

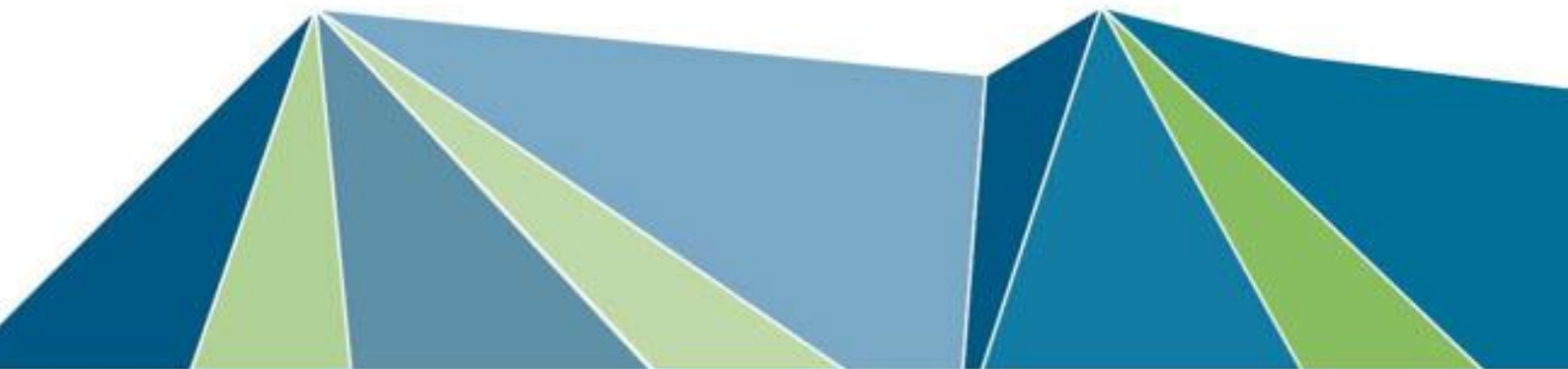
Agenda

Commercial Services Committee Meeting **14 February 2024**

A Commercial Services Committee Meeting will be held in the Ballina Shire Council Chambers, 40 Cherry Street, Ballina on **14 February 2024 commencing at 4:00 PM.**

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

Paul Hickey
General Manager



Ethical Decision Making and Conflicts of Interest

A guide for Councillors, Council employees and community representatives

Ethical decision making

- Is the decision or conduct legal?
- Is it consistent with Government policy, Council's objectives and Code of Conduct?
- What will the outcome be for you, your colleagues, the Council, anyone else?
- Does it raise a conflict of interest?
- Do you stand to gain personally at public expense?
- Can the decision be justified in terms of public interest?
- Would it withstand public scrutiny?

Conflict of Interest

A conflict of interest is a clash between private interest and public duty. There are two types of conflict:

- **Pecuniary** – an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to yourself or another person or entity defined in part 4 of the Council's Code of Conduct, with whom you are associated.
- **Non-pecuniary** – a private or personal interest that you have that does not amount to a pecuniary interest as defined in the Council's Code of Conduct.

These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.

The test for a conflict of interest

- Is it likely I could be influenced by personal interest in carrying out my public duty?
- Would a fair and reasonable person believe I could be so influenced?
- Conflict of interest is closely tied to the layperson's definition of "corruption" – using public office for private gain.
- It is important to consider public perceptions of whether you have a conflict of interest.

Identifying problems

- Do I have private interests affected by a matter I am officially involved in?
- Is my official role one of influence or perceived influence over the matter?
- Do my private interests' conflict with my official role?

Disclosure and participation in meetings

Pecuniary Interests

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned, and who is present at a meeting of the Council or Committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - A person does not breach this clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Non-pecuniary Interests

Must be disclosed in meetings. There are a broad range of options available for managing non-pecuniary interests and the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary interests must be dealt with in one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as per the provisions in the Code of Conduct (particularly if you have a significant non pecuniary interest)

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:
 - a) Tenderers during a public tender or request for quotation
 - b) Persons or representatives from organisations seeking financial support from Council that involves an expression of interest
 - c) Consultants who are engaged by Council on the matter the subject of the deputation.

