan
12. Acoustics Report Peer Review

8.5 Lennox Village Vision - Draft Concept Plan

8.5 Lennox Village Vision - Draft Concept Plan

Delivery Program

Strategic Planning

Objective

To provide Council with the findings of the public exhibition process for the Lennox Village Vision draft concept plan and to present the revised draft concept plan for adoption.

Background

The Lennox Village Vision draft concept plan was reported to the May 2020 Ordinary meeting.

The report included the findings of data analyses undertaken to gain a better understanding of the village centre, which comprised a community satisfaction and user experience assessment of Lennox Head's main street (Place Score assessment), a village centre parking and pedestrian movement analysis, and the outcomes of a community design charrette.

The report also presented a draft concept plan for the renewal of the Lennox Head village centre, along with a costing and staging plan for the construction of the design.

At this meeting, Council resolved as follows:

1. *That Council proceed with the implementation of the Lennox Village Vision (LVV) project following the timeline outlined in Figure 3 of this report, inclusive of the option of commencing construction works on the Ross Park component of the LVV design prior to April 2021.*
2. *That Council endorses the Lennox Village Vision draft concept plan as contained in Attachment 1 for public exhibition.*
3. *That a Councillor briefing be held towards the end of or following the public exhibition of the draft concept plan.*
4. *That Council receive a further report on the LVV draft concept plan following completion of the public exhibition period.*

Following this, the Lennox Village Vision draft concept plan was exhibited for a four week period from 12 June 2020 to 10 July 2020.

This report presents a summary of the public exhibition submissions and in response, recommended minor revisions made to the draft concept plans are included as Attachment 7.

The purpose of this report is to seek adoption of the revised Lennox Village Vision draft concept plan.

Adoption will enable Council to progress the project by proceeding to prepare further documentation, seeking any necessary planning approvals, undertaking detailed design and commencing the staged construction of the works.

Key Issues

- Public exhibition feedback
- Revisions
- Costs and timing

Information

Since re-commencement of the Lennox Head village centre renewal project in 2018, additional data and significant community feedback has been gathered to support the design and decision making process, including:

- Vehicular traffic at intersection survey
- Car parking occupancy audits undertaken over 4 days in December 2019 and January 2020
- Pedestrian desire line surveys
- Targeted community engagement and data collection undertaken in 2018 - including meetings with Lennox Head interest groups, online survey and traffic data collection
- One way traffic trial in March - April 2019 – online survey to which 1057 community members responded, and where 21 submissions were received
- Place Score community satisfaction and user experience measurement undertaken in September 2019
- Community-led design charrette held in March 2020
- Preliminary draft concept plan feedback in May 2020 from participants of design charrette
- Councillor briefing held on 11 May 2020 to present the preliminary draft Lennox Village Vision draft concept plan and timeline options.

Prior to exhibition of the draft plans 1,953 responses to engagement activities had been received.

Following this, the Lennox Village Vision draft concept plan was exhibited for a four week period from 12 June 2020 to 10 July 2020.

A copy of the exhibited plans is contained in Attachment 1.

Details and findings of the public exhibition process are reported as follows:

Timeline

An updated timeline for the works is provided in Figure 1.

Adoption of the Draft Concept Plans will represent completion of Phase 2 and enable the works to progress through detailed design to construction.

8.5 Lennox Village Vision - Draft Concept Plan

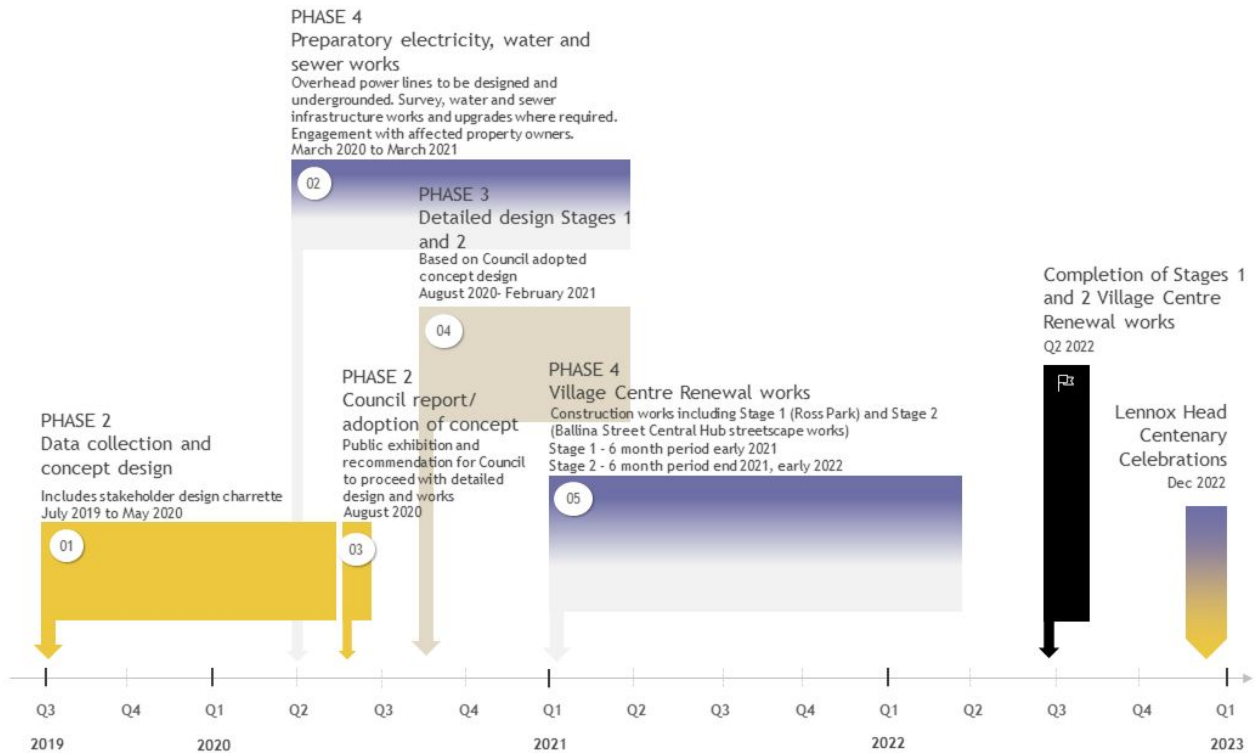


Figure 1. Revised Indicative timeline – remaining phases in the Lennox Village Vision process to completion of Stages 1 and 2 of the Lennox Head village centre renewal works

In respect to the public exhibition process a total of 113 submissions were received by online feedback or written submission.

Online Feedback Form

An online feedback form was used to collect feedback on the draft concept plan (Attachment 2). This feedback form was active for four weeks within the exhibition period, from 12 June 2020 to 10 July 2020 and 88 online feedback form responses were received during this period.

Attachment 3 shows a summary of the responses received via the online feedback form, prepared by Council staff. A copy of the original feedback form responses can be found in Attachment 4.

Written Submissions

Twenty five written submissions were received. Attachment 5 contains a summary of these written submissions. Attachment 6 contains copies of each of the original individual submissions.

There were four respondents who provided both written submissions and completed the online feedback form.

Feedback Summary

Feedback was extensive and varied. A full copy of all of the feedback is contained in the attachments.

8.5 Lennox Village Vision - Draft Concept Plan

In summary the most commonly mentioned supported ideas included:

- Trees and Vegetation
 - Street and other tree planting, locally native plants, gardens, greening, shade and amenity.
- Pedestrians First / Removal of Car Spaces
 - More, better, safer and pedestrian friendly pathways
 - Improvements that support pedestrians, bikes, skateboards and scooters including flush pavement areas and the level pedestrian crossing points
 - Removal of carparking spaces in Ballina Street and Rayner Lane for improved pedestrian spaces
- Ross Park Upgrade
 - The playground design and nature play, an increase in natural elements and the opening of the park to ocean views (there were suggestions for a swing and some fencing)
- Process
 - The overall concept and community-led design process
- Toilet in Ross Park
 - New accessible toilet in Ross Park
- Traffic Calming
 - Slowing down traffic (perhaps more), two-way street and removal of carparking for pedestrian areas and planting
- Upgrade of Lennox Park
 - Removal of the brick shelter and replacement with other shelters, opening up Lennox Park and the general upgrading of Lennox Park

In summary the most commonly mentioned unsupported ideas included:

- Removal of car spaces
 - The removal of car spaces, especially near Ross Park and Rayner Lane and impact on the café and businesses in Rayner Lane
- Toilet in Ross Park
 - Most of these comments came from residents of the apartments north of the park citing concerns regarding noise, odour, visual amenity and potential reduced property values
- Removal of the brick shelter in Lennox Park
 - Keep the shelter shed in Lennox Park for its cultural value (some suggested keeping it unless it is replaced with other weather protected shelters). It should be noted that the shelter is not heritage listed.
- Work near Lennox Head Motors
 - Perceived loss of car parking, road narrowing, tree planting, gardens and general works in front of Lennox Head Motors and impact upon views to business and parking

8.5 Lennox Village Vision - Draft Concept Plan

- Maintenance
 - Concerns regarding future maintenance of gardens to ensure longevity and attractiveness
- Prioritise car space removal in Park Lane
 - Removal of car spaces in Park Lane should be a safety priority
- Blocking views
 - Trees in Ross Park blocking views from upper level apartments

Overall the following loud messages predominated:

- Strong support for trees, shade and natural elements – More trees and a natural focus including tree planting to increase shade, incorporation of gardens and general greening of the streets (endemic vegetation was preferred).
- Strong support for putting pedestrians first – Improvements that support pedestrians, walkability, accessibility, including the central hub, flush pavement areas and the level pedestrian crossing points and thresholds, additional accessible car spaces and pathway connections.
- Strong support for the upgrading of Ross Park and the Nature-based Playground – The opening up of views through Ross Park from the street and improvements to Ross Park including the provision of a natural play setting and elements with the addition of a swing and some ‘nature themed’ low fencing.
- Strong support for achieving walkability – Improved walkability and amenity.
- Strong support for the removal of car spaces for improved pedestrian amenity – Removal of car parking spaces in Ballina Street and Rayner Lane for improved pedestrian amenity.
- Many suggestions for smart lighting - “Use the right amount of light, in the right place, at the right time.”
- Many suggestions for further traffic calming – Support for the two-way road configuration and slowing down the traffic with suggestions to further reduce the speed limit to 30km/hr in Ballina Street and Park Lane.

Whilst there were many comments, the public exhibition process did not provide clear direction on the following items:

- Whether to retain, remove or adapt the brick shelter in Lennox Park
- Provision of a toilet in Ross Park.

As a result of the combined findings of the public exhibition process, some minor alterations to the draft concept plans are recommended. These include:

- Ross Park
 - A swing, low fencing (referencing the historical tea-tree beach fencing) and drinking fountain have been added to the Ross Park playground.

8.5 Lennox Village Vision - Draft Concept Plan

- Larger areas of rubber softfall and a decomposed granite (or similar material) pathway within the playground provides improved accessibility to the equipment and furniture.
- Given that the concept plans include a playspace in Ross Park, a single unisex accessible toilet facility (with minimal footprint) has been included on the revised plans.
- The picnic shelters have been co-located so that the shelters can be used by small or larger groups.
- The accessible car parking bays in Rayner Lane have been made longer to fully comply with the Australian Standards
- A short term parking bay / loading / drop off zone has been incorporated in Rayner Lane to support the park activities and businesses.

- Lennox Park
 - The revised concept plans still propose removal of the brick shelter to open up the park to the ocean and also to allow for addition of a new bus shelter and amenities without visual clutter.
 - The new picnic shelters have been relocated to a more protected and central position. The shelters have been co-located to enable use by small or larger groups and have improved pathway connections. The pathway within the park have been re-aligned to provide improved access to facilities and views from the raised threshold in Ballina Street.
 - A 'leaning bench' for observing the surf has been added along the park edge.
 - There is provision for interpretative signage to the side of the new amenities building.

- Ballina Street
 - Seek a reduction to the speed limit in Ballina Street to 30km/hr (Transport for NSW approval required)
 - A loading zone has been added to the north bound parking zone just south of the post office

- Park Lane
 - Seek a reduction to the speed limit in Ballina Street to 30km/hr (Transport for NSW approval required)

Councillor Briefing

These revised draft concept plans along with a summary of the community feedback were presented to a Councillor briefing on Tuesday 4 August 2020.

Based upon the initial community feedback and discussions at this briefing, no further changes have been made to the revised draft concept plans other than the addition of an option to include sensor parking.

These draft concept plans are provided in Attachment 7.

Sustainability Considerations

- **Environment**

There are a number of environmental and aesthetic benefits that could result from implementation of the Lennox Village Vision renewal works. The key benefits include:

- Undergrounding the electricity provides an opportunity for street tree planting which provides improvements to habitat, street amenity, shade and a greener visual aesthetic
- Use of predominantly indigenous plant species to improve biodiversity within the village centre
- Completion of the footpath connection around the block and provision of level pavement thresholds to encourage walking and cycling as alternative transport modes.

- **Social**

The future village centre renewal can create slower and safer streets which rebalance the priority between people and cars making it safer and more comfortable for all. The creation of a central hub near Ross Park, coupled with improvements to the facilities in Ross Park and Lennox Park can provide improved accessibility to facilities and more opportunities for social interaction.

- **Economic**

The future village centre renewal works can create slower and safer streets which are more attractive, providing more places for people to sit, talk and recreate within the village centre. A more attractive and socially connected street encourages people to stay longer with the potential to stimulate and enhance economic activity in the village.

Legal / Resource / Financial Implications

Based upon the revised draft concept plans a broad indicative cost estimate has been prepared, totaling approximately \$10,253,000 (excluding GST).

An additional initial investment of approximately \$212,500 (inclusive of the capital purchase cost plus the first year technical support fees) plus a subsequent annual support fee of approximately \$20,550 (exclusive of GST) will be required for the integration of sensor parking into Council owned/managed public car parking spaces within the main village centre block (approximately 274 spaces). The potential for installation of the sensors will be further considered as the project progresses having regard for cost, practicality and any new technology options that may arise.

A break-down of the costs is provided in the plan set in Attachment 7 (page 20 of that attachment). As per that summary the various elements are:

Stage 1a – Ross Park - \$535,000
Stage 1b – Ross Park - \$265,000
Stage 2 – Town Centre - \$5.703m
Priority Future Stages – Balance of Ballina Street and Park Lane - \$2.85m
Future Stage – Foreshore - \$465,000
Future Stage – Park Lane - \$435,000

8.5 Lennox Village Vision - Draft Concept Plan

The following funding is currently available in the adopted Long Term Financial Plan.

Description	2020/21	2021/22
Community Infrastructure Reserve Dividends (Stage 2)	1,500,000	1,200,000
Loan Funds (repaid by Commercial Property rentals) (Stage 2)	0	3,300,000
Federal Grant – Comm Infrastructure (Ross Park – Stage 1b)	250,000	0
Strategic Planning Reserve (Ross Park - Stage 1b)	15,000	0
Council Revenue (Ross Park – Stage 1a)	442,500	0
Total	2,207,500	4,500,000

Total funding for Ross Park is \$707,500, with a revised estimate of \$800,000, with \$6m available for Stage 2 based on an estimate of \$5.703m.

The preference is to leave the \$6m in funding for Stage 2, even though the estimate is \$5.703m, as there are significant underground works required that carry a high level of financial risk.

Ross Park Funding

As a result of the community feedback received from the public exhibition, a number of changes are recommended to Ross Park, which is detailed further in the “Consultation” section of this report. These changes have resulted in an increase of approximately \$84,000 in the total funding required for Ross Park Stage 1 works.

To fund this shortfall the following options are available:

- *Ross Park Funding Option 1 – Fund shortfall through an increased dividend from the Community Infrastructure Reserve*

The recoupments to this reserve from developer contributions in 2019/20 were higher than budget, as outlined in the report titled “Budgets Carried Forward and Reserve Movements” later in this agenda. There are now sufficient funds in that reserve to finance this additional contribution.

- *Ross Park Funding Option 2 – Adopt the exhibited version of concept designs for Ross Park.*

This would result in the changes and additions made to Ross Park as a result of exhibition feedback (such as addition of a swing, fencing around the playground, drinking fountain and additional accessible pathways) as detailed in the “Consultation” section of this report, not being implemented.

- *Ross Park Funding Option 3 – Removal of the single unisex toilet proposed for Ross Park along with a smaller increased dividend from the Community Infrastructure Reserve.*

The toilet has been estimated at costing \$50,000, therefore the remaining shortfall of approximately \$34,000 would be funded from the Community Infrastructure Reserve. Under this option, a single unisex toilet for Ross Park could be placed onto the long term shire wide amenities program to be constructed in future when funding becomes available through the long term financial plan. This option would allow Council to assess whether there is reasonable demand for the toilet.

8.5 Lennox Village Vision - Draft Concept Plan

On balance Option 1 is recommended as this enables changes to the Ross Park design, based on exhibition feedback, to be implemented which results in the best design outcome for this important central space within the village centre. Option 3 also has merit as it allows Council to assess demand and save monies.

The actual dividend required from the Community Infrastructure Reserve for Option 1 is \$92,500, to provide a total budget of \$800,000 for Ross Park Stages 1a and 1b.

Future Staged Works

Works beyond Stage 2 (central hub in Ballina Street) remain unfunded. If stage 3 (other parts of Ballina Street) remains unfunded and is unable to commence following completion of Stage 2, this will mean that some temporary works will need to be installed in Ballina Street to enable a physical transition between stages. Such temporary works may include ramps to transition between pavements at different levels and the like. Therefore, if the draft concept plan is adopted it is recommended that Council actively seek funding for subsequent stages.

A possibility exists for the undergrounding of electricity (originally planned for the entire length of Ballina Street as a Part of Stage 2 works) to occur in a future stage. This would allow the funds earmarked for electricity undergrounding to be reallocated to support the completion of the entire length of the Ballina Street component of the village centre renewal works within Stage 2.

Further analysis around the costs and benefits associated with this alternative option is required. If such analysis suggests reconsideration of the timing associated with the electricity undergrounding is warranted, then a report addressing the alternative staging of the undergrounding of electricity for Ballina Street will be presented to Council at a later date.

Consultation

The Lennox Village Vision draft concept plan was exhibited for a four week period between 12 June and 10 July 2020. Details and findings of the public exhibition process are reported in the 'Information' section of this report.

Options

Option 1 – Council may adopt Lennox Village Vision draft concept plans as presented in Attachment 7 to this report.

Under this option Council acknowledges the extent of community feedback on the Lennox Village Vision draft concept plan and that Council adopts the Revised Lennox Village Vision draft concept plan (dated 3 August 2020), as per Attachment 7 to this report. Under this approach staff will proceed to prepare the relevant documentation to seek any necessary planning approvals, undertake detailed design and commence the staged construction of the works.

It is recommended that under this option council adopts Ross Park Funding Option 1 (as specified above) as a basis for proceeding with the full construction of the embellishments to Ross Park as presented in Attachment 7 (to occur in the combined stage 1 of the construction works).

This would involve preparation of planning approval documents, detailed construction design documents with a view to construction of Stage 1 (Ross Park) commencing at the end of 2020 / early 2021 with Stage 2 works (being the central hub area in Ballina Street) commencing after the Easter school holidays in April 2021. Stages 1 and 2 being the currently funded components of the works.

Option 2 – Council may make amendments to the revised Lennox Village Vision draft concept Plan.

This option would involve Council receiving a further report attaching a revised concept plan detailing these amendments.

This option is not preferred as there has been significant resources applied to the community engagement and concept design process and Council is in a position to confirm a preferred concept design. It would also delay village centre renewal construction which may result in Stage 1 and 2 of the LVV not being completed in time for the December 2022 Lennox Head centenary celebrations.

If Council wishes to make relatively minor changes, such changes could be embodied in the Council resolution.

Option 3 - Council can choose to not adopt the draft concept plan.

Council may wish to obtain further information or examine other design options.

There have been significant resources invested in development of the plan and progressing this project. Therefore, this option is not recommended.

RECOMMENDATIONS

1. That Council acknowledges the extent of community feedback on the Lennox Village Vision draft concept plan.
2. That Council adopts the Lennox Village Vision Revised Draft Concept Plan (dated 3 August 2020), as per Attachment 7 to this report, and proceeds to prepare the relevant documentation to seek any necessary planning approvals, undertake detailed design and commence the staged construction of the works, generally in line with the approach and timing outlined in Figure 1 within this report.
3. That works commence with Stages 1a, 1b and 2 as these stages are funded in the Long Term Financial Plan, with Council to further consider funding options for the remainder of the works including the timing for the undergrounding of electricity infrastructure.
4. That Council approves an additional dividend from the Community Infrastructure Reserve of \$92,500 to provide a total budget for Ross Park of \$800,000 to support construction of the full scope of embellishments to Ross Park as presented in the Lennox Village Vision Revised Draft Concept Plan shown in Attachment 7 to this report.

8.5 Lennox Village Vision - Draft Concept Plan

Attachment(s)

1. Lennox Village Vision - Exhibited draft concept plan
2. Public Exhibition Online Feedback Form Questions
3. Public Exhibition - Summary of Online Feedback Form Responses
4. Public Exhibition - Survey Monkey Online Feedback Form Responses
5. Summary of Written Submissions
6. Public Exhibition - Copies of Written Submissions
7. Revised draft concept plan - 3 August 2020

8.6 Development Applications - Works in Progress - August 2020

8.6 Development Applications - Works in Progress - August 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	Being assessed
2018/747	6/12/2018	Ardill Payne & Partners	Staged Torrens Title Subdivision and Boundary Adjustment to create 18 x residential lots, 1 x residual lot, 1 x drainage reserve, associated infrastructure works, earthworks and revegetation/rehabilitation works (Avalon Estate Stages 6a and 6b) - Rifle Range Road & 22 Scarlett Court, Wollongbar	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
2019/170	19/3/2019	MP & MJ Veronesi	Two Lot Boundary Adjustment Subdivision to create one x 78ha and one x 5 ha allotments – 987 & 937 Wardell Road, Meerschaum Vale	Consent Orders issued 24/7/20 Matter now finalised

8.6 Development Applications - Works in Progress - August 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
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
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	Being assessed
2019/535	21/8/2019	Ardill Payne & Partners	To undertake a development in four stages comprising: Stage 1 - Three Lot Torrens Title Subdivision (Proposed Lots 1 and 2 – area of 801m 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

8.6 Development Applications - Works in Progress - August 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
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
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	Awaiting additional information
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

8.6 Development Applications - Works in Progress - August 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
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	Awaiting additional information
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	On exhibition
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	Being assessed
2020/153	13/3/2020	Planners North	Erection of a mixed use development comprising recreation facility (indoor) and information and education facility and associated works – 68 De-Havilland Crescent, Ballina	Awaiting additional information

8.6 Development Applications - Works in Progress - August 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
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	Being assessed
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	Awaiting additional information
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	Awaiting additional information
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	Awaiting additional information
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	Awaiting additional information
2020/264	30/4/2020	Ardill Payne & Partners	To undertake demolition, alterations and additions to the existing Northern Rivers Seafood Building – 480 River Street, West Ballina	Being assessed

8.6 Development Applications - Works in Progress - August 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	Awaiting additional information
2020/318	27/5/2020	I McIndoe	Vegetation management works comprising the removal of four trees – 3 Allens Parade, 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	Referred to Government Departments
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

8.6 Development Applications - Works in Progress - August 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
2020/361	12/6/2020	Ardill Payne & Partners	Change of use to Vehicle Repair Station - 1 Convair Avenue, Ballina	Determination pending
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
2020/369	17/6/2020	L Sapienza	Vegetation management works comprising the removal of five trees - 11 Angus Kennedy Close, Lennox Head	Being assessed
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	Being assessed
2020/418	30/6/20	S J Barnier	Vegetation management works comprising the ongoing pruning of a number of trees adjacent to the common property boundary between Lots 18 DP 253174 and Lot 156 DP 262260 - 67 Northumberland Drive, East Ballina	Being assessed
2020/431	8/7/2020	Ardill Payne & Partners	Change of Use of part of the existing operation of a general industry – brewery to an artisan food and drink industry - 2/188-202 Southern Cross Drive, Ballina	Being assessed
2020/426	6/7/2020	G J Milnes	Vegetation management works comprising the removal of one tree – 51 Antrim Street, East 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

8.6 Development Applications - Works in Progress - August 2020

DA No.	Date Rec'd	Applicant	Proposal	Status
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	On exhibition
2020/481	30/7/2020	S R Tester	Vegetation management works comprising the removal of one tree – 18 Mackney Lane & 21 Byron Street, Lennox Head	Being assessed
2020/482	30/7/2020	N Khotawan & R Earley	Vegetation management works comprising the removal of one tree – 35 Teven Road, Alstonville	Being assessed

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	On exhibition Councillor briefing to be provided

8.6 Development Applications - Works in Progress - August 2020

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 August 2020.

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/18	<p>That Council, as Crown Land Manager ('CLM') for the Lumley Park Reserve (R57670), the Ballina Saunders Park Reserve (R83963), Williams Reserve (82927) and the Kingsford Smith Reserve (R82164) affix the Common Seal to the following documents:</p> <p>Crown Temporary Licences as follows:</p> <p>12 month short-term Licence between Council as CLM (R57670) and the Alstonville Tennis Club for part Lot 333 in DP755745 and whole Lot 7004 in DP92641, at a statutory minimum rental, commencing 1 July 2020 to 30 June 2021.</p> <p>12 month short-term licence between Council as CLM (R83963) and The Ballina Community Gardens Inc for part lot 4 DP1153430, at a statutory minimum rental, commencing 27 August 2020 to 26 August 2021.</p> <p>12 month short-term licence between Council as CLM (R83963) and Ballina Devils Archers Inc for part lot 495 in DP729297, at a statutory minimum rental, commencing 1 July 2020 to 30 June 2021.</p> <p>12 month short-term Licence between Council as CLM (R82927) and Lennox Combined Sports Association Inc for part lot 473 in DP 729088, at a statutory minimum rental, commencing 1 July 2020 to 30 June 2021.</p> <p>12 month short-term Licence between Council as CLM (R82164) and the Ballina Seagulls Rugby League Club (or other incorporated entity as directed by the Club) for lot 153 DP1098090, at a statutory minimum rental, commencing 1 July 2020 to 30 June 2021.</p> <p>12 month short-term Licence between Council as CLM (R82164) and the Ballina Netball Association Inc for part lot 7064 DP 1118403, at a statutory minimum rental, commencing 19 June 2020 to 18 June 2021.</p> <p>12 month short-term Licence between Council as CLM (R82164) and the Tintenbar East Ballina Cricket Club (or other incorporated entity as directed) for part lot 7064 in DP 1118403, at a statutory minimum rental, commencing 1 July 2020 to 30 June 2021.</p>
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9.1 Use of Council Seal

	<p>12 month short-term Licence between Council as CLM (R82164) and Ballina RSL Club Marine Modellers for part lot 7064 DP 1118403, at a statutory minimum rental, commencing 1 July 2020 to 30 June 2021.</p> <p>Explanation: The NSW State Government has provided a 12 month transition period for councils managing Crown reserves under the Crown Land Management Act 2016, which commenced on 1 July 2018. Under the new framework, Council as Crown Land Manager can issue a short-term licence under s 2.20 of the Act for a maximum period of 12 months.</p>
US/19	<p>Ballina Shire Council licence from The Technical And Further Education Commission (TAFE) – Wollongbar TAFE Oval - 3.5 years at a licence fee of \$1,000 (plus GST) per annum, increasing annually by 4%.</p> <p>Explanation: Council has been using the oval at Wollongbar TAFE for an extended period. It is an overflow field for community sporting teams to train and play on a seasonal booking basis. Council has an amenities building at the oval. Council also installed the field lights.</p> <p>TAFE has only recently provided a licence document for a 3.5 year period commencing 1 July 2018 and expiring 31 December 2021. The licence fee is \$1,000 per annum (plus GST), increasing by 4% annually.</p>
US/20	<p>Ballina Shire Council Sublease to P & S Dixon for Lot 7003, DP 92641 being the old Alstonville Hall for a term no greater than five years at current market rent + GST.</p> <p>Explanation: Council has a head lease with the Crown over the property known as Lot 321 DP 755745 and Lot 7003 DP 92641 being the old Tintenbar Council Chambers and Alstonville Hall. The hall has been vacant for a lengthy period of time. The proponents are wishing to lease the hall for physiotherapy rooms.</p>

Attachment(s)

Nil

9.2 Investment Summary - July 2020

9.2 Investment Summary - July 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 July 2020.

Key Issues

- Compliance with Investment Policy and the return on investments.

Information

As at 31 July 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 July 2020 was \$83,538,300. This was unchanged from the balance as at 30 June 2020 due to the value of investments purchased in the month equaling the value of those reaching maturity.

Council's investments, as at 31 July, were invested at an average (weighted) interest rate of 1.34%, which was 1.24% above the July average 90 Day Bank Bill Index of 0.10%.

The balance of the Commonwealth Bank business account as at 31 July 2020 was \$8,621,034, decreasing by \$843,732 from 30 June 2020. Whilst creditors payments in July 2020 were significant and loan repayments occurred, they were largely offset by Council cash inflows which included \$2.93 million in developer contributions for Stage 5 Epiq Lennox.

The July 2020 TCorp Economic Commentary report is included as an attachment to this report.

Rates and charges payments received

Council's rates collections in July 2020 were less than the previous two months. As shown in the following table, the rates payments received in July 2020 were still 25.0% higher, in dollar values, than the same period last year.

9.2 Investment Summary - July 2020

Value and number of payments received	July 2020	July 2019	Variance	Variance %
Rates payments received (\$000)	4,275	3,419	856	25.0%
Number of assessments making payments	7,744	6,578	1,166	17.7%
Average value of receipt	\$552	\$520	\$32	6.2%

This increase could reflect more ratepayers having confidence in paying their rates after the initial economic impact from the COVID-19 pandemic.

To assess the impact of COVID-19 on cash flows it is relevant to review the ageing of Council's rates and charges debtors, as per the following table.

Rates and charges debtors \$'000	As at 31 July 20		As at 30 June 20		As at 30 June 19	
Current	2,725	57.2%	2,726	47.7%	2,845	63.7%
Overdue	2,039	42.8%	2,990	52.3%	1,624	36.3%
Total debtors outstanding	4,764		5,716		4,469	

As at 30 June 2020, the proportion of total debtors overdue was 52.3% of the total debt, in comparison to 36.3% as at 30 June 2019. Council did not issue follow-up letters to unpaid debtors following the 31 May 2020 due date, for the fourth quarterly rates instalment, due to COVID-19.

The proportion overdue as at 31 July 2020 was 42.8%, showing an improvement from 30 June 2020 position. In mid-September 2020, following the first instalment due date, Council will be sending a reminder letter to debtors still unpaid to prompt payment.

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

Reserve Name	Restriction	% Portfolio*
Wastewater (incl developer contributions)	External	12.46%
Water (incl developer contributions)	External	24.54%
Section 7.11 Developer Contributions	External	14.94%
Bonds and Deposits	External	3.37%
Other External Restrictions	External	5.13%
Carry Forward Works	Internal	5.03%
Bypass Maintenance	Internal	4.32%
Landfill and Resource Management	Internal	0.08%
Employee Leave Entitlements	Internal	3.72%
Quarries	Internal	1.02%
Property Reserves	Internal	6.76%
Plant and Vehicle Replacement	Internal	1.55%
Road Works	Internal	4.76%
Indoor Sports Centre	Internal	1.79%
Miscellaneous Internal Reserves	Internal	2.50%
Financial Assistance Grant in Advance	Internal	2.78%
Unrestricted		5.25%
Total		100.00%

* Reflects reserves held as at 30 June 2019. This will be updated for 30 June 2020 as part of the financial statement completion.

9.2 Investment Summary - July 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	Baa2	1,788	1,788	0	2.1%	2%
Rated Institutions								
AMP Bank	Yes	BBB+	A3	6,500	6,500	10%	7.8%	
Australian Unity bank	n/a	BBB+	NR	5,000	5,000	10%	6.0%	
Auswide Bank	No	BBB	Baa2	2,000	2,000	10%	2.4%	
Bank of China	Yes	A	A1	5,000	5,000	20%	6.0%	
Bank of Communications	Yes	A-	A2	1,000	1,000	20%	1.2%	
Bank of Queensland	Yes	BBB+	A3	6,000	6,000	10%	7.2%	
Commonwealth Bank	Yes	AA-	Aa3	8,000	11,000	20%	13.2%	
Credit Union Australia	No	BBB	Baa1	600	600	10%	0.7%	
Defence Bank Ltd	No	BBB	NR	5,500	5,500	10%	6.6%	
ING Bank (Australia) Ltd	Yes	A	A3	1,000	1,000	20%	1.2%	
ME Bank	No	BBB	Baa1	6,750	6,750	10%	8.1%	
Macquarie Bank Limited	Yes	A+	A2	4,000	1,000	20%	1.2%	
My State Bank Ltd	No	BBB+	Baa1	5,000	5,000	10%	6.0%	
National Australia Bank	Yes	AA-	Aa3	13,000	13,000	20%	15.6%	
Newcastle Permanent	No	BBB	A3	4,700	4,700	10%	5.6%	
Teachers Mutual Bank	No	BBB	Baa1	700	700	10%	0.8%	
Westpac Bank	Yes	AA-	Aa3	7,000	7,000	20%	8.4%	98%
Total				83,538	83,538		100%	
Credit Rating Summary as per the Investment Policy								
	Maximum Allowed		Value	Value	%	%		
	%	Value	Previous	Current	Previous	Current		
A- or Higher	100%	83,538	39,000	39,000	47%	47%		
BBB	60%	50,123	44,538	44,538	53%	53%		
Total			83,538	83,538	100%	100%		

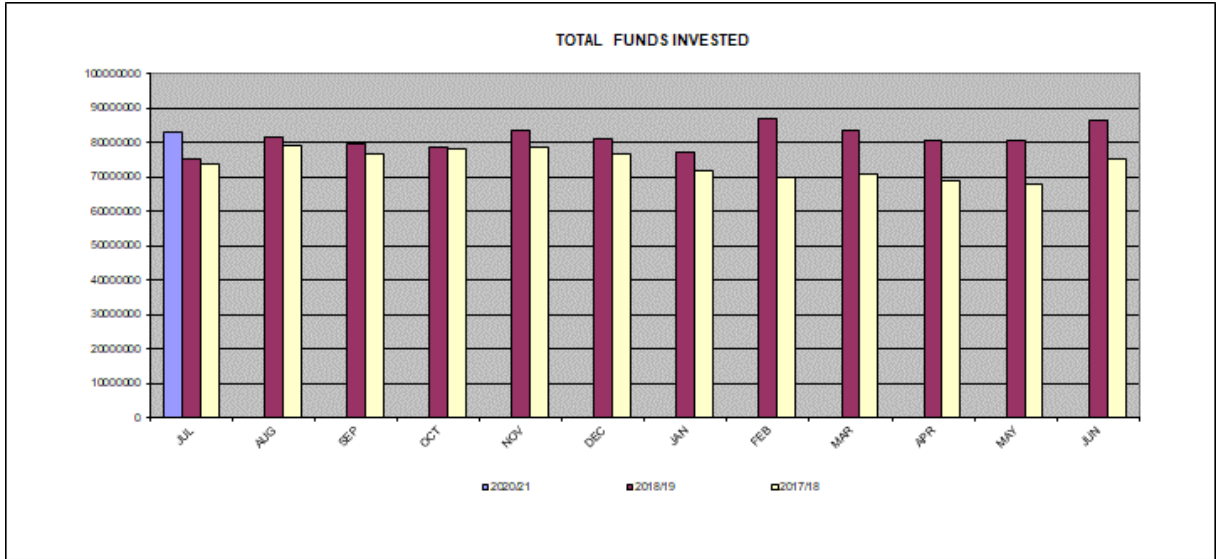
B. Summary of Investments Fossil Fuel Aligned

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

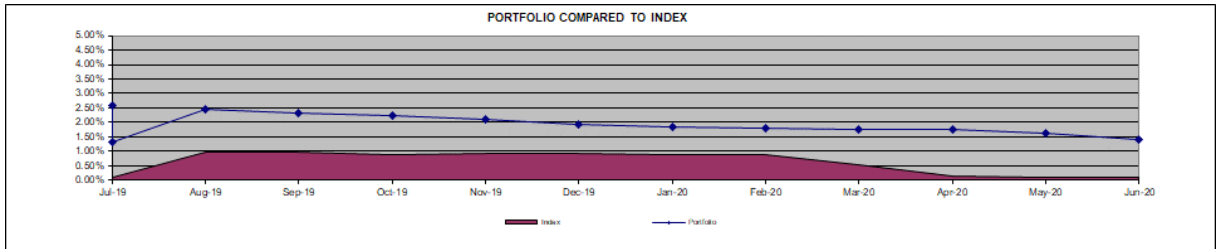
Classification based on advice from 'Market Forces'.

9.2 Investment Summary - July 2020

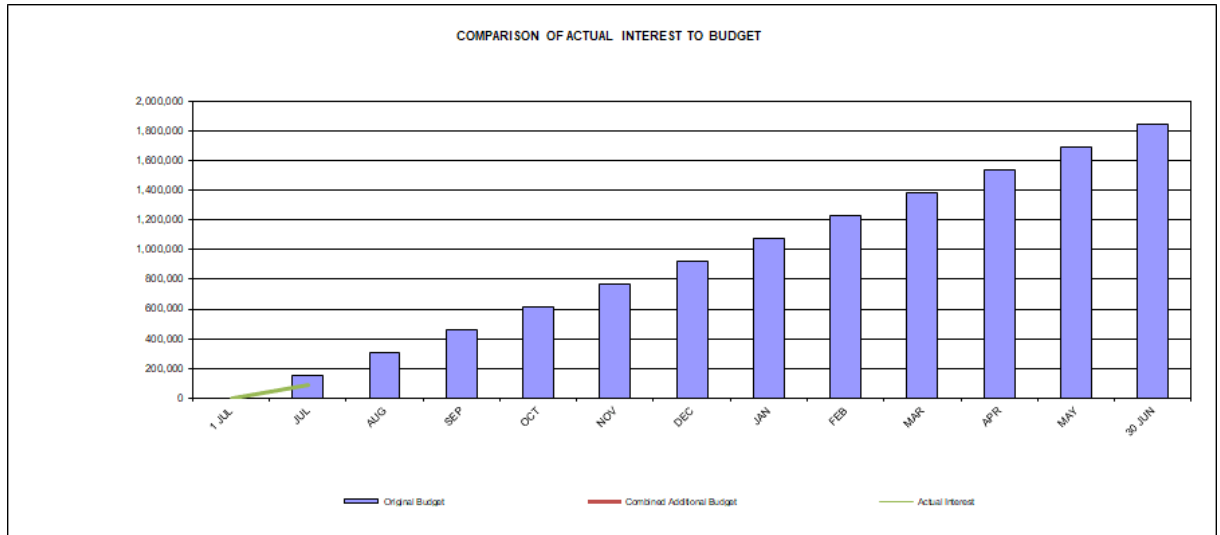
C. Monthly Comparison of Total Funds Invested



D. Comparison of Portfolio Investment Rate to 90 Day BBSW



E. Progressive Total of Interest Earned to Budget



9.2 Investment Summary - July 2020

F. Investments held as at 31 July 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
20/09/2004	National Australia Bank (ASX Listed)	FRN	2.04%	Perpetual	1,788	1,624
17/06/2016	Commonwealth Bank of Australia	FRN	1.15%	17/06/2021	1,000	1,000
30/06/2016	Commonwealth Bank of Australia	FRN	1.14%	30/06/2021	1,000	1,000
3/08/2017	Westpac Banking Corporation	FRN	1.15%	3/08/2022	2,000	2,000
18/08/2017	Westpac Banking Corporation	FRN	1.15%	18/08/2022	1,000	1,000
9/11/2017	ME Bank	FRN	1.35%	9/11/2020	750	750
6/02/2018	Newcastle Permanent Bld Society	FRN	1.51%	6/02/2023	700	700
30/07/2018	Westpac Banking Corporation	FRN	1.03%	31/07/2023	1,000	1,000
31/07/2018	Westpac Banking Corporation	FRN	1.03%	2/08/2023	1,000	1,000
6/09/2018	Newcastle Permanent Bld Society	FRN	1.51%	6/02/2023	1,000	1,000
6/09/2018	Credit Union Australia	FRN	1.35%	6/09/2021	600	600
10/09/2018	AMP Bank	FRN	1.18%	10/09/2021	1,500	1,500
11/01/2019	Commonwealth Bank of Australia	FRN	1.24%	11/01/2024	1,000	1,000
8/02/2019	Westpac Banking Corporation	FRN	1.15%	8/02/2024	2,000	2,000
21/02/2019	Newcastle Permanent Bld Society	FRN	1.14%	22/02/2021	2,000	2,000
22/02/2019	Newcastle Permanent Bld Society	FRN	1.15%	22/02/2021	1,000	1,000
26/07/2019	Commonwealth Bank of Australia	FRN	1.15%	26/07/2021	1,000	1,000
1/08/2019	AMP Bank	FRN	1.18%	10/09/2021	2,000	2,000
7/08/2019	National Australia Bank	TD	1.72%	4/08/2020	4,000	4,000
16/08/2019	AMP Bank	TD	2.00%	17/08/2020	1,000	1,000
26/08/2019	AMP Bank	FRN	1.18%	10/09/2021	1,000	1,000
27/08/2019	Defence Bank Ltd	TD	1.75%	27/08/2020	1,000	1,000
28/10/2019	Bank of Communications	FRN	0.99%	28/10/2022	1,000	1,000
26/11/2019	ME Bank	TD	1.60%	26/08/2020	2,000	2,000
28/11/2019	Australian Unity Bank	TD	1.70%	25/11/2020	2,000	2,000
28/01/2020	ING Bank (Australia) Ltd	TD	1.65%	21/01/2021	1,000	1,000
30/01/2020	Australian Unity Bank	TD	1.65%	11/08/2020	2,000	2,000
5/02/2020	MyState Bank Ltd	TD	1.70%	11/08/2020	2,000	2,000
11/02/2020	Auswide Bank	TD	1.65%	4/02/2021	2,000	2,000
19/02/2020	Bank of Queensland	TD	1.60%	19/08/2020	3,000	3,000
20/02/2020	ME Bank	TD	1.60%	22/09/2020	3,000	3,000
25/02/2020	ME Bank	TD	1.60%	16/09/2020	1,000	1,000
26/02/2020	Defence Bank Ltd	TD	1.65%	23/02/2021	1,000	1,000
27/02/2020	MyState Bank Ltd	TD	1.65%	20/11/2020	1,000	1,000
3/03/2020	Defence Bank Ltd	TD	1.65%	2/03/2021	1,000	1,000
5/03/2020	MyState Bank Ltd	TD	1.65%	3/03/2021	1,000	1,000
7/03/2020	Defence Bank Ltd	TD	1.60%	8/12/2020	1,500	1,500
17/03/2020	MyState Bank Ltd	TD	1.75%	16/12/2020	1,000	1,000
17/03/2020	Macquarie Bank Limited	TD	1.60%	22/12/2020	1,000	1,000
24/03/2020	Defence Bank Ltd	TD	1.85%	23/03/2021	1,000	1,000
28/05/2020	National Australia Bank	TD	0.95%	6/10/2020	2,000	2,000
28/05/2020	National Australia Bank	TD	0.95%	13/10/2020	2,000	2,000
28/05/2020	National Australia Bank	TD	0.95%	20/10/2020	2,000	2,000
4/06/2020	National Australia Bank	TD	0.99%	18/05/2021	3,000	3,000
4/06/2020	Bank of China	TD	0.95%	1/06/2021	2,000	2,000
10/06/2020	Bank of China	TD	0.92%	8/06/2020	1,000	1,000
10/06/2020	AMP Bank	TD	1.55%	10/12/2020	1,000	1,000
10/06/2020	Australian Unity Bank	TD	1.05%	8/04/2021	1,000	1,000
24/06/2020	Bank of China	TD	0.95%	23/06/2021	2,000	2,000
29/06/2020	Commonwealth Bank of Australia	TD	0.74%	5/01/2021	4,000	4,000

9.2 Investment Summary - July 2020

Purch Date	Issuer	Type	Rate	Final Maturity Date	Purch Value \$'000	Fair Value \$'000
29/06/2020	Bank of Queensland	TD	1.05%	28/06/2021	1,000	1,000
2/07/2020	Teachers Mutual Bank Limited	TD	1.47%	2/07/2021	700	700
30/07/2020	Commonwealth Bank of Australia	TD	0.72%	4/02/2021	3,000	3,000
	Totals				83,538	83,374
	TD = Term Deposit			FRN = Floating Rate Note		

RECOMMENDATION

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

Attachment(s)

1. TCorp Economic Commentary report - July 2020

9.3 Rates and Charges Write Offs - 2019/20

9.3 Rates and Charges Write Offs - 2019/20

Delivery Program

Financial Services

Objective

To provide Council with details of the rates and charges written off during the 2019/20 rating year.