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. Acknowledgement of Country
 2. Apologies
 3. Declarations of Interest
 4. Deputations
-

1. Acknowledgement of Country

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

2. Apologies

3. Declarations of Interest

4. Deputations

5.1 Policy (Review) - Commercial Use of Footpaths

5. Committee Reports

5.1 Policy (Review) - Commercial Use of Footpaths

| | |
|------------------|---|
| Section | Commercial Services |
| Objective | To review the Commercial Use of Footpaths Policy. |

Background

All of Council's existing policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements.

The purpose of this report is to review the Commercial Use of Footpaths Policy.

Council first adopted this policy in August 2010 with the latest review in October 2022.

The policy has been developed to provide guidance to business when seeking approval for the commercial use of footpaths for street vending and alfresco dining. A copy of the policy is attached to this report.

Key Issues

- Whether the policy meets the requirements of Council and current legislation
- Provide a balance between the commercial use of public assets and encouraging economic activity

Discussion

The review of the policy has been undertaken following requests from businesses for further clarification, as well as consideration from Council staff and Council's Economic Activation Group. These changes include:

- Ensuring only approved food and drink premises can obtain approval for alfresco dining
- Provision for businesses to extend beyond their immediate frontage at Council's discretion and pending the views of neighbouring premises
- Further clarification regarding street vending requirements
- Outlining restrictions on the transfer of approvals, due to Council requiring updated information on insurances from the new business owner
- Information on the renewals process
- Other minor amendments including definitions.

There are several changes marked in yellow in the attached policy, the majority of which address the matters raised above.

Community Engagement Strategy

The review has been based on feedback from local businesses, particularly through Council's Economic Activation Group.

The revised policy will be placed on public exhibition. If any submissions are received, they can be reported back to Council, however there will not be a need for any further report if there is no public comment.

Financial / Risk Considerations

The proposed changes to the policy do not create any additional risk or financial considerations.

Options

Council may accept or amend the proposed changes to the policy.

There are several changes included in the revised policy, all of which are designed to improve the policy for lessees and potential lessees.

It is recommended that the policy be adopted as presented and to exhibit the policy for public comment.

If no submissions are received from the exhibition process no further action will be required.

RECOMMENDATIONS

1. That Council adopts the amended Commercial Use of Footpaths Policy, as per Attachment 1 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.

Attachment(s)

1. Policy (Review) - Commercial Use of Footpath [↓](#)

(REVIEW)
POLICY NAME: COMMERCIAL USE OF FOOTPATHS
POLICY REF: F07
MEETING ADOPTED: Resolution No.
POLICY HISTORY: 270613/20; 260810/24



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1 OBJECTIVE

This policy applies to street vending (display of goods) and footway restaurants (also referred to as footpath alfresco dining) undertaken on public roads within the meaning of the *Local Government Act 1993* and the *Roads Act 1993*.

The broad intent of the policy is to outline the:

- a) process commercial operators can follow in applying for an approval to use part of the adjoining footpath for street vending the display of goods or a footway restaurant;
- b) design criteria for assessing applications;
- c) standard approval conditions that will be imposed.

The aim of the policy is to:

- a) create vibrant and stimulating commercial centres where the public is encouraged to shop and dine in an outdoor environment and take advantage of the favourable local climate.
- b) enhance and promote the established central business areas of the shire, particularly those of Ballina, Lennox Head, Alstonville and Wardell as focal shopping, business and social places in the shire.
- c) provide clear guidelines for applicants, staff, Council and the community with respect to Council's expectations in relation to street vending and the establishment of footway restaurants.
- d) ensure that pedestrian and traffic safety are not compromised by the activities of street vending and/or footway restaurants.
- e) ensure equitable access for all, including people with disabilities.
- f) promote economic activity by providing opportunities for alfresco dining and for the display of goods and merchandise on footpaths.
- g) mitigate risks for both Council and approved commercial users of footpaths with respect to the operation of this policy.

2 POLICY

This policy applies to all land in Ballina Shire comprising a public road for which Council is the roads authority. This policy does not apply to private land or to roads for which Council is not the roads authority.

Note: This policy does not apply to busking on public roads or in a public place (refer to Council's Policy No B01 Busking) or to commercial activities on public land (refer to Council's Policy No C10 Commercial Activities on Public Land).

2.1 Street Vending Consents and Footway Restaurant Approvals

2.1.1 Who may apply?

- a) An application to use a footpath area for street vending or as a footway restaurant must be made by the registered proprietor of the business occupying the premises from which the footpath activity is intended to be operated or serviced.
- b) A street vending consent ~~or footway restaurant approval~~ will only be granted where the use is consistent with the existing approved use of the premises from which the footpath activity is intended to be operated or serviced.
- c) To be eligible for a footway restaurant (alfresco dining) approval, the premises must be approved as a food and drink premises.

2.1.2 What area may be approved?

- a) The approval area **must be along the building line of the property and** will not extend further than the width of the street frontage of the applicant's premises.

Note: Council may consider approving ~~vending area beyond the applicant's premises with the written consent of both the owner and occupier of the adjoining premises~~ a footway restaurant to extend beyond the immediate frontage of the applicant's premises. The extension onto the footpath outside of a neighbouring premises will be at the Council's absolute discretion and the views of the neighbouring premises will be taken into consideration.

- b) The maximum width of an approval area is dependent on maintaining the following unimpeded pedestrian thoroughfare:

| Footpath width | Unimpeded cross-section |
|-------------------------|-------------------------|
| Less than 3.9 metres | 1.5 metres |
| 3.9 metres | 2.0 metres |
| Greater than 3.9 metres | 50% of footpath width |

- c) The unimpeded cross-section includes ensuring adequate area is maintained around street furniture, garden beds etc
- d) A minimum clearance of 600mm must be maintained on either side of an entrance to a building or shop
- e) Display of goods (street vending) are to extend no further than one metre forward of the property boundary.

2.1.3 General Requirements for Footway Restaurants

- a) The placement of any temporary structures within an approval area must allow sufficient clearance for pedestrians to make normal use of the footpath without

unreasonable impact. The placement of structures must not inhibit or obstruct clear sightlines for vehicles and pedestrians at intersections, vehicular kerb crossings and pedestrian crossings.

- b) The approval area for a footway restaurant ~~must~~ may need to be defined by the use of appropriate barriers. ~~In situations where this is required the feet of the barriers must:~~
- i) The height of the barriers is to be no more than one metre from the ground level;
 - ii) The barriers are to be stable and secure, suitably designed to not damage the footpath and able to withstand weather conditions;
 - iii) The feet of the barriers must:
 - Not be raised more than 5mm above footpath surface level
 - have bevelled edges
 - not project into the unimpeded footpath area
 - contrast visually with the footpath surface.
- ~~e) Displays of goods (street vending) are to extend no further than one metre forward of the property boundary.~~
- d) Any landscaping, lighting, structures and/or furniture within an approval area are to be designed and configured to positively contribute to the overall streetscape.
- e) No permanent structures are permitted within an approval area, and all temporary structures and/or furniture must remain wholly within the specified boundaries of the approval area and removed, in accordance with licence terms from approval area when business is closed or not operating.
- f) Items placed in the approval area must be stable and suitably designed to prevent damage to the footpath, withstand weather conditions and maintain an attractive appearance.
- g) For pedestrian safety, umbrellas must be a minimum of 2.2 metres high from the ground at any point. Umbrellas must be secured at all times and in extreme weather conditions umbrellas must be completely removed or secured in a closed position.
- h) No advertising signs, including free-standing A-frames, are to be placed within the approval area, other than incidental advertising as specified in clauses 2.1.3(b) and 2.1.9(k).