Background

Clause 131 of the Local Government (General) Regulation 2005 (LGGR) and section 607 of the Local Government Act 1993 (LGA), outline procedures that councils must follow to write off certain rates, charges, and interest.

Write offs not covered by specific sections of the LGA must be approved by Council resolution, unless the General Manager has been provided with delegated authority by the Council.

The Council delegated authority for the General Manager provides authority to write off general debts to a maximum of \$1,000 per debt.

The General Manager has provided the Coordinator Rating with delegated authority to write off interest amounts, pursuant to section 567 of the LGA, up to the value of \$100 per assessment.

Clause 131 (6) of the LGGR requires the General Manager to inform the Council of any amounts written off under delegated authority.

This report complies with that clause.

Key Issues

- Compliance with clause 131 (6) of the LGGR

Information

Table 1 details write offs approved by way of separate Council resolution.

Table 2 details adjustments made under Council's resolution to implement a Concealed Water Leaks Policy.

Whilst these amounts are not technically write offs, they are reported for information.

In accordance with clause 131 of the LGGR, details of the 2019/20 rates, charges, and interest written off under delegated authority are provided in Table 3.

Detailed information regarding individual assessments is contained in Council's rating files.

9.3 Rates and Charges Write Offs - 2019/20

Although not required under clause 131 of the LGGR, other debts (besides rates, charges and interest) written off during 2019/20 are provided in Tables 4 and 5.

In accordance with Clause 132 LGGR all rates, charges and interest written off during the period 1 July 2019 to 30 June 2020, totalling \$28,728.38, will be included in Council's Annual Report.

In respect to the postponed rates, Council is required to write rates off where the property meet certain criteria (refer to notes in Table 4).

Table 1 - Write-offs – Approved by Council

Assessment	Amount (\$)	Resolution
RT 111144	9,716.31	Ordinary Meeting – 28 November 2019 281119/3 (Bonito Place, Ballina)
Total:	9,716.31	

Table 2 - Adjustments – Concealed Water Leaks Policy

Assessment	Amount (\$)
RT 115512	2,316.10
RT 115512	1,216.70
RT 180949	634.80
RT 211415	6,288.20
RT 229688	496.80
RT 252754	2,087.68
RT 257306	2,049.60
RT 264052	218.50
RT 285919	70.15
RT 432998	464.60
Total:	15,843.13

Council adopted a Concealed Water Leaks – Financial Assistance Policy at the Ordinary Meeting of 28 September 2017.

The assistance provided under the policy is to waive the difference between step one and step two tariffs, and for 2019/20 this was \$1.15 per kilolitre.

This is the third full year reported of adjustments provided under this policy, and the number of requests for assistance received by staff is an indication of how often concealed leaks can occur in private plumbing.

The majority of the leak event cost is still borne by the customer as water lost is charged at the step one rate of \$2.29 for 2019/20.

The policy excludes non-residential customers.

Table 3 - Write-offs – Under General Manager’s Delegated Authority

Assessment	Amount (\$)	Description
RT 433237	5.73	Write off interest charges raised – Interest free extension was granted but the interest override was not put on.
RT 268323	7.57	Write off interest due to a change of address.
RT 138188	8.06	Write off interest due to deceased estate given three months interest free while awaiting probate.
RT 411332	5.53	Write off interest due to notice not being received by email.
RT 181987	12.07	Write off interest due to notice not being received by email.
RT 219659	9.59	Write of interest due to notice not being received by email.
RT 281826	7.39	Write off interest due to bins incorrectly charged to the wrong assessment.
RT 113900	15.57	Write off interest due to postal address issue.
RT 208268	5.73	Write off interest due to ratepayer paying to wrong assessment.
RT 153057	5.72	Write off interest due to ratepayer paying to wrong assessment.
RT 218718	7.16	Write off interest due to notice not being received via email.
RT 407414	196.52	Write off interest due to postal address issue.
RT 167226	5.24	Write off interest due to ill health/compassionate grounds.
RT 179532	6.45	Write off interest due to ill health/compassionate grounds.
RT 269044	49.50	Write off interest due to rate notice going to the Ratepayer’s investment property.
RT 282296	58.81	Write off interest due to rate notice going to the Ratepayer’s investment property.
RT 100193	6.41	Write off interest due to a change in rate categorisation and the levy being under \$50.00.
DR 13184	180.00	Airport brochure advertising and late payment fee.
Total:	593.05	

Table 4 - Write-offs – Postponed Rates - Required by LGA Legislation

Assessment	Amount (\$)	Description
Four assessments	2,367.38	<p>Year 6 write off of postponed ordinary rate and interest charges - Section 595 LGA - Postponements typically relate to a single dwelling house that is zoned for multiple occupancy - The Valuer General supplies a land value for the highest potential use of the land. Upon application for postponement the Valuer General supplies an attributable value (i.e. extra value due to subdivision or higher use potential) and Council levies but postpones the attributable component. Interest is also charged.</p> <p>After five years the postponed amount and interest is written off. If the entitlement to postponement ceases at any time, any amounts not written off become due.</p>

Table 5 - Write-offs – Small Balances

Assessment	Amount (\$)	Description
164 rate assessments	208.47	Write-off of small balances (less than \$5.00). This process is applied when there are identified small arrears balance brought forward on the rates notice.
One debtor account	0.04	Write-off of small balances remaining following underpayment of invoice.
Total:	208.51	

Sustainability Considerations

- Environment**
Not applicable
- Social**
There may be socio-economic reasons that support writing off a person's account.
- Economic**
There is a loss of income in any write-off, albeit that the percentage written off is extremely small as compared to the total rates and charges levied.

Legal / Resource / Financial Implications

Revenue to the value of \$28,728.38 has been foregone. The overall percentage of rates and charges outstanding has increased from 2.67% to 4.67% based on a total collection figure of approximately \$64m. A reason for this increase will be ratepayers are taking advantage of Council's resolution not to charge interest to 30 June 2021 due to COVID-19.

9.3 Rates and Charges Write Offs - 2019/20

The debt recovery results for the last ten years are as follows.

30 June	% Outstanding
2010/11	7.40
2011/12	6.72
2012/13	6.06
2013/14	4.78
2014/15	3.99
2015/16	3.74
2016/17	2.96
2017/18	2.88
2018/19	2.67
2019/20	4.67

Consultation

The write-off information is included in Council's annual report.

Options

This report is for information purposes based on the provisions of the Local Government Act.

RECOMMENDATION

That Council notes that rates, charges, and interest totalling \$3,168.94 (as per Tables 3, 4 and 5 of this report) were written off under delegation of the General Manager for the 2019/20 rating year pursuant to clause 131 of the Local Government (General) Regulation 2005.

Attachment(s)

Nil

9.4 Community Donations - 2020/21

9.4 Community Donations - 2020/21

Delivery Program

Communications

Objective

To seek advice from Council in respect to late community donation requests for the Tibouchina RSL Day Club and Tintenbar School of Arts Inc.

Background

The Community Donations Program 2020/21 was reported to Council in July 2020. A total amount of \$65,300 was allocated.

As part of the advertising process correspondence is sent to interested community groups seeking their application forms by the deadline.

The Tibouchina RSL Day Club was one of the groups contacted for an application, and at the time they declined to submit a donation request. Unfortunately they had a number of members away, and thought they wouldn't require a meeting venue due to COVID-19 restrictions.

The Tibouchina RSL Day Club are still uncertain as to when they will be able to resume their activities however now are seeking a donation to assist them with hire fees for the Alstonville Cultural Centre, when they are able to return.

Tintenbar School of Arts also submitted an application for a donation, however their request was denied as the project was for retrospective works and did not meet the policy guidelines. They are now seeking a further donation for urgent repair works on the Tintenbar Hall.

This report seeks Council's response to these two late donations.

Key Issues

- Equitable distribution of Council funds

Information

Tibouchina RSL Day Club

The Tibouchina RSL Day Club is a social club for senior members of the Alstonville and Wollongbar community. They meet weekly at the Alstonville Cultural Centre and they provide entertainment and morning tea. The group meets the eligibility requirements for the donations program being a non-profit community group located in the Ballina Shire, as per Attachment 1.

Tintenbar School of Arts Inc.

The Tintenbar School of Arts Inc. is an eligible community group who operate the Tintenbar Hall. The southern deck of the Hall requires urgent repair. Earlier this year they have had someone sustain an injury from falling through rotten timber decking, resulting in an insurance claim.

The quote for repair is \$24,950 and they are seeking \$10,000 from Council to help fund the repairs, as per Attachment 2.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Donations provide financial support for local community groups who contribute to the social fabric of the Ballina Shire.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

The budget for community donations 2020/21 is \$75,000, with \$9,700 unallocated. \$5,000 of that amount is a result of the cancellation of Christmas on the Plateau 2020 due to COVID-19.

The total cost for hire of the Alstonville Cultural Centre by the Tibouchina RSL Day Club is \$5,070 for the remainder of the 2020/21 financial year.

The total cost to repair the Tintenbar Hall is estimated at \$24,950 and they are seeking \$10,000 from Council's donation program.

Consultation

Council advertised for submissions during the exhibition of the Community Donations Program in May 2020.

Council emailed the Tibouchina RSL Day Club to confirm they were aware of the Community Donations program and encourage them to make an application before the 5 June 2020 deadline.

Tintenbar School of Arts Inc. were aware of the program's deadline and submitted a request for a donation however their original application did not meet the policy guidelines.

Options

Council can choose to support the requests, not support the donation requests, or modify the amount.

9.4 Community Donations - 2020/21

Due to uncertainty as to when the Tibouchina RSL Day Club will be able to resume their activities, an option could be to allocate an amount to help support this Club, when they are ready to resume their activities.

Should the Alstonville Cultural Centre not be available when their activities resume, due to the possible use of the facility for filming, the approved donation could be applied to another available Council facility.

Council has approved a donation of approximately \$2,500 for this group for the last two financial years and an amount of \$2,000 is recommended for 2020/21, in recognition that the Club has not yet resumed activities.

The remaining available funds of \$7,700 could be allocated to the Tintenbar School of Arts Inc to assist with the urgent repair works required for this building. This amount is close to what has been requested.

An alternative option is to provide a smaller donation to Tintenbar School of Arts Inc and to retain funds in the budget.

Due to the nature and urgency of the works, along with this facility normally being well utilized by the community, it is recommended that an amount of \$7,700 be allocated to Tintenbar School of Arts Inc.

If this recommendation is supported it will effectively finalise the community donations program for 2020/21.

RECOMMENDATIONS

1. That Council approves a donation request for the Tibouchina RSL Day Club up to \$2,000 for hire of the Alstonville Cultural Centre or suitable alternative for 2020/21.
2. That Council approves a donation request for Tintenbar School of Arts Inc. for \$7,700 for repair of the Tintenbar Hall.

Attachment(s)

1. Application - Tibouchina RSL Day Club
2. Application - Tintenbar School of Arts Inc

9.5 Legal Matters - Update

9.5 Legal Matters - Update

Delivery Program

Governance

Objective

To provide an update on litigation involving Council.

Background

This report provides an update on current or recent legal matters to ensure that Councillors and the community are informed on litigation involving Council.

Key Issues

- Type, outcomes and cost of litigation

Information

This report provides an opportunity to review contemporary legal cases involving Council. Details of the case(s) are as follows:

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Allens Linklaters	Planners North v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2016/184 (Intrapac Pty. Ltd.)	1,200,000	1,232,000 (Council awarded \$493,816 in costs)

Comment

The applicant appealed the deemed refusal of DA 2016/184 (Cumbalum Views Estate) for an urban subdivision of the Cumbalum Urban Release Area – Precinct A (CURA A). This application originally comprised 642 residential allotments, four future development lots, eight residual rural lots, 18 open space lots, road construction, earthworks, stormwater management, infrastructure works, vegetation removal and other associated subdivision works.

A decision was handed down on 22 June 2018 with the application approved with conditions. The approved development (now 457 residential lots) is substantially different from that originally proposed reflecting a variety of issues raised by Council as concerns both pre and during the Court proceedings.

Council was awarded certain costs and an application for costs was filed in the Supreme Court. The cost determination was issued to Council on 5 August 2020. The total determination is \$493,816.99 (no GST).

A copy of the “Certificate of Determination” is included as Attachment 1 and the first 16 pages of the 66 page “Costs Assessment Reasons” is included as Attachment 2.

The “Cost Assessment Reasons” highlight the changes to the application as the court action, initiated by the applicant, progressed along with the basis for the \$493,816.69 calculation.

Council has been advised that the applicant has agreed to pay the determination amount, with an invoice to be issued shortly.

9.5 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Parker and Kissane	Ballina Shire Council v The Beach	Land and Environment Court - Class 4 Civil Enforcement Proceedings	50,000	48,000
<p>Comment</p> <p>At the April 2019 Ordinary meeting, Council resolved to grant consent to the two development applications lodged by The Beach. Subsequently, a building information certificate was also issued. Class 4 Proceedings were discontinued at the agreement of both parties.</p> <p>Council resolved to take certain actions at the February 2020 Ordinary meeting and penalty infringement notices have been issued.</p>				
Parker and Kissane	Palmlake Works Pty Ltd v Ballina Shire Council	Land and Environment Court – Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2018/321	750,000	753,000
<p>Comment</p> <p>DA 2018/321 comprises the staged erection of an extension to an existing Seniors Housing Development (Palm Lake Resort) under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 comprising of 156 self-care dwellings, recreation facilities and associated car parking, infrastructure works, site filling and associated works at Lot 2 DP 1155600, 120 North Creek Road Ballina.</p> <p>On 24 October 2018, the applicant lodged Class 1 proceedings in the Land and Environment Court for a deemed refusal of development application 2018/321.</p> <p>On 9 November 2018, the applicant filed a notice of motion containing an amended proposal and a request for expeditious proceedings.</p> <p>Council prepared its Facts and Contentions by 17 December 2018. The applicant failed to provide its response to the facts and contentions by the nominated date of 15 February 2019.</p> <p>The applicant subsequently sought leave on 16 April 2019 to further amend the application. An order for the applicant to pay Council's costs thrown away as a result of the amendment was subsequently made.</p> <p>The matter was set down for Hearing from 15 to 22 July 2019 and the hearing was then extended to 19 and 20 August 2019. A decision on the matter was handed down on 4 October 2019 with the amended development application approved with conditions.</p> <p>Council then resolved to appeal the decision in the NSW Land and Environment Court.</p> <p>The appeal judgement was issued on 29 April 2020 and the Court found that Council established five (out of six) grounds of error on questions of law. The appeal was upheld. As part of Chief Judge Preston's decision, it was ordered that the proceedings be remitted to Commissioner Dickson to be determined according to the reasons (as detailed by Chief Judge Preston) for his judgment.</p> <p>On 22 June 2020 a motion from the applicant regarding the reopening of the proceedings was heard. On 26 June 2020 Commissioner Dickson ruled in Council's favour with the decision being that the case would not be reopened.</p> <p>On 30 June 2020, Council received advice from the applicant seeking to discontinue the proceedings. This proposed discontinuance was accepted and a formal Notice of Discontinuance was lodged in the Land and Environment Court shortly after.</p> <p>The discontinuance now concludes the matter except for the issue of costs. Council's legal representative is now pursuing costs in line with orders in Council's favour</p>				

9.5 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Allens Linklaters	Northern Rivers Land Solutions v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of three modification applications to development application 2016/184 and associated construction certificate application and deemed refusal of development application 2018/616 (Intrapac Pty. Ltd.)	300,000	300,000
<p>Comment</p> <p>The applicant appealed the deemed refusal of three modification applications and an associated construction certificate application to DA 2016/184 for an urban subdivision of the Cumbalum Urban Release Area – Precinct A (CURA A) as approved by the Court. An appeal was also lodged against the deemed refusal of DA 2018/616 to undertake bulk earthworks across the site. The need to obtain separate approval for the bulk earthworks is a condition of the 2016/184 consent as ordered by the court.</p> <p>On 4 July 2019 the Court set the matter down for hearing on 31 January 2020 and 10-12 February 2020. The Court's decision was handed down on 5 March 2020.</p> <p>Two of the modification applications were determined by Council in advance of the Court hearing. The outcome of the hearing was the approval of the bulk earthworks DA 2018/616 and the remaining modification to DA 2016/184 following the applicant's further address of a number of issues raised by Council. The construction certificate was not determined by the Court. Following various changes to the construction certificate documentation to meet applicable conditions of consent, Council issued the construction certificate for works associated with stages 2 and 3 of the Banyan Hill development. The legal proceedings in relation to this matter have concluded.</p>				
Parker and Kissane	Jeffrey Gibbs v Ballina Shire Council and North Coast Recycling Pty Ltd	Land and Environment Court - Class 1 Appeal Proceedings – Third Party Challenge to Consent Granted by the NRPP to development application 2017/600.	200,000	19,000
<p>Comment</p> <p>DA 2017/600 is a 'designated development' for the expansion of an existing resource recovery facility at Northcott Crescent in the Russellton Industrial estate. The application was granted consent by the Northern Regional Planning Panel in November 2019.</p> <p>An amended Class 1 Application was filed in the NSW Land and Environment Court on 11 February 2020. Council is the first respondent and North Coast Recycling Pty Ltd is the second respondent. The matter is set down for hearing from 18-22 January 2021.</p>				
Lindsay Taylor Lawyers	Jason and Joanne White v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge Council's Refusal of development application 2018/381.	100,000	22,000
<p>Comment</p> <p>DA 2018/381 involves the decommissioning of an existing dwelling and construction of a new two-storey dwelling and swimming pool and the upgrading of an existing internal access way at 404 Old Byron Bay Road, Newrybar. Council refused the application at the December 2019 Ordinary meeting.</p> <p>The matter is set down for a Section 34AA conciliation conference and hearing on 14 and 15 September 2020.</p>				

9.5 Legal Matters - Update

Council Solicitor	Parties	Description	Cost Estimate	Paid to Date
Parker and Kissane	Veronesi v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge deemed refusal of development application 2019/170.	100,000	0
<p>Comment</p> <p>DA 2019/170 involves a proposal for a two lot boundary adjustment subdivision at 987 and 937 Wardell Road, Meerschaum Vale. On 28 January 2020 the applicant filed an appeal with the NSW Land and Environment Court on the basis of a deemed refusal.</p> <p>The application had remained undetermined in an attempt to have a number of outstanding issues satisfactorily resolved.</p> <p>A conciliation conference was held on 3 July 2020, Council and the applicant reaching agreement. Orders were made on 24 July 2020, with the application approved with conditions. Key matters associated with the proposal were able to be addressed through conditions of consent. This matter has now concluded.</p>				
Lindsay Taylor Lawyers	Griffani and Griffani v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge Council's refusal of development application 2019/30.	100,000	18,000
<p>Comment</p> <p>DA 2019/30 involves the erection of eight holiday cabins and the temporary use of the land for the purposes of wedding ceremonies. Council determined the application by way of refusal at the December 2019 Ordinary meeting.</p> <p>A conciliation conference is set down for 11 November 2020.</p>				
Lindsay Taylor Lawyers	Intrapac Skennars Head Pty. Ltd. v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge to deemed refusal of modification application relating to developer contributions payable under conditions of consent for development application 2017/244.	250,000	60,000
<p>Comment</p> <p>The applicant has lodged an appeal in the NSW Land and Environment Court on the basis of deemed refusal of a modification to the development consent that would have the effect of reducing the developer contributions payable by Intrapac in relation to the Aureus development.</p> <p>The matter is listed for hearing on 10-12 November 2020.</p>				
Parker & Kissane	Monica and Allan Anderson v Ballina Shire Council	Land and Environment Court - Class 1 Appeal Proceedings – Challenge to Council's refusal of DA 2020/49.	TBC	0
<p>Comment</p> <p>DA 2020/49 proposes subdivision of two existing rural zoned lots to create three lots, including one split lot.</p> <p>Council staff determined the application by way of refusal under delegated authority on 22 July 2020.</p> <p>The matter is set down for first directions on 31 August 2020.</p>				

9.5 Legal Matters - Update

Parker & Kissane	Martin Kenny vs Ballina Shire Council	NSW Civil & Administrative Tribunal – Application under Government Information (Public Access) Act 2009	10,000	0
Comment				
Mr Kenny has appealed to NCAT in relation to Council's decision to withhold documentation relating to compliance action associated with 404 Old Byron Bay Road Newrybar.				
A case conference was held on 11 August 2020. Further information is to be provided by both parties to the Tribunal during September and October.				
The proceeding is listed for further directions on 20 October 2020.				

Legal / Resource / Financial Implications

This section provides an update on legal costs for recent years and for the completion of the 2019/20 financial year.

Table 1 – Legal Expenditure 2016/17 to 2019/20

Description	2016/17	2017/18	2018/19	2019/20
DA 2016/184, 2018/616 - CURA A - Planners North / Northern Rivers Land Solutions – Intrapac	273,000	832,100	78,400	337,000
DA 2016/25 - Retail Fuel	5,000	0	0	0
North Creek – Wall	6,000	0	0	0
Riveroaks / Ferngrove Consent	6,000	0	0	0
Seabreeze Caravan Park	25,000	104,500	0	0
DA 2017/244 - Skennars Head – Aureus – Intrapac	0	1,100	31,100	28,000
DA 2017/557 - Byron Highlander (Function Centre)	0	2,800	9,500	0
Ballina Sands – Newrybar Swamp Road	0	4,000	22,100	15,000
The Beach House	0	0	31,600	16,000
DA 2018/381 - 404 Old Byron Bay Road (White)	0	0	900	22,000
DA 2017/321 - Michael Young	0	0	22,600	0
DA 2017/707 - Ardill Payne – 5 Rayner Lane	0	0	9,300	37,000
DA 2018/321 - Palm Lake	0	0	256,600	497,000
DA 2018/189 - Page Court	0	0	0	6,000
DA 2019/30 - Griffani	0	0	0	17,000
DA 2018/597 – Water Extraction	0	0	6,400	0
DA 2017/600 – Jeffrey Gibbs	0	0	0	7,000
Fire Safety Statements	0	0	9,200	6,000
Misc including insurance and planning agreements	38,000	22,700	25,400	54,000
Total Actual Expenditure	353,000	967,200	503,100	1,042,000
Legal Expenditure Budgets	167,500	1,005,000	290,000	1,036,000
Expenditure Budget Result – Surplus / (Shortfall)	(185,500)	37,800	(213,100)	(6,000)
Legal Actual Income from Costs Recovered / Fines	90,000	108,000	61,000	157,000
Legal Income Budget	75,000	85,000	70,000	140,000
Income Budget Result – Surplus / (Shortfall)	15,000	23,000	(9,000)	17,000
Net Income and Expenditure Budget Result	(170,500)	60,800	(222,100)	11,000

Legal expenditure can vary significantly from year to year as shown in the following table, which provides a ten year summary of actual results, with the last three years having been exceptionally high.

Table 2 – Legal Expenditure 2009/10 to 2015/16 (\$'000)

Year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Expense	710	136	149	266	103	88	353	967	503	1,042
Income	353	8	19	34	5	20	90	108	61	157
Net	357	128	130	232	98	68	263	859	442	885

The expenditure figures exclude legal costs relating to lease documentation, property matters and contracts, as well as staff time.

The major increase in costs, in recent years, is primarily due to Council's ongoing legal cases with Intrapac Pty. Ltd., with approximately \$1.6m in legal costs incurred in respect to their developments during the last four years, as well as the Palm Lake application, where \$753,000 has been expended to date.

Intrapac has also commenced the developer contributions challenge in respect to DA 2017/244 and the current estimate is that Council will incur at least another \$250,000 in legal costs for this case.

The legal cost figures for these matters also exclude the significant amount of staff time consumed in managing cases, which then has flow-on impacts in respect to assessment times for all other development applications.

Pleasingly there has been a costs order now confirmed of \$496,000 for the Intrapac CURA A matter, with a costs order still outstanding on the Palm Lake appeal.

These monies will assist in managing the 2020/21 budget for legal expenses, which totals \$325,000.

Contract Disputes

Contract disputes, can at times involve legal action, and there is currently one major on-going dispute in respect to contractual obligations as follows:

- Haslin Constructions – Ballina Wastewater Treatment Plant Design

Council has not awarded completion of this contract as the works are not considered to be defect free. The Contractor disputes this position and the issues were referred to Expert Determination.

The Expert Determination report was decided substantially in Council's favour. As the value of the works considered by the Expert is in excess of \$500,000 this determination is non-binding on the parties. This disputed is now being litigated in the Supreme Court. Council is the defendant in this matter.

Legal and related expenditure on this dispute to date is approximately \$569,000 as per the following summary.

Table 3 – Haslin Dispute – Expenditure for 2016/17 to 2019/20

Description	2016/17	2017/18	2018/19	2019/20	Totals
Maddocks Lawyers	258,800	40,800	27,300	144,900	471,800
Expert Determination	27,500	57,100	12,200	0	96,800
Total	286,300	97,900	39,500	144,900	568,600

9.5 Legal Matters - Update

These figures exclude office based staff time, as that time is not directly charged to the dispute.

Council last considered a report regarding this matter at the February 2020 Ordinary meeting.

Following this meeting Council has responded to further hearing preliminaries, however importantly Council has again indicated to Haslin we would agree to participate in commercial settlement negotiations or mediation. As part of their defence, Haslin has commenced a cross claim with a key subcontractor.

This aspect of the matter has taken the time since the Council report meaning the substantive hearing process has not commenced. Haslin has indicated their interest in discussing settlement process options once the cross claim procedures are established.

Consultation

This report is provided in open Council to ensure the community is informed on legal matters involving Council.

If Council wishes to discuss any matters of detail it may be necessary to resolve into confidential session to ensure any legal advice is not provided in open session.

Options

This report is provided for public information.

RECOMMENDATION

That Council notes the contents of this update on legal matters.

Attachment(s)

1. DA 2016/184 - Certificate of Determination
2. DA 2016/184 - Cost Assessment Reasons
3. National Parks and Wildlife - Penalty Infringement Notice
4. Council response to Penalty Infringement Notice
5. National Parks and Wildlife Service - Review Response

9.6 Policy (Review) - Model Code of Conduct

9.6 Policy (Review) - Model Code of Conduct

Delivery Program

Governance

Objective

To adopt a revised Code of Conduct following Office of Local Government changes to the Model Code.

Background

The Office of Local Government (OLG) has issued Circular 20/32 which outlines immediate amendments to the Model Code of Conduct and the Procedures for the Administration of the Model Code of Conduct. A copy of the circular is included as Attachment 1 to this report.

Council's Code of Conduct and the Procedures for the Administration of the Model Code of Conduct were adopted by Council on 24 January 2019, based on the then Model Procedures and Code as released by the OLG.

Key Issues

- Changes to the Model Code and Procedures

Information

The new Model Code of Conduct and Procedures for the Administration of the Model Code of Conduct are included as Attachments 2 and 3 to this report. As outlined in the OLG circular, the Model Code of Conduct has been amended to:

- remove as a breach, a failure to comply with a council resolution requiring action in relation to a code of conduct breach. This is because it is now redundant following a Supreme Court decision.
- update the language used to describe the various heads of discrimination in clause 3.6 to reflect more contemporary standards.
- include in the definition of council committee and council committee members, members of audit, risk and improvement committees (ARICs) in anticipation of the commencement of the requirement for all councils to appoint an ARIC following the next local government elections.

Amendments have also been made to the gifts and benefits provisions of the Model Code of Conduct in response to feedback from councils. The amendments, as summarised in the circular, are:

- lift the \$50 cap on the value of gifts that may be accepted to \$100
- clarify that items with a value of \$10 or less are not "gifts or benefits" for the purposes of the Model Code of Conduct and do not need to be disclosed

9.6 Policy (Review) - Model Code of Conduct

- clarify that benefits and facilities provided by councils (as opposed to third parties) to staff and councillors are not “gifts or benefits” for the purposes of the Model Code of Conduct, and
- remove the cap on the value of meals and refreshments that may be accepted by council officials in conjunction with the performance of their official duties

Councils are not obliged to amend their codes of conduct to lift the cap on the value of gifts that may be accepted if they do not wish to. It is open to councils to retain the existing \$50 cap or to impose another cap that is lower than \$100. The Procedures have been amended as follows:

- Consistent with the Supreme Court decision, councils have the following options when taking disciplinary action against councillors for breaches of their codes of conduct under the new Procedures:
 - that a councillor be formally censured for the breach under section 440G of the *Local Government Act 1993* (the Act), or
 - that a councillor be formally censured for a breach under section 440G and the matter referred to OLG for further disciplinary action under the misconduct provisions of the Act.
- The process for censuring councillors for breaches of the Code of Conduct has been significantly strengthened to ensure councillors are made publicly accountable to their electors for their conduct. When censuring councillors, councils are required to specify in their resolution the grounds on which the councillor is being censured by disclosing the investigator’s findings and determination and any other grounds that the council considers may be relevant or appropriate.
- Councillors may seek to avoid public censure for breaches of the code of conduct by voluntarily agreeing to undergo training or counselling, to apologise for their conduct or to give undertakings not to repeat their conduct before the investigator finalises their report to the council. Investigators can finalise their investigations without a report to the council where they consider these to be an appropriate outcome to the matter they are investigating. However, it will remain open to investigators to finalise their report and to recommend censure where they consider this is appropriate and warranted.
- The process for referral by councils of Code of Conduct breaches by councillors to the OLG for further disciplinary action under the misconduct provisions of the Act has been streamlined. Investigators are required to consult with OLG before recommending the referral of matters to ensure the conduct in question is sufficiently serious to warrant disciplinary action for misconduct and that there is sufficient evidence of the breach to allow OLG to take further disciplinary action.
- Other amendments have been made to the Procedures to:
 - allow panels of conduct reviewers to be appointed without a resolution of the council, and

9.6 Policy (Review) - Model Code of Conduct

- allow the referral of investigator's reports to the OLG for action under the misconduct provisions of the Act where the council will not have a quorum to deal with the matter.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The Model Code aims to ensure appropriate standards of behaviour are in place in respect to Councillors, staff and delegates of Council.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

Council has a statutory responsibility to ensure that it adopts the Model Code of Conduct and Procedures, as a minimum standard. Changes can be made however they must strengthen the Model Code.

Consultation

The OLG consulted widely in preparing the Code. Training sessions will now be held with all Council staff in respect to the changes outlined in the Code.

Options

Council has the option of adopting the Model Code and Procedures or adopting it with more onerous measures included.

The preference is to adopt the Model Code as it has been prepared by the OLG based on significant consultation and sets a reasonable benchmark for the minimum standards of behavior.

RECOMMENDATION

That Council adopts the Office of Local Government's Model Code of Conduct and Model Procedures, as per Attachments 2 and 3 to this report.

Attachment(s)

1. Office of Local Government - Circular 20-32
2. Model Code of Conduct
3. Procedures for the Administration of the Model Code of Conduct

9.7 Budgets Carried Forward and Reserve Movements

9.7 Budgets Carried Forward and Reserve Movements

Delivery Program

Financial Services

Objective

To provide a preliminary overview of the 2019/20 financial year results and to advise of any budgets carried forward to 2020/21, along with the transfers to reserves included in the 2019/20 results.

Background

The purpose of this report is to provide a preliminary overview of the 2019/20 financial results.

The report also seeks approval to carry funds forward from 2019/20 to 2020/21 for ongoing or incomplete projects and to advise on transfers to reserve.

Key Issues

- Financial performance.

Information

This section of the report provides a brief overview of the results for the different operations of Council.

The results will still be subject to change due to end year accounting adjustments, such as leave accruals and end of year asset accounting journals however, they provide a reasonable summary of the outcomes for 2019/20.

General Fund

Table 1 outlines the General Fund Operating Result, with the result being \$3.2m above forecast. A large portion of this relates to \$1.8m in net operating expenditure for projects to be carried forward to 2020/21. That is, operating expenditure of \$1.9m less operating income of \$117,000 carried forward.

These carry forwards are detailed in Table 6.

Operating revenue was \$1.4m above budget.

The larger areas attributable to this result being Landfill and Resource Management, \$382,000 above budget, Airport, \$264,000 above budget, Fleet Management, \$212,000 above budget and Vegetation Management, \$195,000 above budget.

Operating expenditure was below budgeted expenditure by \$1.9m.

This is almost entirely due to operating expenditure related projects in progress and the unexpended budgets are then carried forward to the 2020/21 financial year.

9.7 Budgets Carried Forward and Reserve Movements

Some of the larger expenditure carry over items are \$367,000 for Emigrant Creek Stabilisation; \$300,000 for the Indigenous Area Repair Bushfire Recovery; \$225,000 for the Asset Protection Zone Bushfire Recovery; and \$100,000 for the Bushfire Community Resilience and Economic Recovery.

The bushfire expenditure relates to grant monies received late in the financial year.

The depreciation expense in Table 1 represents budgeted amounts. This figure is prior to end of year accounting journals. This is a difficult item to forecast, and is dependent on the timing of new expenditures and disposal of assets each year, as well as being impacted by revaluation of asset classes during the year.

The operating results by program for the General Fund are outlined in the following table.

Table 1: General Fund – Draft Operating Result by Section (\$'000)

Description	Revenue Actual	Revenue Budget	Expenses Actual	Expenses Budget	Result Actual	Result Budget
Planning and Environmental Health Division						
Strategic Planning	141	182	1,238	1,735	(1,097)	(1,554)
Development Services	742	690	2,503	2,488	(1,760)	(1,798)
Building Services	1,862	1,787	1,420	1,357	442	430
Environment and Public Health	861	659	1,593	2,400	(732)	(1,741)
Public Order	264	241	662	586	(397)	(345)
Sub Total	3,870	3,559	7,416	8,566	(3,544)	(5,008)
Civil Services Division						
Asset Management	318	315	2,797	2,692	(2,479)	(2,377)
Depot and Ancillary Building Mgmt	0	0	1,495	1,392	(1,495)	(1,392)
Stormwater and Env Protection	479	490	947	981	(468)	(491)
Roads and Bridges	763	819	3,266	3,570	(2,503)	(2,752)
Ancillary Transport Services	1,003	969	1,762	1,882	(760)	(913)
Transport NSW	964	783	783	783	181	0
Ferry, Wharves and Jetties	455	545	914	904	(459)	(359)
Open Spaces	447	478	3,289	3,182	(2,842)	(2,704)
Vegetation Management	195	0	351	1,016	(156)	(1,016)
Sports Fields	0	101	533	586	(533)	(485)
Cemeteries	378	420	319	303	60	117
Fleet Management and Workshop	4,733	4,521	3,123	2,942	1,610	1,579
Emergency Services	142	176	455	489	(312)	(313)
Quarries and Sandpit	68	67	48	44	19	23
Landfill and Resource Mgmt	6,089	5,707	5,834	5,929	255	(223)
Domestic Waste Management	7,963	8,041	7,839	7,643	124	398
Sub Total	23,997	23,432	33,755	34,338	(9,759)	(10,906)
Corporate and Community Division						
Governance	30	28	2,590	2,587	(2,560)	(2,559)
Communications	115	113	1,366	1,473	(1,251)	(1,360)
Financial Services	31,599	31,509	(4,958)	(5,012)	36,557	36,522
Information Services	338	306	3,496	3,477	(3,158)	(3,171)
People and Culture	278	213	349	294	(71)	(81)
Property Management	1,985	2,019	1,034	1,133	951	886
Flat Rock Tent Park	348	340	277	312	71	28
Ballina-Byron Gateway Airport	5,754	5,490	4,275	4,221	1,479	1,269
Community Facilities	416	410	1,521	1,526	(1,105)	(1,116)
Community Gallery	135	134	435	463	(300)	(329)
Library Services	166	166	1,532	1,594	(1,366)	(1,428)
Swimming Pools	984	940	1,785	1,756	(801)	(816)
Tourism	159	141	529	559	(370)	(419)
Sub Total	42,307	41,809	14,231	14,383	28,076	27,425
Operating Result (excl deprec)	70,174	68,800	55,402	57,287	14,773	11,511
Depreciation	0	0	14,731	14,731	14,731	14,731
Operating Result (incl deprec)	70,174	68,800	70,133	72,018	42	(3,220)

Even though the net result is better than forecast, it is important to note the impact of the carry forward works on the bottom line for 2019/20 and that the overall result will change once year end accounting adjustments are completed.

9.7 Budgets Carried Forward and Reserve Movements

For example, one year-end accounting adjustment to be completed is the reclassification of an investment from 'fair value' to 'held to maturity'. This will result in an increase to interest recognised, with a positive impact of \$123,000 on interest revenue to be recognised.

Brief comments for each section on the major items of interest for the final quarter of the year (i.e. comparisons to forecast) are as follows:

Planning and Environmental Health Division

Strategic Planning

Interest earned on section 7.11 balances was \$48,000 lower than forecast.

The largest variation for all other income budgets was rezoning fees, \$8,000 above the March forecast.

The next part of this report identifies expenditure budgets of \$368,900 to be carried forward to the next financial year. The largest component of the carry forward is \$200,000 for the Koala Management and Biodiversity project, funded from the Bushfire Recovery Grant.

Other carry forwards totalling \$168,900 are for plans of management, studies, rezoning projects and other identifiable projects to continue.

A further amount of \$103,000 has been transferred to the Planning and Environmental Health Division reserves, representing savings on completed projects or amounts unspent on projects that will continue.

Development Services

Income was above forecast by \$52,000 with higher than forecast development application fees, subdivision fees and legal expenses recovered contributing to the final outcome.

Expenses were \$15,000 more than the forecast. Consultant expenses totalling \$46,000 exceeded budget by \$26,000. Legal expenses for Development Services totalled \$984,000, exceeding budget by \$14,000.

The above overs were offset in part by savings within the salaries budget of \$15,000. An unspent budget of \$10,000 for the quarries baseline survey has been transferred to reserve.

Building Services

Income was above forecast by \$75,000 with the largest variations being development application fees up by \$51,000 and plumbing and drainage fees up by \$32,000.

Expenses were \$63,000 more than the forecast.

Actual salary expense came in at \$68,000 above the budgeted expenditure of \$1,243,000 with additional resources engaged to assist with the workload.

9.7 Budgets Carried Forward and Reserve Movements

Legal expenses totalling \$52,000 came in under budget by \$3,000.

Other savings of \$3,000 were realised in sundry administration expenses.

Environmental and Public Health

Operating income was over budget by \$201,000 due to increased grant funds.

A State Government grant of \$214,900 was received for the North Creek Dredging Investigation Studies. This amount has been transferred to the Coastal Management Plan Reserve for use in 2020/21.

Another State Government Grant of \$140,000 was received late in 2019/20 for funding of the Contaminated Lands Officer. This amount has been placed in reserve to fund expenditure in 2020/21.

The above items were offset partially by grant funding for Emigrant Creek Stabilisation not received. With this work not yet completed, grant income of \$190,000 has been deferred to 2020/21.

Operating expenditure was \$807,000 below forecast.

Of this, amounts totalling \$461,700 are items for carry forward to 2020/21, the largest individual item being the Emigrant Creek Stabilisation budget of \$367,000.

The carry forwards also includes \$37,000 for Marom and Chilcotts Creek, \$41,700 for the Contaminated Lands Officer and \$16,000 for committed expenditure for Environmental Health Projects.

Unspent budgets totalling \$226,000, being \$153,000 for Healthy Waterways, \$39,000 for the Lake Ainsworth Management Plan and \$34,000 for Environmental Health Projects, have been placed back into reserves for when required.

Significant operational savings were realised, with employee costs \$137,000 below budget due to extended leave and staff vacancies.

Public Order

Operating income was above budget by \$23,000, with parking fines over budget by \$18,000 and income of \$4,000 received from the Office of Local Government for the purchase of a hydrobath for the animal shelter.

Operating expenditure exceeded budget by \$76,000, with the largest contributor being salary expenses totalling \$549,700, which exceeded budget by \$86,000.

A budget of \$4,000 has been carried forward for the purchase of the hydrobath for the animal shelter.

9.7 Budgets Carried Forward and Reserve Movements

Civil Services Division

Asset Management

Operating income was close to budget, over by \$3,000.

Operating expenditure was over budget by \$105,000, with salaries budget overs of \$131,000 offset by unspent budgets of \$14,000 for road safety projects and \$6,000 for road condition assessments.

Additional staff resources were engaged, on a temporary basis, during the year to manage the high workload for the development engineers.

Depot and Ancillary Building Management

Operating expenditure was over budget by \$103,000.

Within the depot expenditures, the large overs in expenditure were: cleaning contracts \$12,000; yard maintenance \$10,000; and depot stockpiles \$14,000.

Within building management expenditures, the larger overs in expenditure were: picnic tables and shelters, \$26,000; electric barbecues, \$19,000; and sportsfield rates and charges \$25,000.

Stormwater and Environmental Protection

Operating income was under budget by \$10,000.

Grant income of \$67,000 for the Ballina Flood Risk Study was not received as the works are not completed, with this income budget transferred to 2020/21.