2.1.4 General Requirements for Street Vending

- a) Any clothing racks and/or display tables with wheels, must have lockable wheels to ensure racks and display tables can be secured on the footpath.
- b) Where goods are being displayed on a stand, the stand must be safe, stable and solid and no higher than 1.5 metres.

c) Any goods displayed without the use of a stand, must be safe, stable and solid and no higher than 1 metre.

d) Any goods displayed within approval area must not pose a risk to members of the public using the footpath.

2.1.5 Type of commercial uses

a) A street vending consent and footway restaurant approval under this policy are restricted to small-scale commercial use of footpaths.

~~b) Advertising on footpaths is not permitted, except for incidental advertising such as branded screens/barriers and/or umbrellas associated with footway restaurants.~~

2.1.6 Car parking

a) There are no additional car parking requirements for the commercial use of footpaths where such an activity is undertaken in accordance with the requirements of this policy.

b) Any car parking requirements associated with the existing approved use of the associated business premises must be maintained.

2.1.7 Applications

a) An application under this policy must be submitted on a Council-approved form, together with the prescribed application fee ~~(where applicable)~~ and all required documentation.

b) The application must include accurate scaled and dimensioned plans of the application area, together with details of the proposed placement of landscaping, lighting, temporary structures and/or furniture.

c) An application for a footway restaurant must include details of the intended operation of the alfresco dining area, including nature of dining, hours of operation, seating capacity, type of service, etc.

d) An application for a footway restaurant must be accompanied by detailed evidence that the existing kitchen, washing and trade waste facilities are suitable to cater for the proposed additional capacity associated with the application area.

e) The use of a footpath area for a purpose authorised under this policy must not commence until a valid street vending or footway restaurant approval has been issued and relevant conditions have been complied with.

f) An application for the use of a footpath area as a footway restaurant must specify whether the applicant will be applying for a licence for the service and consumption of alcohol within the approval area.

Note: If the approval area is within a designated Alcohol-Free Zone, a special exemption will need to be obtained.

2.1.8 Approvals and Renewals

- a) All street vending and footway restaurant approvals are valid for five years and will lapse at the end of this period.
- b) At the end of the approval period the approval will lapse. An application for a new approval must be made and submitted to Council at least one month before the existing approval expires. The application must be accompanied by the relevant application form, fee and insurance documentation.
- c) This approval is vested with the registered proprietor of the business occupying the premises from which the footpath trading is to be operated or serviced. Where a business is sold or transferred, this approval is no longer valid and cannot be transferred to the new owner. A new business proprietor will need to get a new approval for footpath trading.
- d) If a proprietor sells or permanently closes the business, it is their responsibility to notify Council within a minimum of 14 days' notice.

2.1.9 Standard conditions

- a) This approval does not become operational until the prescribed annual footpath occupation fee has been paid.
- b) The prescribed footpath occupation fee must be paid annually.
- ~~e) This approval is vested with the registered proprietor of the business occupying the premises from which the footpath activity is to be operated or serviced. Where a business is sold or transferred, this approval may be transferred to the new proprietor when Council is notified of the change in ownership and relevant fees are paid. Failure to notify Council of changes may result in the approval being withdrawn.~~
- d) The required public liability policy shall be maintained when an approval is being acted upon and a copy of the relevant certificate of currency made available to Council on request.
- e) The applicant, in acting upon this approval, indemnifies Council against all claims of public liability relating to use and activities associated with the approval area.
- f) The approval area shall be permanently marked in a manner authorised by Council, at the cost of the applicant.
- g) The endorsed use must be confined at all times to the approval area and must be operated in accordance with the terms of this approval.
- h) The footpath must be kept clean and tidy at all times. The applicant may be required to periodically steam or pressure-clean the approval area and adjacent footpath, or upon the direction of Council.
- i) The applicant must reinstate any damage caused to public footpaths at his/her own cost. All repair work must be undertaken to the satisfaction of Council.