The income carry forward above was offset partially by the receipt of unbudgeted contributions of \$56,000 for Ballina Flood Management Third Party Modelling.

Operating expenses were \$34,000 less than forecast.

Of total budgeted expenditure, \$56,000 is being carried forward to 2020/21.

The carry forward budgets for projects in progress are \$42,000 for the Ballina Flood Plain Management Plan and \$14,000 for Ballina Flood Management Third Party Modelling.

Amounts totalling \$32,000, being unspent budgets for Coastal Management Plan related studies, have been transferred to reserve until required.

Roads and Bridges

Operating income was under budget by \$55,000, with the interest allocation to the bypass reserves less than budgeted.

Operating expenditure was less than budget by \$304,000, of which there are carry forward budgets to 2020/21 totalling \$60,000 for rural roads sealed operations, gravel roads maintenance and gravel roads operations.

9.7 Budgets Carried Forward and Reserve Movements

The level of works, of an operating nature, were less in the 2019/20 year as resources were directed to completion of capital works, higher in 2019/20 due to projects under the Marine Estate Management Strategy funding.

Only \$60,000 has been carried forward as the other savings were needed to offset over-expenditures in other areas within Civil Services.

Ancillary Transport Services

Operating income was \$34,000 above forecast.

Loan proceeds of \$700,000 were recognised, being an internal loan from Water Fund, to fund the LED street lighting upgrade project. This amount is \$22,000 less than the budgeted funding of \$722,000, as the actual costs of the project amounted to \$704,000.

Unbudgeted income of \$95,600 was received for the sale of the old lighting equipment, following the LED replacement lighting project. This amount allowed for an additional, unbudgeted, loan repayment to the Water Fund to be made in 2019/20 for this amount.

Private works income was \$32,000 below forecast with very little activity during 2019/20. This is largely offset by lower expenditure.

Grant income received from Transport NSW for street lighting was \$6,000 below forecast, with \$98,000 received against budgeted grant income of \$104,000.

Operating expenditure was \$119,000 below budget.

Of total budgeted expenditure, \$38,000 of unspent budgets are being carried forward to 2020/21, with details provided in Table 6.

Expenditure on roads and traffic signs was below budget by \$95,000, offset partially by over spend of \$89,000 on other footpaths and shared paths.

The LED street lighting upgrade project actual spend was below budget, by \$18,000, with a total cost of \$704,000.

Further, savings are now being recognised for the associated street lighting electricity expense, which was \$21,300 under the 2019/20 budget of \$550,300. This is a pleasing outcome, with the electricity expense for recent years as follows:

2019/20	\$529,000
2018/19	\$713,200
2017/18	\$597,100
2016/17	\$585,900

Private works expenditure was \$34,000 below forecast, consistent with the reduced private works income.

The net profit for private works, however, was reasonably consistent with forecast, being \$1,400 above forecast.

9.7 Budgets Carried Forward and Reserve Movements

Ferries, Wharves and Jetties

Operating income for this section, which relates to the ferry, was \$90,000 below budget. The loss of income was due to the loss of casual fee income, for the period from mid-April to end of June, with Council resolving not to charge casual fees.

Operating expenditure for this section, which includes ferry operations and wharves/jetty expenses, was \$10,000 above budget.

The wharves/jetty total expenditures were \$18,000 over budget, predominantly due to higher than budgeted general maintenance expenses.

Transport NSW

Costs in this section are funded by a grant from Transport NSW.

Both operating expense and capital expense for this section were on budget, with a combined expenditure of \$968,800.

Total Transport NSW income allocated for this section was \$964,000, thus all amounts received have been fully acquitted.

Open Spaces

Operating income was \$31,000 less than forecast.

The larger factors were contributions from the National Disability Insurance Scheme (NDIS) \$27,000 less than forecast, open spaces licence revenue \$31,000 below budget, offset in part by nursery sales \$19,000 higher than budget.

Expenses were \$107,000 more than forecast, with tree maintenance \$63,000 above budget, nursery operations \$25,000 above budget and beach maintenance \$23,000 above budget.

Vegetation Management

Operating income of \$195,000 was recognised for this section.

An amount of \$165,200 was received from Intrapac Pty. Ltd, for offsetting impacts from the Aureus Development for vegetation restoration works at Boulder Beach. This a consent condition and the funds have been placed into reserve, to be drawn down over the next five years.

Grant funding of \$30,000 was received for the Rock Fishing Safety Program.

Operating expenditure was \$665,000 below budget, with resulting carry forwards of \$682,600, which includes \$19,800 for the Rock Fishing Safety Program.

This significant carry forward figure includes \$300,000 for the Indigenous Area Repair Bushfire Recovery and \$225,000 for the Asset Protection Zone Bushfire Recovery.

9.7 Budgets Carried Forward and Reserve Movements

Expenditure savings to budget relate to a number of other ongoing grant funded vegetation works and compensatory works, with carry forwards of \$157,600, detailed in Table 6 of this report.

Sport Fields

The budgeted operating income of \$100,500 was a grant for the construction of the Ballina Community Men's Shed, with a matching expenditure budget. These works are still to be commenced.

Total expenses were \$52,000 below forecast. This includes an unspent expenditure budget of \$100,500 for the Men's Shed, offset by overspend of \$48,500 on sports fields operating budgets.

Cemeteries

Cemetery fees were \$42,000 below forecast and operating expenses \$16,000 above forecast. This results in the transfer to the cemeteries reserve of \$60,000 comparing to the forecast of \$117,000.

Fleet Management and Workshop

The net operating result was \$31,000 above forecast. Plant charged to works was \$194,000 more than forecast. Total expenditures, main contributor being plant repairs, exceeded budget by \$181,000.

Emergency Services

Income for this section comprises an annual maintenance and repair grant and a hazard reduction grant. The budgeted hazard reduction grant was \$62,400. Of this, the reimbursement claimed and received by Council was \$29,100, to match the actual expenditure incurred for hazard reduction. Overall, the net operating result for this section was within \$1,000 of budget.

Quarries and Sandpit

Operating income and expenditures were close to budget.

Landfill and Resource Management (LRM)

A net surplus of \$255,000 was achieved, comparing to the March forecast deficit of \$223,000.

Operating income exceeded forecast by \$382,000, with disposal fees over by \$320,000 and income received for the Return and Earn Scheme exceeding forecast by \$73,000.

The COVID-19 pandemic lock-down resulted in a significant increase in income, with some neighbouring local government areas also closing their landfills for certain periods.

Operating expenditure was \$95,000 below forecast.

9.7 Budgets Carried Forward and Reserve Movements

Domestic Waste Management (DWM)

DWM operations produced a net surplus of \$124,000 compared to the March forecast of \$398,000.

Interest income of \$30,000 was allocated to this reserve compared to an original budget of \$79,000, with the end of year allocation based on reserve balances end of year and interest available for distribution.

Organics collection and disposal costs were \$251,000 above budgeted expenditure of \$1,660,000. This reflects the increased tonnages that occurred during the April to June period.

Corporate and Community Division

Governance

Operating income and expenditures were close to budget.

Communications

Operating expense budgets included \$100,000 for the Bushfire Community Resilience and Economic Recovery. This is a carry forward expenditure for 2020/21.

Financial Services

A budgeted dividend of \$75,000 from the Water and Wastewater Funds is yet to be finalised as part of year end accounting journals.

Similar to the previous year, the Financial Assistance Grant (FAG) was paid in advance, with advance funds of \$2,417,800 received in June 2020 compared to \$2,338,700 received in June 2019. There is a net impact of approximately \$79,100 on the operating result, with this amount transferred to reserve.

Operating expenses were \$54,000 above forecast, with the larger contributor being overs in employee costs.

Information Services

Information fee income for the year totalled \$338,000, above forecast by \$32,000, offset partially by expenditure over by \$19,000, predominantly salary expenses.

People and Culture

Refunds of \$141,700 were received from StateCover Mutual, \$62,700 higher than budgeted refunds of \$79,000.

The expenditure section of the budget manages, amongst other things, staff leave, superannuation, recoupment of on-costs (a negative expense) and workers compensation for the entire organisation with a total expenditure budget of approximately \$7.9 million.

9.7 Budgets Carried Forward and Reserve Movements

Preliminary staff leave expenditures are over budget by \$200,000 (5.6% over compared to budget of \$3,768,000), however this will be revised when the required year-end accounting adjustments for leave provisions are completed.

Superannuation paid is over budget by \$41,000 (1.5% over compared to budget of \$2,660,000).

Recoupment for staff on-costs represents a significant item (a negative expense) within the total expenditure budgets. This section receives the credits from the on-costs and the budget is \$7.9 million.

In this period there were positive variations of \$154,000 which represents a 2.0% variation to forecast.

This was offset in part by workers compensation premiums paid for the year of \$488,800, \$74,000 above budget.

Savings achieved in the section include employee costs of \$55,000.

There is carry forward expenditure of \$47,400 relating to the grant funded Elson Dixon Employment program.

Property Management

The total operating income of \$1,984,800 was \$34,000 less than budget.

Interest income of \$26,000 was allocated to reserves compared to an original budget of \$46,000. The total of all lease incomes was below budget by \$14,000.

Across this portfolio, operating expenses of \$1,034,000 were below budget by \$99,000, with the larger variations to budget noted below.

Building maintenance costs were \$23,000 over for Wigmore Arcade and \$13,000 over for 89 Tamar Street, offset by savings of \$19,000 for Council owned residential properties.

Savings of \$26,000 were realised for lease and legal costs. Employee costs exceeded budget by \$20,000. Unexpended funds of \$56,000 for the Southern Cross Estate Master Plan will be carried forward to 2020/21.

Flat Rock Tent Park

Operating income was \$8,000 above budget with the budget having been revised down by \$108,000 at the March 2020 Quarterly Financial Review.

Operating expenditure was \$35,000 below budget, with the largest variation being \$18,000 for contract management costs.

Ballina Byron Gateway Airport

The Airport achieved an operating surplus of \$1,478,600 excluding depreciation. This was \$210,000 better than the most recent forecast.

Operating income was \$264,000 above forecast.

9.7 Budgets Carried Forward and Reserve Movements

Mandated security charges (income) exceeded budget by \$149,000, with a favourable end-of-year accrual of \$186,000 recognised in June.

Passenger charges exceeded budget by \$79,000 with some flights resuming for the latter part of the financial year.

Airline contribution to CAGRO costs exceeded budget by \$54,000, with a favourable end-of-year true-up of \$28,200 recognised in June.

Rental income for the terminal building was below budget by \$24,000.

Budgeted income for an interest subsidy provided under loans under the Local Infrastructure Renewal Scheme (LIRS) was below budget by \$18,000. This income is an accounting adjustment, with the treatment of such changed due to changes in recognition requirements under the revenue related Australian Accounting Standards.

Operating expenditure was \$54,000 above forecast.

The larger areas of overs were \$54,000 for CAGRO costs, \$25,000 for electricity, \$21,000 for aircraft movement area and \$20,000 for cleaning contracts.

Savings were realised for employee costs and compliance inspection costs, of \$67,000 and \$26,000, respectively.

Year-end accounting journals and capitalisation of assets completed in the 2019/20 year is currently in progress.

A preliminary review of expenditures within the Terminal Building capital work in progress has identified amounts approximating \$72,000 that are operating in nature and will need to be transferred to operating expense.

This will have the impact of reducing the preliminary operating result noted earlier in this report.

Community Facilities

Total income was close to the latest estimates, with no individually large variations.

Total expenditure was also close to the latest estimates, with the larger variations being employee costs over budget by \$15,000, electricity for the Lennox Head Cultural Centre (LHCC) over by \$15,000 and cleaning contracts for the Ballina Indoor Sports Centre (BISC) savings of \$11,000.

Operating expenditure also included budgets of \$15,000 for crown land rental of the LHCC and the Ballina SLSC, for which payment has not been requested.

Year-end accounting journals and capitalisation of assets completed in the 2019/20 year is currently in progress.

A preliminary review of expenditures within the BISC capital work in progress has identified amounts approximating \$89,000 that are considered operating in nature and therefore will need to be transferred to operating expense.

9.7 Budgets Carried Forward and Reserve Movements

This will have the impact of further reducing the preliminary operating result noted in this report.

Northern Rivers Community Gallery

For expenditure budgets, there are carry forwards totalling \$42,000 corresponding to grants received for which expenditure has not commenced.

Over spend across the other expenditure budgets total \$14,500, including salary costs over by \$5,800 and cleaning contracts over by \$4,500.

Library Services

Operations came in close to forecast. The expenditure saving to budget largely represents grant funded projects of \$57,000 which will be carried forward to 2020/21 and savings in various operating expenses totalling \$4,500.

Swimming Pools

Operating income for both pools have exceeded (March) budgets.

Ballina pool income for the year of \$611,800 was \$27,600 more than the forecast. Alstonville pool income for the year of \$372,100 was \$16,700 more than the forecast.

Overall expenditure for Ballina pool was \$1,218,200 which was \$55,000 over forecast. Actual rates and charges (inclusive of water usage) and electricity were higher than forecast, \$40,400 and \$22,700 respectively. There were savings in chemicals and management contract.

Overall expenditure for Alstonville pool was \$566,300 which was \$26,000 below forecast. Chemicals and management contract costs were lower than forecast, \$20,600 and \$14,700 respectively.

There were overs for maintenance and rates and charges budgets.

Tourism

Total operating income of \$159,200 for 2019/20 included \$90,000 budget for advertising income from the Visitor Information Guide, a project which is undertaken every three or four years.

Actual advertising and promotions income, relating to both the Visitor Information Guide and Airport Brochure Rack Advertising, exceeded budget by \$17,000.

Operating expense was \$30,000 below budget.

The larger savings were for employee costs of \$18,200, conferences of \$3,800 and electricity of \$3,300.

9.7 Budgets Carried Forward and Reserve Movements

Water Operations

The preliminary result for Water Operations is shown in Table 2, with a comparison to the March forecast.

Table 2 - Water Operations – Draft Financial Results (\$'000)

Item	Actual	Budget
Operating Revenues	13,384	13,626
Operating Expenses	10,733	10,844
Operating Result (excluding depreciation)	2,651	2,782
Depreciation Expense	1,500	1,500
Operating Result (including depreciation)	1,151	1,282
Capital Income	763	600
Capital Expenditure	3,030	3,580
Net Cash Increase	384	198

The actual operating result is positive, inclusive of depreciation, which is an important benchmark. This goes a long way to ensuring that the business is sustainable over the long term.

Operating income was close to budget, \$242,000 lower than the March 2020 forecast, which is a variation of less than 1.8%.

The variation to budget was largely attributable to lower than forecast water consumption, for non-residential businesses, for the last quarter and lower than forecast interest income.

Operating expense was reasonably close to budget, \$111,000 less than forecast, which is a variation of 1.0%.

The budgeted dividend of \$32,900, payable to the General Fund, is yet to be finalised as part of year end accounting journals and has been included in the actual operating expenses shown above.

The depreciation expense shown is the budgeted figure, with the actual depreciation yet to be finalised.

The major increase in operating expenditure for 2019/20 was mains maintenance at \$875,600 (with a budget of \$830,000) compared to \$611,100 for 2018/19, an increase of \$264,500.

There has been a continued on-going proactive works to improve the condition of the mains, as well as responding to breaks.

The capital income figure in Table 2 refers to developer contributions which amounted to \$763,000 for the year.

Capital expenditure was \$3,030,000 which was a net \$550,000 less than the total forecast, although main renewal works were \$332,000 above budgeted spend.

Budgets carried forward for works not completed total \$651,000.

9.7 Budgets Carried Forward and Reserve Movements

Wastewater Operations

The preliminary result for Wastewater Operations is shown in Table 4, with a comparison to the March forecast.

Table 4 - Wastewater Operations – Draft Financial Results (\$'000)

Item	Actual	Budget
Operating Revenues	20,411	20,380
Operating Expenses	13,824	13,631
Operating Result (excluding depreciation)	6,587	6,749
Depreciation Expense	3,900	3,900
Operating Result (including depreciation)	2,687	2,849
Capital Income	1,694	1,500
Capital Expenditure	5,626	7,096
Net Cash Increase	2,655	1,153

Operating income was very close to budget, \$31,000 higher than the March 2020 forecast, which is a variation of less than 1.0%.

The larger variations to budget noted were recycled water user charges above forecast by \$60,000, annual wastewater charges above forecast by \$30,000, offset partially by trade waste being \$87,000 below forecast.

Operating expense was reasonably close to budget, \$193,000 more than forecast, which is a variation of 1.4%.

The budgeted dividend of \$42,100, payable to the General Fund, is yet to be finalised as part of year end accounting journals and has been included in the actual operating expense shown above.

The depreciation expense shown is also the budgeted figure, with the actual depreciation yet to be finalised.

The capital income figure in Table 4 refers to developer contributions which amounted to \$1,694,000 for the year.

Capital expenditure includes loan capital repayments of \$3,536,000 whilst total capital expenditure on assets was \$1,470,000 less than forecast.

Budgets carried forward for works not completed total \$338,000.

Works Carried Forward and Reserve Transfers

It is important for budgeting purposes that any incomplete projects / tasks / actions that are still on-going are carried forward to the next year (2020/21).

This ensures that the current budget reflects the totality of the works and services program.

Tables 6 and 7 show works proposed to be commenced or completed in 2020/21.

Items in Tables 6 and 7 have previously been approved by Council, unless noted otherwise in this report, and the designated funding source will also be carried forward.

9.7 Budgets Carried Forward and Reserve Movements

Table 6 represents operating expenses forecast for 2019/20 that did not occur, which then improves the operating result for that year.

Once these budgets are carried forward the forecast operating result for 2020/21 is adversely impacted.

Table 7 represents capital projects forecast for 2019/20, not yet completed, and now proposed for commencement or completion in 2020/21.

Table 8 shows further proposed revisions to the adopted 2020/21 budgets.

Table 9 shows transfers to or from reserves for 2019/20 that are in addition to previously approved budget transfers.

Table 6 - Operating Items Carried Forward to 2020/21 (\$)

Description	Expenditure	Income	Net	Comment
Planning and Environmental Health Division				
<i>Strategic Planning</i>				
Koala Management and Biodiversity (Bushfire funds)	200,000		200,000	Project not commenced
Environmental Action Plan	5,000			Project in progress
Lennox Head Village Renewal	15,000			Project in progress
Heritage Programs	11,000			Project in progress
Plans of Management (including Crown)	74,000		74,000	Partly grant funded project in progress
Aboriginal Heritage	8,300		8,300	Project in progress
Koala Study	28,000		28,000	Project in progress
Rezoning and Planning Proposals	27,600		27,600	LEP reviews in progress
<i>Environmental and Public Health</i>				
Contaminated Lands Officer	41,700	(140,000)	181,700	Grant funding which had been budgeted for 2020/21 was received late 2019/20 (in advance), so 2020/21 income budgets need to be revised down. Placed into reserve to fund the expenditure in 2020/21
Emigrant Creek Stabilisation	367,000	190,000	177,000	Project in progress
Environmental Health Project	16,000		16,000	Project in progress
Marom and Chilcotts Creek	37,000		37,000	Project in progress
<i>Public Order</i>				
Companion Animal Programs	4,000		4,000	Purchase of hydrobath for the animal shelter, funded by Office of Local Government
Division Total	834,600	50,000	784,600	

9.7 Budgets Carried Forward and Reserve Movements

Description	Expenditure	Income	Net	Comment
Civil Services Division				
<i>Stormwater and Environmental Protection</i>				
Ballina Flood Plain Management Plan	42,000	67,000	(25,000)	Project in progress
Ballina Flood Management 3rd Party	14,000		14,000	Projects in progress
<i>Roads and Bridges</i>				
Rural Roads Sealed Operations	30,000		30,000	Savings from 2019/20
Gravel Roads Operations	10,000		10,000	Savings from 2019/20
Gravel Roads Maintenance	20,000		20,000	Savings from 2019/20
<i>Ancillary Transport Services</i>				
Shared Pathways - Veg Maintenance	7,000		7,000	Works not commenced
Footpath Mtce - Martin Street, Ballina	3,000		3,000	Works not commenced
Car Park Maintenance	15,000		15,000	Works not commenced
Alstonville Town Centre Maintenance	8,000		8,000	Works in progress
Ped Crossing, Main St, Alstonville	5,000		5,000	Works not commenced
<i>Vegetation Management</i>				
Asset Protection Bushfire Recovery	225,000		225,000	Project not commenced
Indigenous Area Bushfire Recovery	300,000		300,000	Project not commenced
Rock Fishing Safety Program	19,800		19,800	Works in progress
Roadside Vegetation Mgmt Plan	5,800		5,800	Project in progress
Booyual Estate Bushland Reserve Compensatory Works	14,000		14,000	Works not commenced
Compensatory works for Roundabout	32,000		32,000	Works in progress
Hutley Drive North Vegetation Works	22,000		22,000	Works not commenced
Other Grant Projects	64,000		64,000	Works not commenced
<i>Landfill and Resource Management</i>				
Illegal Dumping Program	19,000		19,000	Works in progress
<i>Domestic Waste Management</i>				
Kerbside Bin Composition Audit	23,900		23,900	Works in progress
Division Total	879,500	67,000	812,500	
Corporate and Community Division				
<i>Communications</i>				
Bushfire Resilience and Recovery	100,000		100,000	Project not commenced
<i>People and Culture</i>				
Elson Dixon Employment	47,400		47,400	Project in progress
<i>Property Management</i>				
Southern Cross Estate Master Plan	56,000		56,000	Project in progress
<i>Gallery</i>				
Regional Arts NSW - CASP	5,000		5,000	Project not commenced
NSW Audience Development Program	10,000		10,000	Project not commenced
FACS Youth Opportunity	26,900		26,900	Project not commenced.
Division Total	245,300	0	245,300	
GENERAL FUND TOTAL	1,959,400	117,000	1,842,400	