- j) The *Companion Animals Amendment (Outdoor Dining Areas) Act 2010* allows dogs in outdoor dining areas that use temporary infrastructure to delineate the area. Proprietors are advised to familiarise themselves with the relevant Act to ensure compliance with the provisions of this Act.
- k) No advertising is to be displayed on the footpath, with the exception of branded pedestrian screens/barriers and umbrellas associated with footway restaurants.
- l) An approved footway restaurant must not serve or allow the consumption of alcohol, unless it is outside a declared Alcohol-Free Zone and/or a liquor licence has been obtained.
- m) If Council or a service authority requires the use of public land, including an approval area, to undertake works or for a planned event, the applicant is to be given at least seven (7) days written notice. In an emergency, an approval area may need to be cleared immediately. The applicant will be responsible for the movement of all items and any associated costs.
- n) Council has the right to instigate enforcement action or to modify the conditions of a street vending consent or footway restaurant approval, or to suspend or **terminate** such approval after giving notice to the applicant in writing if:
 - i) there is non-compliance with any part of this policy
 - ii) the consent/approval conditions have not been met or there is non-compliance with an approved plan and there is failure to comply with the directions of an Authorised Officer
 - iii) the applicant has failed to maintain public liability insurance
 - iv) the applicant has failed to pay the annual occupation fee
 - v) in the opinion of an Authorised Officer, the street vending or footway restaurant conducted by the applicant poses an unacceptable safety hazard to pedestrians, motorists or cyclists; or
 - vi) in the opinion of an Authorised Officer, the applicant has caused or is causing detriment to the amenity of the area, having regard to any complaints received and/or inspections undertaken.
- o) A street vending consent or footway restaurant approval may be cancelled by Council with 90 days' notice within the first year of its operation, and with 30 days' notice in any subsequent year. No claim for compensation will arise from such cancellation, and the applicant shall be responsible for vacating all of the approval area.

2.1.10 Footpath occupation fee

The footpath occupation fee is based on a per metre rate of the approval area in accordance with Council's annual schedule of fees and charges (note: a minimum charge applies). It is based on a reasonable return on land value, which may vary for

different parts of the commercial areas. This fee is an annual fee payable to Council to undertake street vending or to operate a footway restaurant.

APPLICATION

3.1 ~~Repeal of Previous Policy~~

~~Upon adoption, this policy repeals Council Policy No F07 Commercial Use of Footpaths adopted by Council on 22 October 2022 – 27 June 2013 (Minute No 270613/20).~~

3 BACKGROUND

A policy in relation to the commercial use of footpaths was originally adopted by Council in August 2010 following the commencement of provisions that exempted the commercial use of footpaths from consent requirements under the *Environmental Planning Assessment Act 1979*.

This policy has now been adopted to detail Council's approval requirements under the *Local Government Act 1993* and the *Roads Act 1993*, and for the use of public roads for commercial activities that include street vending, alfresco dining and merchandise displays.

3.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* makes provision for development that is exempt from the consent requirements under the Act. An environmental planning instrument may specify development as exempt development. The commercial use of footpaths in Ballina Shire is exempt development when it meets the requirements of clause 3.1 and Schedule 2 of the *Ballina Local Environmental Plan 2012* (BLEP 2012). Schedule 2 of the BLEP 2012 provides the following specifications for commercial use of footpaths that are exempt development:

- a) Must be located on the footpath within a road reserve for which the Council is the roads authority under the *Roads Act 1993*
- b) Must hold any relevant approval issued under the *Roads Act 1993* or the *Local Government Act 1993* (or both)
- c) Must not occupy an area greater than 30m² per operator.

Note: State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 also applies to footway dining. As the SEPP provisions will override the BLEP 2012 (in the event of an inconsistency), applicants may also need to refer to the SEPP.

3.2 Roads Act 1993

The *Roads Act 1993* provides that Ballina Shire Council is the roads authority for public roads in the shire. Section 125 of the Act allows Council to grant approval for "footway restaurants" subject to the terms and conditions of the Act. Section 138 of the Act specifies the consent requirements for structures on a public road, with relevant terms and conditions specified for "street vending" detailed in section 139A. An approval

granted by Council under this policy constitutes an approval for either a "footway restaurant" or "street vending" as specified in the *Roads Act 1993*.