9.7 Budgets Carried Forward and Reserve Movements

Table 7 - Capital Items Carried Forward to 2020/21 (\$)

Description	Expenditure	Income	Net	Comment
Civil Services Division				
<i>Administration Centre and Depot Facilities</i>				
Depot – Workshop	27,000		27,000	Works in progress
Depot - Improvements	29,000		29,000	Works in progress
<i>Procurement and Building Management</i>				
Public Amenities - Kerr Street	139,000		139,000	Works in progress
<i>Stormwater and Environmental Protection</i>				
Martin Street (River St to Richmond St)	75,000		75,000	Works in progress
Rutherford St / Tresise Pl Backflow	113,700		113,700	Works in progress
<i>Roads and Bridges</i>				
Carrs Bridge	173,000		173,000	Works in progress
Hutley Drive Northern Connection	50,000		50,000	Works in progress
Airport Boulevard	256,000		256,000	Works in progress
River Street Lane Duplication Stage 2	126,000		126,000	Works in progress
River Street Lane Duplication Stage 3	118,000		118,000	Works in progress
River Street Lane Duplication Stage 4	14,000		14,000	Works in progress
Lake Ainsworth	17,000		17,000	Works in progress
Swift Street Segment 30	4,000		4,000	Works in progress
Pearces Creek Bridge Repairs	26,000		26,000	Works in progress
Northumberland Drive Segment 10	22,000		22,000	Works in progress
Regatta Avenue Segment 30	82,000		82,000	Works in progress
Angels Beach Dr / Bangalow Rd Roundabout Extensions	14,000		14,000	Works in progress
Tamarind Drive Lane Duplication	27,000		27,000	Works in progress
Fawcett Street Segment 10	4,000		4,000	Works in progress
Barlows Road Segment 20	2,000		2,000	Works in progress
Martin Street Segment 10	191,000		191,000	Works in progress
The Coast Road	75,000		75,000	Works in progress
North Creek Road	49,000		49,000	Works in progress
Howards Road Segment 20	34,000		34,000	Works in progress
<i>Ancillary Transport Services</i>				
Coastal Shared Path	364,000	73,000	291,000	Works in progress.
Street Lighting - Lighthouse Parade	125,000		125,000	Works not commenced
Path - Suvla Street, Shelly Beach Rd	74,000		74,000	Works in progress
Path - Bugden Avenue, Alstonville	67,000		67,000	Works in progress
<i>Open Spaces and Reserves</i>				
Wollongbar Skate Park	40,000		40,000	Works in progress
Wollongbar District Park	21,000		21,000	Works in progress
Pop Denison Master Plan	75,000		75,000	Works in progress
<i>Sporting Fields</i>				
Wollongbar Sports Field	296,000	268,000	28,000	Works in progress
Ballina Heights Sports Field	149,000		149,000	Works in progress
Shipping Container Amenities		54,000	(54,000)	Insurance monies to be received

9.7 Budgets Carried Forward and Reserve Movements

Description	Expenditure	Income	Net	Comment
Pacific Pines Lighting	415,000		415,000	Works in progress
<i>Plant</i>				
Capital Purchases	467,000		467,000	Purchases scheduled
<i>Emergency Services</i>				
SES New Headquarters	25,000		25,000	Works not commenced
Division Total	3,785,700	395,000	3,390,700	
Corporate and Community Division				
<i>Property Management</i>				
Shelly Beach Café Site	36,000		36,000	Project in progress
54 North Creek Road – Sale		317,400	(317,400)	Settlement due 2020/21
Boeing Ave Lots Two and Three	184,000		184,000	Project in progress
<i>Flat Rock Tent Park</i>				
Flat Rock Improvements	35,000		35,000	Works in progress
<i>Ballina Byron Gateway Airport</i>				
PALC and ALER	315,000		315,000	Works in progress
<i>Community Facilities</i>				
Lennox Head Community Centre	32,400	520,000	(487,600)	Grant funding will be received in 2020/21
Alstonville Cultural Centre	24,000		24,000	Works in progress
Kentwell Community Centre Solar	14,000		14,000	Works in progress
Ballina Surf Club	12,900		12,900	Works in progress
Naval Museum	48,000		48,000	Works in progress
<i>Swimming Pools</i>				
Alstonville Pool	(108,000)		(108,000)	2019/20 works used 2020/21 budget
Division Total	593,300	837,400	73,300	
GENERAL FUND TOTAL				
	4,379,000	1,232,400	3,464,000	
Water Services				
Main Renewal Burnett Street	112,000		112,000	Works in progress
Basalt Court Access Upgrade	322,000		322,000	Works in progress
Water Network Master Plan	41,000		41,000	Works in progress
Water P/S Basalt Court HLZ Booster	46,000		46,000	Works in progress
Water P/S East Ballina HLZ Booster	6,000		6,000	Works in progress
Ethernet Telemetry Upgrade	92,000		92,000	Works in progress
East Ballina Booster PZ Aug	32,000		32,000	Works in progress
WATER FUND TOTAL	651,000	0	651,000	
Wastewater Services				
Mains Seamist P/S Rising	46,000		46,000	Works in progress
Wastewater Network Master Plan	36,000		36,000	Works in progress
Plant Purchases	231,300		231,300	Scheduled plant purchases
Recycled Water West Ballina Line	25,000		25,000	Works in progress
WASTEWATER FUND TOTAL	338,300	0	338,300	

9.7 Budgets Carried Forward and Reserve Movements

Table 8 - Revisions to 2020/21 Budgets (\$)

Description	Expenditure Increase / (Decrease)	Income (Increase) / Decrease	Reserve Balance (Increase) / Decrease	Comment
GENERAL FUND				
Planning and Environmental Health Division				
<i>Environmental and Public Health</i>				
Shaws Bay Coastal Management Plan (CMP)	325,000			Increase following acceptance of tender. Total budget of \$1,220,000.
Shaws Bay CMP - Additional Grant Funding		(87,000)		Variation for additional grant under the Coast and Estuary Funding
Shaws Bay CMP - S7.11 Open Spaces Reserve			(40,000)	S7.11 Open Spaces Developer Contributions
Shaws Bay CMP - Coastal Management Plan Reserve			(21,000)	Funding from an existing internal reserve
Healthy Waterways transfer to Shaws Bay CMP	(55,000)			Reallocation from operating budget
Pop Denison Master Plan transfer to Shaws Bay CMP	(84,000)			Reallocation from capital budget
Building Maintenance transfer to Shaws Bay CMP	(34,000)			Reallocation from operating budget
Picnic Tables repair transfer to Shaws Bay CMP	(4,000)			Reallocation from operating budget
Civil Services Division				
<i>Roads and Bridges</i>				
Wardell Road	386,500			New budget – grant
The Coast Road	122,000			New budget – grant
Southern Cross Drive	342,900			New budget – grant
Eltham Road	107,300			New budget – grant
South Ballina Beach Road	88,500			New budget – grant
Fixing Local Roads Grant Funding		(785,400)		Grant funding confirmed
Urban Roads Reseals	(130,900)			Reallocation from capital budget - Council contribution for grant
Rural Roads Reseals	(130,900)			Reallocation from capital budget - Council contribution for grant
Corporate and Community Division				
<i>Gallery</i>				
Gallery Upgrade (Kiln purchase, wheelchair lift and other equipment)	91,000			New budget – grant
Grant Funding		(85,000)		NSW Stronger Country Communities Fund Round 3.
Halls Maintenance Budget	(6,000)			Reallocation from operating budget
WATER FUND				

9.7 Budgets Carried Forward and Reserve Movements

Description	Expenditure Increase / (Decrease)	Income (Increase) / Decrease	Reserve Balance (Increase) / Decrease	Comment
Alstonville Water Mains Renewal	300,000			New capital budget
Mains Renewal Recurrent Budget	(300,000)			Reallocation from capital budget
WASTEWATER FUND				
Sewer Relining Project	325,000			New capital budget
Mains Renewal Recurrent Budget	(200,000)			Reallocation from capital budget
Water Reserves			(125,000)	Allocation from reserve.

Table 9 - Additional Reserve Transfers for 2019/20 (\$)

Reserve Description	Amount	Comment
Planning and Environmental Health Division		
<i>Strategic Planning</i>		
Strategic Planning	48,000	Unspent operating budgets
Strategic Planning Rezoning	55,000	Unspent budgets for plan reviews
Public Art	11,000	Council contribution to public arts
Section 7.11 (previously s94)	1,037,100	Actual contributions plus interest of \$4,759,300 exceeded budgeted amount of \$3,722,200.
<i>Development Services</i>		
Quarries Baseline Study	10,000	Unspent operating budget
<i>Environmental and Public Health</i>		
Healthy Waterways and Environment Health Projects	215,000	Unspent budgets for Healthy Waterways and other projects
Coastal Management Plans	215,000	Grant received for North Creek dredging
Civil Services Division		
<i>Asset Management</i>		
Asset Management	15,000	Unspent capital budget
<i>Stormwater and Environmental Protection</i>		
Coastal Zone Management Plan	32,000	Net unspent budget
<i>Roads and Bridges</i>		
Ballina Bypass	(58,000)	Actual interest of \$19,000 compared to budget of \$77,000
Alstonville Bypass	(22,000)	Actual interest of \$5,000 compared to budgeted amount of \$27,000
<i>Ferry, Wharves and Jetties</i>		
Ferry, Wharves and Jetties	51,000	Unspent capital budgets for Fishery Creek Pontoon and Ferry Gear Box transferred back to reserve, until required
<i>Open Spaces</i>		
Ocean Pool	7,000	Unspent budget transferred back to reserve
<i>Cemeteries</i>		
Cemetery Operations	(57,000)	Actual transfer to reserve was \$60,000 compared to budgeted transfer of \$117,000
<i>Plant</i>		

9.7 Budgets Carried Forward and Reserve Movements

Plant Reserve	100,000	For plant capital, there were unspent funds of \$436,000 available for carry forward, with the actual carry forward required at \$367,000.
<i>Quarries and Sandpit Operations</i>		
Quarry Reserve	34,000	Unspent funds from Environment Health Project, which had been funded from this reserve
Quarry Reserve	(3,700)	The actual transfer to reserve was \$19,300 compared to budgeted transfer of \$23,000 due to a slightly unfavourable operating result
<i>Domestic Waste Management</i>		
DWM Reserve	(274,600)	Actual operating surplus of \$123,600 compared to a budgeted operating surplus of \$398,200
<i>Landfill and Resource Recovery</i>		
Waste Reserve	477,500	Actual operating surplus of \$255,000 compared to a budgeted operating deficit of \$222,500
Corporate and Community Division		
<i>Financial Services</i>		
Financial Assistance Grant	79,100	2020/21 funding received in advance (net amount compared to the 2019/20 amount)
<i>People and Culture</i>		
Risk Management Projects Reserve	(34,000)	Additional amounts transferred from reserve, adjusted to improve year end overall cash deficit
<i>Community Infrastructure Reserve (CIR)</i>		
Interest	(8,000)	Actual interest \$19,000 compared to budgeted income of \$27,000
89 Tamar Street	(17,600)	Actual income of \$739,100 compared to budgeted income of \$753,000. Actual costs of \$85,700 compared to budgeted costs of \$82,000
Fawcett Street Café	10,100	Actual income of \$50,000 agrees to budget. Actual costs of \$15,900 compared to budget of \$26,000
Lennox Head Cultural Centre	(520,000)	Grant funding of \$520,000, budgeted for 2019/20, cannot be recognised until 2020/21 so the income budget has been carried forward. As the 2019/20 expenditure requires a funding source, this has been taken from the CIR, with a transfer back to replenish this reserve in 2020/21.
Sale of 3 Brunswick St property	4,800	Actual net proceeds from sale of \$219,800 compared to budget of \$215,000
Kentwell Centre Solar	11,000	Actual required budget of \$14,000 compared to budget of \$25,000
<i>Property Development Reserve</i>		
Interest	(12,000)	Actual interest of \$7,000 compared to budgeted income of \$19,000
ARC Rental	2,500	Actual income of \$264,000 agrees to budget. Actual costs of \$1,500 compared to budget of \$4,000
Recoupments from s7.11	771,700	Actual recoupments of \$1,221,700 compared to budgeted recoupments of \$450,000
Norfolk Rental	(21,900)	Actual income of \$116,100 compared to budget of \$138,000
<i>Caravans and Camping Ground</i>		
Flat Rock Tent Park	7,500	Transfer to reserves, excluding capital carry forwards, is \$7,500 above budget due to favourable operating result of \$27,500 offset by an amount of \$20,000 adjusted to improve year end cash deficit
<i>Ballina Byron Airport</i>		

9.7 Budgets Carried Forward and Reserve Movements

Airport reserves	210,000	Transfer to reserves, excluding capital carry forwards, is \$210,000 above budget
<i>Community Facilities</i>		
Ballina Indoor Sports Centre	54,000	Unspent capital budget for Ballina Indoor Sports Centre (BISC) transferred back to reserve.
<i>Library Services</i>		
Library Special Projects Reserve	57,000	Unspent funds transferred to reserve until needed.
Water Supply		
Section 64	245,400	Developer contributions of \$762,600 and interest of \$198,700 with s64 funded capital expenditure \$1,027,800. Net decrease to reserve of \$66,500. Budgeted decrease was \$311,900. Amount above budget is \$245,400.
Refurbishment	336,600	Operating surplus of \$2,452,700 (excludes depreciation and s64 interest) with refurb reserve funded capital expenditure of \$2,002,000. Net increase to reserve of \$450,700. Budgeted increase was \$114,100. Increase above budget is \$336,600.
Wastewater Services		
Section 64	744,700	Developer contributions of \$1,693,900 and interest of \$155,600 with s64 funded capital expenditure \$439,000. Net increase to reserve of \$1,410,500. Budgeted increase was \$665,800. Above budget by \$744,700.
Refurbishment	757,400	Operating surplus of \$6,431,200 (excludes depreciation and s64 interest), with refurb reserve funded capital expenditure of \$5,186,900. Net increase to reserve of \$1,244,300. Budgeted increase was \$486,900. Above budget by \$757,400.

Sustainability Considerations

- **Environment**
Many of the projects have environmental, social or economic outcomes.
- **Social**
As above
- **Economic**
As above

Legal / Resource / Financial Implications

There are no significant financial implications from this report as the report details movements between years and surplus funds going into reserves.

Consultation

Many of the reserve transfers involve consultation across the organisation.

9.7 Budgets Carried Forward and Reserve Movements

Options

This report is designed to provide an overview of the preliminary results for 2019/20 and to ensure Councillors are informed on the works and services carried forward and the transfers to reserves.

The options are to approve or not approve the adjustments with the recommendation for approval.

RECOMMENDATIONS

1. That Council notes the contents of this report in respect to the forecast operating results for 2019/20.
2. That Council approves the works and services carried forward, other additional changes to budget and reserve movements, as outlined in Tables 6, 7, 8 and 9 of this report, for inclusion in the Long Term Financial Plan.

Attachment(s)

Nil

10.1 Future Water Project 2060 - Marom Creek Water Treatment Plant

10. Civil Services Division Reports

10.1 Future Water Project 2060 - Marom Creek Water Treatment Plant

Delivery Program

Water and Wastewater

Objective

To consider the impacts of the Future Water Project 2060 on Council's ownership and operation of the Marom Creek Water Treatment Plant.

Background

Rous County Council has released its Future Water Project 2060 for public consultation. The two options identified in the Future Water Project include the acquisition by Rous County Council of Ballina Shire Council's Marom Creek Water Treatment Plant asset. The objective of this report is to examine this proposal.

A presentation from Rous County Council regarding the Future Water Project was recently provided to a Councillor briefing. The Future Water Project is currently on public exhibition.

Council has advised Rous County Council that we propose to confirm a response to the Future Water Project after the information regarding the outcomes of public exhibition become available.

This report does not consider the Future Water Project or the role of Marom Creek Water Treatment Plant in the Future Water Project. Rather, the purpose is to consider Council's position in terms of the retention or disposal of the asset.

There is an existing interface between Rous County Council and Council in respect of the water supply available from Marom Creek.

Rous County Council currently supplies water to Ballina Shire under the conditions of a Service Level Agreement. This Service Level Agreement includes provision to supply water to the Marom supply area in times of drought.

In turn the agreement provides for the Marom Creek Water Treatment Plant to supply water into the Rous supply area when available, and this occurred during the 2002/03 drought.

Key Issues

- Balancing regional and Council priorities
- Ensuring that Ballina Shire is not adversely impacted

Information

The Marom Creek Water Treatment Plant supplies the villages of Meerschaum Vale, Wardell and Cabbage Tree Island with drinking water.

10.1 Future Water Project 2060 - Marom Creek Water Treatment Plant

The plant was constructed in the early 1980s and its only augmentation to date has been the addition of fluoridation in 2015.

The plant does not currently operate at full capacity as capacity is greater than the demand from the current supply area. This means the plant operates at less than optimum efficiency.

The plant still produces water more cheaply when compared to the costs of the bulk water supplied by Rous County Council to the rest of the Shire, albeit without the same level of supply security when compared to the regional supply.

Based on 2020/21 demand forecasts, the cost of water for the Marom Creek Supply to Wardell is \$1.28 per kilolitre and the cost to produce 300 megalitres is \$0.79 per kilolitre.

The reduced rate from the increase in volume reflects the amount of fixed costs.

These rates compare favourably to the cost to purchase from the Rous County Council supply, which is \$1.76 per kilolitre.

Council does not differentiate water pricing by source of supply and this means the Marom Creek Water Treatment Plant generates a small financial surplus within the Council's water fund.

There are opportunities for increased operating efficiencies and a larger surplus if the plant is operated at full capacity by providing more water to the region.

Council completed an asset master plan for the plant in 2018, which identified that the plant has sufficient capacity and the associated weir pool has sufficient secure yield to meet the needs of the current supply population for at least the next twenty years.

While the Marom Creek Supply is small and does not have the same secure yield estimate as the regional supply, during the most recent drought period, the asset was able to maintain an uninterrupted supply while operating under the same drought management planning, including water restriction levels, as the regional supply.

Capital works to improve the operating and treatment efficiency of the plant were also identified, and are currently underway. These works will allow the plant to meet current and future anticipated water quality requirements.

The works include filter refurbishment, filter media replacement and UV disinfection. The cost of these works is \$4.7 million with a grant of \$1.2 million from the State Government's Safe and Secure Water Program supporting the project.

Role of Marom Creek Water Treatment Plant in the Future Water Project

The Rous County Council Future Water Project includes two key actions. These are:

Key Action 1 – Augmentation to Meet Short To Medium Term Demand Needs – Marom Creek Water Treatment Plant and Alstonville Groundwater Acquirer.

10.1 Future Water Project 2060 - Marom Creek Water Treatment Plant

Key Action 2 – Augmentation to Meet Long Term Demand Needs – New 50 Gigalitre Dunoon Dam.

In respect of Key Action 1, the Future Water Project documentation states the following;

The first step will be to maximise the benefit of the existing Ballina Shire Council owned Marom Creek water treatment plant and better utilise the existing groundwater resources on the Alstonville plateau. This would provide an increase in the capacity to supply water for our region. This will involve Rous County Council:

- *securing the utilisation of Marom Creek Water Treatment Plant as a regional source option;*
- *completing plant upgrade works to ensure it can meet the demands for water within the supply area;*
- *redeveloping groundwater bores to allow optimised use of the Marom Creek Water Treatment Plant and provide drought resiliency; and*
- *undertaking ongoing monitoring to ensure environmental impacts are minimised.*

If by December 2020 the Marom Creek Water Treatment Plant option is not able to be secured, the development of the Woodburn coastal sands groundwater scheme will progress.

Other Council Areas

Each of the other three constituent councils maintain and operate water treatment plants and supplies outside of the supply from Rous County Council.

Byron Shire Council owns and operates the Lavertys Gap Weir, which supplies Mullumbimby, Lismore City Council supplies the town of Nimbin from Mulgum Creek, and Richmond Valley Council supplies Casino independently from Rous County Council.

Proposed Acquisition of the Marom Creek Water Treatment Plant

Under the Future Water Project options, as currently presented, Rous County Council would acquire the plant and supply all of Ballina Shire's drinking water. Rous County Council is seeking a resolution of this matter by the end of the calendar year.

Rous County Council officers are proposing a detailed study of the plant and associated assets with a view to identifying a price for the asset. This will be an extensive body of work, and will need to consider not just asset condition, operation and value but also, from Ballina Shire Council's perspective, the associated income loss.

This study is premised on the interest of Rous County Council in acquiring the plant, and the assumption that Council is prepared to consider selling the plant.

10.1 Future Water Project 2060 - Marom Creek Water Treatment Plant

If there is little or no interest on behalf of Council to sell the asset now, then Council's resources would be more efficiently used in working to identify alternative arrangements, which will support both the outcomes of the Future Water Project and Council's retention of the plant.

Rous County Council report a significant difference in cost between the subject option and the next preferred option which is the Woodburn coastal sands groundwater scheme.

For this reason, it is important Council considers this issue from both the perspective of the region and its own interests.

Legal / Resource / Financial Implications

The Marom Creek Water Treatment Plant supplies a small percentage of Council's overall drinking water supply. The supply from Marom Creek Water Treatment Plant is cheaper than the bulk water supplied by Rous County Council.

Transferring the asset to Rous County Council represents a loss of potential income for Council, which would need to be considered as part of any transfer agreement.

Participation in the proposed Rous County Council study to value the plant and associated assets will require significant time from a number of Council officers.

Consideration is also required in respect of determining the best overall strategic position for the supply of water to our residents.

Consultation

A Councillor briefing was held on the Future Water Project 2060, and the role of Marom Creek Water Treatment Plant, on 30 July 2020. The Future Water Project is currently open for public consultation.

Options

There are three main options available in the context of the Future Water Project for Council to consider in respect of the Marom Creek Water Treatment Plant. These are:

1. Retain the plant and continue to supply the existing local supply area.

This option does not support the objectives of the Future Water Project and does not allow Council to optimise use of its asset. This option is not recommended for these reasons.

2. Retain the plant and reach agreement with Rous County Council to increase the area of supply.

Under this option, Rous County Council and Council would develop an agreement to replace the existing service level agreement.

10.1 Future Water Project 2060 - Marom Creek Water Treatment Plant

The new agreement would involve Rous County Council investing in the upgrades of the Marom Creek Water Treatment Plant proposed in the Future Water Project.

The terms of an agreement would need to satisfy Rous County Council in respect of providing sufficient management and operating certainty to ensure this investment supports the region's secure yield calculation over the long term.

A long term deed of agreement, or some other instrument, is not uncommon for infrastructure assets.

A disadvantage of this option is Rous County Council does not prefer this option compared to ownership transfer. It is however noted the Future Water Project documents refer to "*securing the utilisation of Marom Creek Water Treatment Plant as a regional source option*" and securing utilisation can be achieved without asset transfer.

From the perspective of Ballina Shire Council, this option has several advantages including;

- Avoiding the need to resource and consider the asset transfer, which may be difficult to negotiate and ensure fair value is achieved for Ballina Shire ratepayers.
- We can still facilitate the requirements of the Future Water Project because the infrastructure is still made available to the strategy irrespective of ownership.
- Council can retain access to the existing cheaper water production costs for the local community.

3. Transfer the Plant to Rous County Council

This option supports the objectives of the Future Water Project, but does not provide any financial benefit to Council through the operation of the treatment plant, and means all of Council's bulk water supply will be sourced from Rous County Council. This is the preferred option from Rous County Council's perspective.

Council may see benefits in deferring all of its supply source to the regional authority whose charter is specific for this function.

This option will require a significant body of work to be completed in valuing the asset and identifying an acceptable transfer payment, which appropriately recognises the current and ongoing value of the asset.

In recognition of the cost and resource implications to both councils, the work to investigate this option should only commence if there is a genuine interest in transferring the asset, subject to suitable price and other arrangements being confirmed.

The recommendation follows the general consensus discussed at the recent briefing which is to retain options two and three, at this point in time.

10.1 Future Water Project 2060 - Marom Creek Water Treatment Plant

This approach acknowledges the stated preference from Rous County Council and enables Council to further investigate the advantages and disadvantages of a long term agreement for the management of the asset or the price for transferring the ownership to Rous County Council.

RECOMMENDATION

That Council advise Rous County Council that in response to the draft Future Water Project, Council endorses the concurrent investigation of the following two options for the management and asset ownership of the Marom Creek Water Treatment Plant:

- A long term deed of agreement where the asset continues to be owned by Ballina Shire Council and the supply is formally included in the management of the regional water supply and its secure yield.
- An agreement for the transfer of ownership of the Marom Creek Water Treatment Plant to Rous County Council.

Attachment(s)

Nil

10.2 Wollongbar Sporting Fields - Planning

10.2 Wollongbar Sporting Fields - Planning

Delivery Program

Open Spaces

Objective

To report on options for the Wollongbar sporting fields and to confirm the intentions of the Wollongbar Alstonville Rugby Club.

Background

The Wollongbar Alstonville Rugby Club made a submission to Council as part of the draft 2020/21 Operational Plan requesting funding assistance for their new clubhouse facility at the Wollongbar sporting fields.

A copy of that submission, excluding a number of attachments, is included as Attachment 1 to this report.

As per the submission, the advice from the Club is that they have raised in excess of \$350,000, plus \$800,000 in grants, however an additional \$300,000 is required to complete the project.

A copy of the submission and staff advice was provided to the June 2020 Ordinary meeting, where Council adopted the 2020/21 Operational Plan.

The staff advice noted it might be of benefit for Council to review its strategic intentions for the Wollongbar sporting fields, to maximise their future use, and the resultant resolution was as follows:

- 1. That the General Manager convene a meeting with the Executive of the Wollongbar Rugby Union Club to review the long term goals of the Club in respect to the use of the Wollongbar Sports Fields and Lyle Park, with the outcomes of those discussions to be reported back to Council.*
- 2. That Council receive a report on long-term strategic options to maximise the community use of the Wollongbar Sports Fields.*

In accordance with the resolution, a meeting was held with the Wollongbar Alstonville Rugby Club President on 27 July 2020.

The purpose of this report is to consider the outcomes of this discussion, along with examining longer term options for the Wollongbar sporting fields.

Key Issues

- Equitable allocation of open space and sports fields
- Clubhouse construction and use
- Lyle Park future

Information

Part of the information reported to the June Ordinary meeting is reproduced as follows, to add context to this report.

Council does not have funds allocated within the draft Delivery Program and Operational Plan to support the requested additional funds towards the rugby clubhouse. Staff have previously met with the Club to discuss options to reduce the size of the clubhouse and/or the potential to stage the implementation of works to reduce the costs.

Council has also advised the Club that their planned usage upon completion, such as commercial office space for employed rugby union development officers and the hosting of private functions are not permissible as per Council's Local Environment Plan, based on the zoning of the land.

Council recently adopted the Sport and Recreation Facility Plan where it was identified that upon the completion and relocation of rugby to the Wollongbar Sports Fields, Lyle Park could be used as a multi-sport training facility. This includes rationalising the existing clubhouse and improving change rooms, storage and amenities.

Council has been contacted by interested user groups, including football through the recent formation of the Wollongbar Warriors FC, that are potential users of this space.

Council has built the sports fields well in advance of population growth in Wollongbar with another 1,700 plus residents forecast to move into this area by 2036, adding to the existing population of approximately 3,000 people. The fields are designed to maximise use for as many sports as possible, and as mentioned, football, which has high and increasing playing numbers, is showing interest in the use of the existing or new fields.

It is clear, that the Executive of the WAR Club has a broader vision for the Wollongbar Sports Fields for major carnivals, private functions, etc. through the construction of a substantial club house.

Based on the information provided to Council to date, the proposed development as shown on the amended plans includes elements that result in the development being a prohibited land use in the 7(i) Environmental Protection (Urban Buffer) Zone. The 7(i) zone under the Ballina Local Environmental Plan 1987 has been in place over the land since 1987.

A sporting clubhouse is enabled in the 7(i) zone as development ancillary to the sporting fields (open space being a permissible land use in the zone). Elements that enable private functions, commercial events and food preparation and service (such as restaurants and cafes) change the nature of the building such that it is not considered to be ancillary development to the sporting fields (open space).

Importantly, the Club is not precluded from proposing expansion or change in relation to the proposed building, but alterations to the currently approved plans need to be mindful of what is permissible within the zone.

10.2 Wollongbar Sporting Fields - Planning

Even though the Council only recently adopted the Sport and Recreation Facility Plan, it may be appropriate to revisit whether the WAR Club should relocate their clubhouse from Lyle Park to the Wollongbar Sports Fields.

Lyle Park, based on the natural contour of the land, and the location of the clubhouse, presents an excellent opportunity to develop a state of the art suburban ground, and even though there is limited playing fields, juniors and minor games can still be played at the Wollongbar Sports Fields.

Further information is as follows.

Wollongbar Alstonville Rugby Club (WARC)

At the July 2020 staff meeting with the WARC President, it was confirmed that WARC has retained their long term aim to relocate to the Wollongbar sporting fields, upon construction of the clubhouse and some field improvements.

Further to this meeting, WARC was requested to confirm their position in writing and a copy of the response is provided as Attachment 2.

WARC's desire to use the increased available space at the Wollongbar sporting fields and progress with a new clubhouse is supported, as it is consistent with the planning for these fields.

Council staff have been collaborating with WARC representatives over the plans for the construction of a clubhouse, for a number of years.

As per the previous information reported to Council, a development application has been approved for the clubhouse.

WARC has also prepared a construction certificate application and has requested Council provide landowner's consent for the application to be submitted to Council for assessment.

In light of the issues noted in respect to the proposed use of the facility, and Council's resolution for further review of the site, staff have advised WARC we will provide landowner's consent once Council has considered this report.

WARC need to demonstrate progress towards the expenditure of the grant funds awarded to this project. Therefore the recommendation to this report is to authorise the General Manager to sign the landowner's consent.

A second recommendation is to confirm the planning advice regarding the permitted uses of the facility, to avoid any uncertainty.

One concern with the response from WARC, as per Attachment 2, is that Council staff were seeking greater certainty that following the transition to the Wollongbar sporting fields, and the construction of the new clubhouse, WARC would acknowledge that the Lyle Park clubhouse would be available for use by other groups.

The current response only confirms that WARC accept the Lyle Park clubhouse use would be reviewed.

10.2 Wollongbar Sporting Fields - Planning

It is a significant shift for a sporting club to leave behind a clubhouse that has been established over a number of decades, largely through in-kind labour and works.

The Lyle Park clubhouse provides an excellent facility and viewing area for games and it is reasonable to ask whether the expenditure of the \$1.15m available would be better spent on totally refurbishing this clubhouse rather than building another facility.

The preference of the existing executive is for a new clubhouse, however Club Committees can change quickly, as there are typically only a few people that help keep many volunteer sporting group's operating.

From a Council facility management and allocation perspective, the preference is to avoid any future debate, where WARC may wish to retain the Lyle Park clubhouse and the new clubhouse.

What was originally sought from WARC was confirmation in writing that they would be prepared to vacate the Lyle Park clubhouse, if Council did identify another preferred sporting group. The response only agrees to a review.

This is a somewhat moot point, in that this is a decision for a later date, and even though Council could press for this commitment prior to approving the lodgment of the construction certificate, the preference is to note this in the recommendations.

Wollongbar Warriors Football Club (WWFC)

Council has held a number of meetings with this newly established Football Club, the WWFC, and Football Far North Coast, regarding the use of the Wollongbar sporting fields for football. It is expected that the WWFC will commence playing next season.

The WWFC's initial requirements are for one senior field, some junior fields and supporting amenities. These can be accommodated on the western fields and a draft layout is provided at Attachment 3. This document also illustrates how the supporting amenities are already in place.

Trends

It is difficult to clearly identify what the future trends may be in sports, particularly with respect to the use of sporting fields. The Federal Government's SportAus website has a variety of information on participation rates and the future of Australian sport, as per the following link:

<https://www.sportaus.gov.au/research>

A report on that website, completed in 2013, titled the "Megatrends shaping the sports sector over coming decades" identified six key trends for sport, summarized the trends as follows:

1. *A Perfect Fit - Personalised sport for health and fitness*
2. *From Extreme to Mainstream - The rise of lifestyle sports*
3. *More than Sport - The attainment of health, community and overseas aid objectives via sport*

10.2 Wollongbar Sporting Fields - Planning

4. *Everybody's Game - Demographic, generational and cultural change*
5. *New Wealth, New Talent - Economic growth and sports development in Asia*
6. *Tracksuits to Business Suits - Market pressures and new business models*

Essentially the report, a copy of which is available at the following link, identified trends for more individual sports / activities such as boot camps etc, rather than the traditional formalised sporting clubs and activities that require dedicated times for training, playing etc.

https://www.clearinghouseforsport.gov.au/_data/assets/pdf_file/0007/564073/The_Future_of_Australian_Sport_-_Full_Report.pdf

Football is seen as one sport where participation is increasing. As an indicator of current player numbers Alstonville Football Club had a total of 713 players registered for the 2019 season and fields such as Crawford Park are struggling with overuse.

WARC had a total of 379 (162 seniors and 217 juniors) registered with Far North Coast Rugby Union.

Both football and rugby union appear to be strong in respect to player numbers, at Alstonville and Wollongbar, and planning for these two sports is a reasonable outcome for the Wollongbar sporting fields.

Transitional Arrangements

The transition of rugby from Lyle Park to the Wollongbar sporting fields is an identified action within Council's Sport and Recreation Facility Plan.

In the submission provided by WARC, they are requesting a new lease be issued for the Lyle Park clubhouse for a four year period. This is consistent with the current practice for sporting clubs.

As we are entering a transitional period, the preferred option is to provide annual renewals, in the interim, as this will allow Council to assess the progress of the new clubhouse and continue to keep this matter under watch.

A four year lease provides a greater sense of ownership and by reviewing the lease each year, Council can steadily work towards the long term use of the existing and new facilities. Community group leases are fairly straightforward and there is limited cost in issuing new documentation each year.

Other Uses

With the proposed occupation by football and rugby union, there are limitations on additional sport or recreational opportunities using the Wollongbar sporting fields.

The development consent conditions with regards to the provision of car parking and maintaining of environmental buffer areas need to be considered when assigning usage.

10.2 Wollongbar Sporting Fields - Planning

Current considerations exist within the Sport and Recreation Facilities Plan for additional tennis and use of the existing netball courts. Specifically the plan proposes the expansion of the tennis facilities to be followed by the retirement of tennis courts at Lumley Park. This allows the consolidation of tennis activities at one location and this proposal is supported by the Tennis Club.

While there are space constraints, consideration is being given to the installation of an outdoor exercise facility, along with investigations into other recreational activities.

The Sport and Recreation Facilities Plan is an important tool for assigning occupation of Council's facilities now and to assist in transitions that may be needed as demand across the diverse range of sport and activities in the Shire change over time.

Some sports are growing in participation and infrastructure needs while others are in decline and these changes will further evolve over time.

Current Works

Works are currently in progress to install sports field irrigation at the Wollongbar sporting fields. These works are in addition to sub-surface drainage that was recently completed.

Following the completion of the irrigation, turf improvements works are planned.

These works will facilitate the playing fields being available to the Rugby Club, albeit it is noted the program also involves some top soiling applications for the next few years to ensure the playing surface is established to the preferred standard of the Club.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Sport provides valuable social benefit to the community
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

Field improvement works currently underway are grant funded from the Stronger Country Communities Fund.

There is no funding currently allocated in the Long Term Financial Plan for the \$300,000 shortfall for the new clubhouse.

Consultation

Council staff have consulted with the Wollongbar Alstonville Rugby Club in accordance with the Council resolution.

10.2 Wollongbar Sporting Fields - Planning

Council staff have also met with representatives from Wollongbar Warriors Football Club, Alstonville Tennis Club and Wollongbar Alstonville Rugby Club, on an ongoing basis, to discuss options relating to their requirements.

Options

The purpose of this report is to confirm the Rugby Club's intentions in respect to the use of the Wollongbar sporting fields and to ensure those intentions align with Council's strategic planning for this infrastructure.

The Rugby Club remain committed to using the Wollongbar sporting fields once the final field condition is established and their new clubhouse is built.

The current proposal involves a four year transition period from Lyle Park.

On balance this transition period is considered reasonable as:

- It will provide flexibility while the new fields are maintained in their development phase
- There are no other existing demands from other sports that require immediate occupation of Lyle Park
- It will provide time for the Club to raise funds and build the new clubhouse.

For the longer term, as community needs change, updates to the Sport and Recreational Facilities Plan can provide for changes to the use of Lyle Park and the Wollongbar sporting fields.

It is important for Council to be able to plan flexibly and provide or manage infrastructure, including clubhouses, that are adaptable and can be used by different clubs in the future, or as shared spaces, when that is preferred.

The recommendations to this report are consistent with the information section in respect to Wollongbar Alstonville Rugby Club proceeding with their new clubhouse and the Wollongbar Warriors Football Club being identified as another future user of the fields.

In respect to the construction certificate, as there is a development application approved, it is recommended Council grant landowner consent to lodge the application, as this is an important step to support the Club's intentions to use the fields.

The recommendation also confirms in writing, the permitted uses of the clubhouse facility, along with the preferred lease term for the Lyle Park clubhouse.

RECOMMENDATIONS

1. That Council supports the proposed transition of the Wollongbar Alstonville Rugby Club from Lyle Park to the Wollongbar sporting fields, noting this transition is to proceed during the next four years.
2. That Council authorises the General Manager to execute a new lease for the Lyle Park clubhouse to the Wollongbar Alstonville Rugby Club, based on a one year term, to be annually reviewed. This annual review will allow Council to assess the progress of the new clubhouse at the Wollongbar sporting fields, as well as potential uses for the Lyle Park clubhouse, which may involve the existing clubhouse being occupied by sporting groups, other than the Wollongbar Alstonville Rugby Club.
3. That Council supports the use of the Wollongbar sporting fields by the Wollongbar Warriors Football Club.
4. The General Manager is authorised to provide landowner's consent to the Wollongbar Alstonville Rugby Club Clubhouse construction certificate at the Wollongbar sporting fields.
5. That Council notes that based on the information provided to date, the proposed clubhouse development may include elements that result in the development being a prohibited land use in the 7(i) Environmental Protection (Urban Buffer) Zone. A sporting clubhouse is enabled in the 7(i) zone as development ancillary to the sporting fields (open space being a permissible land use in the zone). Elements that enable private functions, commercial events and food preparation and service (such as restaurants and cafes) change the nature of the building such that it is not considered to be ancillary development to the sporting fields (open space).

Attachment(s)

1. Wollongbar Alstonville Rugby Club - Delivery Program and Operational Plan - Submission
2. Wollongbar Alstonville Rugby Club - Meeting Response
3. Wollongbar Sporting Fields - Western Field Layout

10.3 Car Parks - Upgrade Program

10.3 Car Parks - Upgrade Program

Delivery Program

Engineering Works

Objective

To confirm a car park upgrade program.

Background

A ten-year upgrade plan and funding strategy for car park improvements was presented to the April 2020 Finance Committee meeting, where the Committee recommended as follows:

1. *That Council defer the draft car park lighting program.*
2. *That Council hold a briefing on the draft program prior to reporting back to Council.*

A briefing was held on 27 July 2020 and the report that follows now seeks to have Council adopt a preferred program of works.

Key Issues

- Financial sustainability of assets
- Levels of service and public amenity

Information

An inventory of the car parks requiring maintenance and minor upgrades (line marking/lighting/pavement repairs) has been prepared and a program developed based on an assessment of the following criteria:

- Importance to the community
- Capacity/demand
- Pavement type and condition
- Line-marking
- Lighting
- Signage and drainage.

Numerous Council car parks are in need of improvements, requiring line markings, lighting, pavement repairs / upgrades and / or expansion. Many do not have lighting, which is important for safety and security reasons.

The recommended program aims to advance major and minor upgrades. The focus is on improving the existing car parking facilities, many of which are highly utilised, before embarking on constructing / formalizing car parking at sites not yet serviced by this type of infrastructure.

In response to the recent Councillor briefing, several changes have been made to the original draft program submitted to the April 2020 Finance Committee meeting.

10.3 Car Parks - Upgrade Program

Attachment 1 contains the original car park upgrade program.

Attachment 2 contains the revised program incorporating feedback from the Councillor briefing.

The key changes arising out of the briefing are as follows:

- Parking upgrades at Pat Morton Lookout have been brought forward, commencing in the current financial year. Attachment 3 provides concept ideas for the Pat Morton Lookout precinct, including car parking and how it might integrate with the shared path network and other embellishments.
- The Serpentine at East Ballina has been added to the program, commencing in the 2022/23 financial year. Submissions for a car park at this location date back several years.
- Kingsford Smith car park has been removed from the program as this work can now be completed through a State Government grant for improvements to this precinct.
- Lighting upgrades have been deferred to later years in order to allow funding for the major upgrades at Pat Morton Lookout, Missingham Park Amphitheatre, The Serpentine and Rocky Point in the earlier years.

The size of the program reflects current funding limitations. To date, resources have not been allocated towards scoping or costing the details of the potential major upgrade projects.

If this program is the preferred direction of Council, project scoping and cost estimating will be undertaken. The outcomes from this work may mean further consideration for the timing of works under the program.

Any adopted program would be subject to annual review as part of preparing the one year Operational Plan and four year Delivery Program.

The list of major car park upgrades outlined in the program is not exhaustive. Some car park areas, for example the Shaws Bay area adjacent to Missingham Bridge, is not included. The reason for this is the scale and cost of a project in this location is beyond the funding capacity of this program. Works such as this will need to be considered as a priority within the capital works program for our road network, for one-off projects funded from the Community Infrastructure Reserve.

Sustainability Considerations

- **Environment**
Any major improvements including stormwater and drainage should result in improved environmental outcomes.
- **Social**
Car parks can provide public amenity and safety.
- **Economic**
The community expects a level of service that is affordable and sustainable.

10.3 Car Parks - Upgrade Program

Legal / Resource / Financial Implications

A review of the asset inventory indicates it is timely that Council consider the level of service provided from this infrastructure, particularly at locations where the demand for car parking is increasing.

The current Long Term Financial Plan (LTFP) includes the following allocations for car park improvements:

<u>Year</u>	<u>LTFP (\$)</u>
2020/21	90,000 (includes grant monies)
2021/22	50,000
2022/23	50,000
2023/24	100,000
2024/25 onwards	100,000 indexed

This amount of funds is an effective step forward in delivering a sustainable program of car park minor upgrades. It also has potential to fund more substantial expansion / upgrade projects as they arise, albeit two or more years of funding maybe required for some projects.

The above funds have been allocated to a car park upgrade program as shown in Attachment 2 to this report.

Consultation

Council has received community interest regarding the need to improve informal parking areas at The Serpentine, East Ballina and at Marine Parade, Lennox Head.

Details of submissions were provided in the April 2020 Finance Committee Report. A project for the Serpentine is included in the draft program.

Options

The options available to Council are;

- Option 1. To adopt the draft program presented in Attachment 2 to this report.
- Option 2. To amend and then adopt the draft program presented in Attachment 2 to this report.
- Option 3. Seek further information prior to adopting a program.
- Option 4. Not adopt a program.

As per Council's normal practice, it is preferred to indicate to the community its preferred priorities for projects proposed to be completed under the long term financial plan.

There is an opportunity to review these priorities each year when updating the Operational Plan and Delivery Program.

10.3 Car Parks - Upgrade Program

The program attached to this report follows the feedback from Councillors at the recent briefing.

Option 1 is recommended.

RECOMMENDATION

That Council adopts the Ten Year Priority Program for Car Park Improvements, as per Attachment 2 to this report, for inclusion in the 2020/21 Operational Plan and 2020/21 to 2023/24 Delivery Program.

Attachment(s)

1. Car Park Upgrade Program - Original
2. Car Park Upgrade Program - Revised
3. Pat Morton Lookout Precinct - Concept Plans

11.1 Notice of Motion - Local Government Representation - National Cabinet

11. Notices of Motion

11.1 Notice of Motion - Local Government Representation - National Cabinet

Councillor

Cr Cadwallader

I move

1. That Council confirms its support for the LGNSW campaign to have a dedicated local government representative on the National Cabinet.
2. That Council write to our local State Government representatives and the Premier highlighting the importance of having a dedicated local government representative on the National Cabinet.

Councillor Comments

As per the following comments from Cr Linda Scott, President, LGNSW, it is important for Council to support this campaign to have a dedicated local government representative on the National Cabinet.

LGNSW email dated 25 July 2020

The May decision to omit local government representation from the new National Cabinet has sparked real concern right across Australia.

Like so many of you who have contacted me directly, I and the LGNSW Board strongly believe all three tiers of government must be represented on this new intergovernmental body

The drought, bushfires, floods and COVID-19 pandemic of recent months have all proved conclusively that local government – the closest level of government to the community – is critical in delivering local services and infrastructure at a grassroots level.

We need a seat at the table and a voice in discussions, not only to flag the impact of federal policies on local governments and communities, but to help shape our nation's future.

The Australian Local Government Association (ALGA) brings together the leaders of all state and territory local government associations, and as a foundation member of COAG has worked constructively in that forum for many years to represent you on issues of national significance.

This is particularly important now that COAG meetings have been reduced to one per year, with the vast majority of decision-making referred to the National Cabinet.

11.1 Notice of Motion - Local Government Representation - National Cabinet

The ALGA Board is advocating strongly for the inclusion of a local government representative in the National Cabinet: a representative whose first and foremost consideration is the impact of decisions on councils and the communities they represent.

COUNCILLOR RECOMMENDATIONS

1. That Council confirms its support for the LGNSW campaign to have a dedicated local government representative on the National Cabinet.
2. That Council write to our local State Government representatives and the Premier highlighting the importance of having a dedicated local government representative on the National Cabinet.

Attachment(s)

Nil

11.2 Notice of Motion - Lennox Head Beach - Dog Access

11.2 Notice of Motion - Lennox Head Beach - Dog Access

Councillor

Cr Williams

I move

That Council expand the dogs on leash zone that forms part of the dog access track at Seven Mile Beach, a further 18 metres south of the current pathway on the grassed area.

Councillor Comments

Recent changes in the Lake Ainsworth precinct have prohibited dogs from a large area and relocated the dog off-leash area to the south, closer to the surf club. I supported both these changes. However, the current access arrangements via a two metre wide dogs on leash pathway to the beach are ugly and the recent installation of signage has left dog owners feeling excluded and unwelcome.

Following the installation of additional signage, I was immediately approached by several community members proposing a petition to amend the current plan. I worked with them to develop the proposal above. A widening of the pathway from two metres to 20 metres to allow dog owners to use the northern most section of the grassed area. The petition has so far been signed by over 650 people, please see attached.

This is a compromise that seeks to achieve the aim of maintaining a clear no dogs area in front of the surf club but allow some space for socialising adjacent to the very popular dog off-leash area. By following the alignment of the path, the proposal aims to provide a clear, enforceable, delineation to guide all users of the area.

Given that this proposal that has been developed by community members and already extensively discussed with users, there is likely to be a high level of compliance and self-policing by the community.

I have also sought the advice of staff prior to submitting this notice of motion. I have reproduced the bulk of the text below and highlighted some elements in bold. Council compliance staff face a difficult task, I believe they have acted in good faith, seeking to balance the needs of users.

The expansion of the two metre wide dog on leash pathway, to a 20 metre wide dog on leash thoroughfare, will reduce conflict between users and I believe will be supported by the community as a reasonable compromise.

I do not support the installation of bollards on the southern side of the pathway at this time.

“The prohibition on dogs east of the surf club was implemented as a trial in 2010. Council formalised this arrangement in 2012 and this no dog area has been in place since this time. In October 2019, the extent of the no dog area in the vicinity of the surf club was extended to cover most of the reserve area adjacent to the surf club.

The approach adopted in October 2019 provided for a pathway to access the off lead dog area on Seven Mile Beach (noting that access already existed in this area to Seven Mile Beach). The off lead area was extended southward on Seven Mile Beach as part of this change and an area on the northern side of the kiosk was identified as a dog on lead space to provide dog owners with access to the kiosk.

Key reasons for the approach recommended to Council in October 2019 were reduced congestion and conflict between different users in what has become a very busy area at times, improved public safety with respect to the presence of dogs in a congested area (the concern being the risk of incidents involving dogs in this type of space with the numbers of people using the area) and provision of a clear and logical delineation between dog prohibited and dog permitted areas.

A further reason for the extension of the prohibited area was to reduce the movement of dog owners with their dogs across the front of the surf club (being a convenient route along the foreshore to access the beach). The changed arrangement intentionally sought to direct dog movement to the west of the surf club and along the designated path to the beach with the aim of reducing conflict in the reserve area.

Prior to the introduction of the change in October 2019, a relatively poor level of compliance was observed by Rangers. The change made it simpler for foreshore users to interpret where dogs are permissible and where they are not and was supported by an extensive education and awareness program during late 2019 and early 2020. Compliance levels upon introduction of the change were generally very good and as a result minimal signage was considered appropriate.

The pathway to the off lead area on Seven Mile Beach is planned as a 2m wide concrete path with bollards along the southern edge to distinguish it within the reserve as the beach access for dog users, to be constructed in the near future. I note that some dog owners have indicated social distancing is difficult on the accessway at present. This will be addressed with the formalised path through the 2m width and no bollards along the northern side so users can divert off the path onto the existing grassed area when passing others.

There are many other locations in Lennox Head where dog owners can take their dogs including the foreshore area to the south of the surf club which is an on lead dog area. Overall, Council has an extensive network of dog permitted areas along the coastline.

The new signage has been installed in response to concerns raised by Councillors last month and increasing non-compliance observed by staff.”

Staff Comments

There are several options available to Council if a change to the current dog management approach is desirable. As well as the approach suggested above, options include extending and formalising the dog on lead area between the kiosk and amenities building, creating a dog on lead area adjacent to the access pathway with no area adjacent to the kiosk and returning the entire area adjacent to the surf club to a dog on leash area.

The figure included as Attachment 4 shows the option of an extended on lead area adjacent to the kiosk.

In determining the preferred approach to dog management in the area, the following points are provided for consideration:

- Past performance regarding dog management has demonstrated that a proportion of dog owners choose to disobey signage and regulations in the subject area and permit dogs either on leash and off leash in dog prohibited areas.
- Previously the 'no dog' area directly in front of the surf club had a high non-compliance with dog control and Council received numerous complaints. This informed the position of Council in October 2019 to extend the 'no dog' zone to include the entire front grass reserve. To offset the additional restrictions Council supported the extension of the off leash area at Seven Mile Beach further south to the now current access point. Provision was also made for an on leash area near the kiosk at the surf club to allow people to recreate with their dogs on leash.
- Keeping the on leash area near the entrance to the reserve transitions well into the access pathway to the off leash area and also allows dog owners to be with their dogs at all times. This approach is also designed to minimise division of the open grassed reserve area for different purposes.
- Under the Companion Animals Act 1998 dogs must be under the effective control at all times by a competent person and when in an on lead permitted area the dog must be on an adequate chain, cord or leash that is attached to the dog and that is being held by or secured by a person. The use of dog parking stations where dogs are secured to a nominated common area, but not under the direct control of, or attached to a person, contravenes the Act and presents a public liability to Council if a dog incident/dog attack occurred.
- Creation of an alternative on leash area presents a significant concern with the practicalities of accessing this area adjacent to a no dog area.
- The Companion Animal Management Plan should be referenced in all decisions as this sets the direction and decision making across the whole Shire. It provides for the balance that is required to support dog owners and those that do not want recreate or interact with dogs.
- Consistency and clarity are key principles to encouraging optimal compliance outcomes in this locality. Changes should be weighed having regard for these outcomes.

11.2 Notice of Motion - Lennox Head Beach - Dog Access

- The pathway providing access to the beach can be widened to 2.4m if desirable.
- There are a number of other management and compliance issues associated with the reserve area, including the locations of tables and chairs, music and commercial activities, shower and tap locations, works undertaken on the surf club building and the kiosk operation.
- The current arrangements (noting the access path is due to be constructed shortly) or one of the alternatives could be held in place for a period of 12 months on a trial basis to provide opportunity for a formal review of outcomes.

COUNCILLOR RECOMMENDATION

That Council expand the dogs on leash zone that forms part of the dog access track at Seven Mile Beach, a further 18 metres south of the current pathway on the grassed area.

Attachment(s)

1. Petitioner's Map
2. Petition Stall at Dog Access Path
3. Petition
4. Lennox Head Surf Life Saving Club Precinct - On Leash Area Option - Area Adjacent to Kiosk

11.3 Notice of Motion - 4WD Beach Permits

11.3 Notice of Motion - 4WD Beach Permits

Councillor

Cr Jeff Johnson

I move

1. That Council limits beach four wheel drive permits to vehicles registered in the Ballina Shire, except for emergency services vehicles.
2. That Council also only offer 12 month permits.
3. That a further report be received that looks at permit costs and measures to ensure compliance with a code of conduct including cancelling permits for vehicles who breach the code.

Councillor Comments

Ballina Shire is one of the few areas along our coastline that allows vehicles to access the beaches. The beach access that runs from South Ballina down to Broadwater is not controlled by Council so this motion is not related to that area.

While the beaches are Crown Reserves they are managed by Ballina Shire Council and ratepayers pay for maintaining the access tracks, administration of the permits and periodic monitoring.

Seven Mile Beach at Lennox Head is becoming increasingly popular which results in a conflict between vehicles and other beach users. Reducing the number of vehicles to Ballina Shire registered vehicles and removing the shorter term permits would not only reduce the number of vehicles on the beach, but it would also increase the level of self-monitoring amongst permit holders.

In order to purchase an annual permit a code of conduct needs to be agreed to and any proven breaches could result in a cancellation of the permit. The recent installation of a gate at the four wheel drive entrance provides opportunities to implement measures that ensure greater compliance with the code of conduct and permit system.

Staff Comments

A similar motion was submitted to the April 2020 Ordinary meeting where Council 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.*

The Coastal Reserve Plan of Management is due for review during 2020/21.

One difficulty with a system available to vehicles registered in the Ballina Shire is that the existing ticketing machine cannot confirm the registration location.

11.3 Notice of Motion - 4WD Beach Permits

If permits are only available for 12 months, it may be more practical to offer permits from the Council Administration Centre, as this would then allow the applicant's registration to be confirmed. These are operational matters that can be worked through if the recommendation is supported.

There is some uncertainty as to whether the NSW Department of Planning, Industry and Environment (DPIE) – Crown Lands, would allow a permit system for local residents only, as crown reserves are provided for the benefit of all NSW residents, not just residents of a local government area. Councillors should be managing crown land as NSW Crown Land Managers, not only as local government representatives. If the recommendation is supported, staff would follow up with DPIE to ensure the proposal can be implemented.

Council, at the May 2020 Ordinary meeting, undertook the four year review of the 4WD Beach Access – Seven Mile Beach, Lennox Head Policy. This Council Policy establishes the framework that applies to 4WD users to manage the permitted 4WD beach access in a way that facilitates safe beach access and use, as well as minimising impacts on key environmental attributes of the beach, dunes and surrounding area. The resolution from that meeting was as follows:

1. *That Council adopts the amended 4WD Beach Access – Seven Mile Beach Lennox Head Policy, as attached to this report.*
2. *That Council place this 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.*

The exhibition has resulted in a number of submissions and the Policy will be submitted back to Council at the September 2020 Ordinary meeting. It may be more transparent to consider the various submissions to that Policy before changing the existing permit system.

COUNCILLOR RECOMMENDATIONS

1. That Council limits beach four wheel drive permits to vehicles registered in the Ballina Shire, except for emergency services vehicles.
2. That Council also only offer 12 month permits.
3. That a further report be received that looks at permit costs and measures to ensure compliance with a code of conduct including cancelling permits for vehicles who breach the code.

Attachment(s)

Nil

11.4 Notice of Motion - Local Indigenous Economic Development Initiative

11.4 Notice of Motion - Local Indigenous Economic Development Initiative

Councillor

Cr Jeff Johnson

I move

1. That Council acknowledges and confirms its support for the Federal Government's Indigenous Procurement Policy targets of 3% of the number of contracts and at least 1% of the value of contracts being awarded to Indigenous businesses each financial year, based on a three year rolling average.
2. That Council liaise with local Aboriginal organisations and employer groups with the aim of increasing the level of involvement of local Aboriginal owned businesses in Council's procurement and tender processes.

Councillor Comments

Last August I attended the Indigenous Economic Development Forum which was focused on raising awareness of the importance of economic development to assist in closing the gap that still exists between indigenous and non-indigenous Australians.

The best way to bridge the economic divide, which has obvious flow on affects is to increase the number of Indigenous owned and operated businesses in our local area and region. This not only creates wealth but also additional employment opportunities.

Ballina Shire Council can assist local indigenous businesses to apply for government contracts / tenders with the aim of increasing the number of locally owned indigenous businesses, increasing the percentage of Council procurement being awarded to indigenous owned businesses and to grow local employment opportunities.

It is my understanding that Clarence Valley Council is organising a regional tender writing skills workshop to assist local businesses to tender for NSW Government (state and local) contracts and grants. This will be a regional event that will coincide with Small Business Month and will provide a unique opportunity for local businesses to gain some necessary skills.

Depending on the level of interest, maybe an additional workshop could be held in the Ballina Shire to encourage more local businesses to attend, particularly if there is support for such an initiative from other local Councils in our region.

Staff Comments

As per the Councillor comments, Clarence Valley Council, with support from Ballina Shire Council, is coordinating a series of workshops to assist local business in bidding for Government tenders. The councils involved are Clarence, Richmond Valley, Ballina and Lismore.

11.4 Notice of Motion - Local Indigenous Economic Development Initiative

It is intended to engage with representatives from the Aboriginal community to participate in the training. There may also be opportunities for more locally based training to improve accessibility.

The training is being conducted as part of Small Business Month (October), with Council in a position to secure State Government grant funding (\$2,000) to assist with this training as part of our support for small business.

In addition to this, Council's recently adopted Local Strategic Planning Statement includes an action to develop a memorandum of understanding (MOU) with the Jali Local Aboriginal Land Council. Indigenous procurement opportunities can form part of this MOU.

The reference to 3% in the notice of motion relates to the Federal Government's Indigenous Procurement Policy, with information on that policy available as per the following link:

<https://www.niaa.gov.au/indigenous-affairs/economic-development#programmes-and-policies>

COUNCILLOR RECOMMENDATIONS

1. That Council acknowledges and confirms its support for the Federal Government's Indigenous Procurement Policy targets of 3% of the number of contracts and at least 1% of the value of contracts being awarded to Indigenous businesses each financial year, based on a three year rolling average.
2. That Council liaise with local Aboriginal organisations and employer groups with the aim of increasing the level of involvement of local Aboriginal owned businesses in Council's procurement and tender processes.

Attachment(s)

Nil

12. Advisory Committee Minutes

12.1 Commercial Services Committee Minutes - 18 August 2020

Attendance

Crs David Wright (Mayor - in the chair), Phillip Meehan (via Zoom), Sharon Parry (via Zoom), Jeff Johnson (arrived at 4.04 pm via Zoom), Eoin Johnston, Stephen McCarthy, Nathan Willis, Keith Williams (arrived at 4.09 pm), Sharon Cadwallader and Ben Smith (arrived at 4.38 pm).

Paul Hickey (General Manager), John Truman (Director - Civil Services Division), Matthew Wood (Director, Planning and Environmental Health Division), Kelly Brown (Director, Corporate and Community Division), Paul Tsikleas (Manager Commercial Services), Julie Stewart (Airport Manager) and Sarah Carden (Secretary) were in attendance.

There were three people in the gallery at this time.

1. Apologies

Apologies were received from Cr Ben Smith and Cr Keith Williams who indicated they would arrive late to the meeting.

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Stephen McCarthy)

That such apologies be accepted and leave of absence granted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Jeff Johnson, Cr Keith Williams and Cr Ben Smith

2. Declarations of Interest

Nil

3. Deputations

- **Mark Holden and Pat Grier, Byron Film Studios** – spoke in favour of Item 4.3 – Southern Cross Expansion Precinct – Innovation Precinct.

Cr Jeff Johnson arrived at the meeting via Zoom at 04:04 pm.

4. Committee Reports

Cr Keith Williams arrived at the meeting at 04:09 pm.

4.3 Southern Cross Expansion Precinct - Innovation Precinct

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Nathan Willis)

1. That Council notes the contents of this report in respect to the planning still to be completed for the rezoning of the Southern Cross Expansion and Innovation Precinct.
2. That Council notes the contents of the Master Plan Concept Brief, for the Ballina Innovation Hub, as per Attachment 5 to this report.
3. That Council approves an allocation of \$30,000 from the Property Development Reserve, as the maximum one third co-contribution to a feasibility study into the viability of the Byron Studio's movie studio and sound stage complex proposal at the Innovation Precinct, with the balance to be co-funded by the State Government and the Private Sector proponents. This funding is subject to Council having full access to the information sourced and contained within the feasibility study.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Ben Smith

Cr Ben Smith arrived at the meeting at 04:38 pm.

4.1 Regional Airport Screening Infrastructure Program

RECOMMENDATION

(Cr Sharon Cadwallader/Cr Sharon Parry)

1. That Council endorses an application to the Regional Airport Screening Infrastructure Program for the maximum amount likely to be approved, as determined by the General Manager, based on an estimated project value of \$2.5m for modifications to the terminal building to accommodate the new passenger security screening process at the Ballina Byron Gateway Airport.
2. That Council notes the contents of the latest review of the Long Term Financial Plan for the Ballina Byron Gateway Airport, which includes a loan of \$1.5m for this project, as a worst case scenario, if a high level of grant funding, as outlined in point one is not secured.

FOR VOTE - All Councillors voted unanimously.

12.1 Commercial Services Committee Minutes - 18 August 2020

4.2 Henderson Land, Lennox Head - Update

RECOMMENDATION

(Cr Keith Williams/Cr Sharon Cadwallader)

That Council approves an allocation of \$200,000 from the Property Development Reserve for inclusion in the 2020/21 Long Term Financial Plan, to finance Council's contribution to the shared access road infrastructure works for the Council owned land, described as Lot 2 DP 1070446.

FOR VOTE - All Councillors voted unanimously.

MEETING CLOSURE

4.47pm

RECOMMENDATION

That Council confirms the minutes of the Commercial Services Committee meeting held 18 August 2020 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

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 July 2020 Ordinary meeting are as follows:

<u>Date</u>	<u>Function</u>
20/7/20	Church Group
22/7/20	Meeting – Rod Kinnish – Evans Head Aviation Museum
27/7/20	Meeting – Adam Mumford
27/7/20	Briefing – Newrybar Swamp Road
27/7/20	Briefing – Car Park Strategy
28/7/20	Meeting – 47 Bath Street, Wardell
30/7/20	Briefing - Future Water Strategy
31/7/20	On-Line Citizenships
1/8/20	Rotary Antique Fair
2/8/20	Commemoration Park Markets
4/8/20	Briefing – Byron Studios
4/8/20	Briefing – Lennox Village Vision
7/8/20	Extraordinary Meeting NRJO
8/8/20	Meeting – Lennox Head Kiosk
9/8/20	Commemoration Park Markets
10/8/20	Meeting – Lennox Head Kiosk
10/8/20	Meeting – TAFE NSW Ballina and Wollongbar
12/8/20	Local Traffic Committee
12/8/20	Briefing – Lennox Head Markets
12/8/20	Briefing – 4WD on Beaches
13/8/20	On-Line Citizenships
14/8/20	CSPC Meeting - Lismore
16/8/20	Commemoration Park Markets
16/8/20	Ballina Markets
17/8/20	Church Group
17/8/20	'Teams' Meeting – Qld Border
18/8/20	Vietnam Veteran's Day Wreath Laying
18/8/20	Commercial Services Meeting
20/8/20	'Teams' Meeting – Qld Border
21/8/20	NRJO Meeting
23/8/20	Commemoration Park Markets
27/8/20	Council Meeting
30/8/20	Commemoration Park Markets

RECOMMENDATION

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

Attachment(s) - Nil

14. Confidential Session

14. Confidential Session

Nil Items