3.3 Local Government Act 1993

Section 68 of the *Local Government Act 1993* specifies activities requiring prior approval of Council and includes activities on a public road that "*expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.*" An approval granted by Council under this policy constitutes an approval for activities on a public road in accordance with section 68 of the *Local Government Act 1993*.

4 DEFINITIONS

| | |
|--------------------------------|--|
| Alfresco dining | The use of an outdoor area for the service and consumption of food and drink. |
| Applicant | A person or organisation applying for approval to undertake street vending or to operate a footway restaurant. |
| Application | An application made under this Policy. |
| Application area | The area proposed for street vending or the establishment of a footway restaurant. |
| Approval area | The footpath area the subject of an approval for street vending or a footway restaurant approval. |
| Authorised Officer | An officer of Ballina Shire Council authorised in the administration and/or enforcement of this policy. |
| Council | Ballina Shire Council. |
| Food and drink premises | Taken to have the same meaning as the Standard Instrument which can include a restaurant, café, takeaway, pub and small bar for the preparation and retail sale of food or drink for the immediate consumption on or off the premises. |
| Footpath application | An application made under this policy to undertake street vending or to operate a footway restaurant. |
| Footpath occupation fee | The annual fee payable to Council to undertake street vending or to operate a footway restaurant. |
| Footway restaurant | An alfresco dining establishment on a public road for which approval is required under section 125 of the <i>Roads Act 1993</i> . |

| | |
|--|--|
| Footway restaurant approval | An approval granted under this policy for a footway restaurant. |
| Public road | As the context requires, has the same meaning as specified in the <i>Local Government Act 1993</i> and/or the <i>Roads Act 1993</i> . |
| Small-scale commercial use of footpaths | <p>The commercial use of footpaths that meets the exempt development requirements specified in clause 3.1 and Schedule 2 of the <i>Ballina Local Environmental Plan 2012</i> and that meets the following requirements:</p> <ul style="list-style-type: none">a) Involves the use of footpaths within a road reserve for which Council is the roads authority under the <i>Roads Act 1993</i>b) Is for the purpose of small-scale commercial/business use such as alfresco dining, display of merchandise and the likec) Occupies an area not greater than 30 m² per operatord) Is operated in conjunction with an authorised adjoining usee) Does not involve the erection of permanent enclosures/structuresf) Does not interfere with the safety and free passage of other users of the footpathg) Does not result in the loss of any car parking. |
| Street vending | The sale and/or display of goods and merchandise on a public road for which consent is required under section 139A of the <i>Roads Act 1993</i> . |
| Street vending consent | Approval granted under this policy to undertake street vending. |

5 SCOPE OF POLICY

This policy outlines the approval process and Council requirements for small-scale street vending and footway restaurants on public footpaths in Ballina Shire. Some of the design requirements may be applicable for other developments that are subject to other approval processes.

6 RELATED DOCUMENTATION

Related documents, policies and legislation:

- a) Local Government Act 1993

- b) State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
- c) Roads Act 1993
- d) Environmental Planning and Assessment Act 1979
- e) Ballina Local Environmental Plan 2012.

7 REVIEW

The Commercial Use of Footpaths Policy will be reviewed every four years.

5.2 Debtor Write-offs

5.2 Debtor Write-offs

| | |
|------------------|--|
| Section | Financial Services |
| Objective | To obtain Council approval to write off two sundry debtors due to liquidation. |

Background

Clause 213 of the Local Government (General) Regulations 2021 identifies the following requirements to follow when writing off debts owed to Council:

- “(2) *A council must from time to time, by resolution, fix an amount above which debts to the council may be written off only by resolution of the council.*
- (3) *A debt of or below that amount can be written off either by resolution of the council or by order in writing of the council’s general manager. In the absence of a resolution under subsection (2), the council’s debts can be written off only by resolution of the council.*
- (4) *A resolution or order writing off a debt to a council must-*
- (a) Specify the name of the person whose debt is being written off, and*
 - (b) Identify the account concerned, and*
 - (c) Specify the amount of the debt,*
- or must refer to a record kept by the council in which those particulars are recorded.*
- (5) *A debt can be written off under this section only-*
- (a) If the debt is not lawfully recoverable, or*
 - (b) As a result of a decision of a court, or*
 - (c) If the council or the general manager believes on reasonable grounds that an attempt to recover the debt would not be cost effective.*
- (6) *The fact that a debt is written off under this section does not prevent the council concerned from taking legal proceedings to recover the debt.*

The matters presented in this report relate to the following sundry debtors:

- Virgin Australia - \$151,157.66
- FSG Australia - \$2,043.01

Council has recently received final letters from the liquidators of both organisations advising no further payments will be received. The General Manager has delegated authority to write-off debts to the value of \$1,000. These debts both fall outside that delegation.

Key Issues

- Compliance with Local Government (General) Regulations 2021
- Advice from liquidators that debt is not recoverable

Discussion

Virgin Australia

Council invoiced Virgin Australia for their use of the Ballina Byron Gateway Airport during February and March 2020 along with a further invoice covering Security and the CAGRO reconciliation for the 2019/20 year. Council received a letter from Virgin Australia in May 2020 advising that administrators had been appointed.

A part payment of the outstanding amount was received in March 2021 with further small payments received from the administrators in September 2022 and December 2023. The final amount outstanding that will not be received is \$151,157.66.

A provision for this bad debt has already been raised in Council's financial statements.

FSG Australia

FSG Australia (FSG) were renting a council owned building at 32 Swift Street, Ballina. As part of their lease arrangement, they were responsible for reimbursing Council for all Rates and Charges.

Council received a letter from FSG in July 2018 advising that liquidators had been appointed as at 30 June 2018. FSG were invoiced for the outstanding rates and charged for the period June 2017 to June 2018. Council was advised by the liquidators in August 2018 that it was unlikely that unsecured creditors would receive any payment.

A final email was received from the liquidators on 30 January 2024 confirming that there would be no return to Council from the liquidation of FSG and the winding up of FSG had been finalised with ASIC in the process of deregistering the entity. The final amount outstanding that will not be received is \$2,043.01.

A provision for this bad debt has already been raised in Council's financial statements.

Community Engagement Strategy

Council liaised with the administrators as they worked through the liquidation processes.

Financial / Risk Considerations

The write-off of these sundry debtor amounts is revenue foregone from the General Fund. As a provision has already been provided in Council's financial statements for both debts, there is no net impact of this write-off on Council's operating result for the year, from an accounting perspective.

5.2 Debtor Write-offs

Options

The only option available is to write-off the debts with Virgin Australia of \$151,157.66 and FSG Australia of \$2,043.01 as both companies have been liquidated and the administrators have advised Council there are no further funds to be recovered.

RECOMMENDATION

That Council approves the write-off of \$151,157.66 owed by Virgin Australia and \$2,043.01 owed by FSG Australia as per the contents of this report.

Attachment(s)

Nil

5.3 Ballina Marina Master Plan

5.3 Ballina Marina Master Plan

Section Commercial Services

Objective To provide Council with an update on discussions with Crown Lands in regards to progressing the West Ballina Marina Proposal

Background

The Ballina Marina Master Plan was adopted by Council on 28 September 2017. The plan was adopted by Council to encourage and facilitate development of the West Ballina Trawler Harbour site, with a copy of the plan available on Council's website as per the following link:

[Ballina Marina Master Plan | Ballina Shire Council \(nsw.gov.au\)](https://www.ballina.nsw.gov.au/Document%20Library/Ballina%20Marina%20Master%20Plan)

A plan of the proposed site is included as Attachment 1 to this report, with the area outlined in red forming the master plan land components. Council cannot progress development of this land as it is owned by the Crown.

In November 2022 Council staff met with representatives from Crown lands to discuss ways in which development of the land could progress. One of the most significant issues is that the land is Crown land and would require conversion to freehold land to facilitate development and sale of buildings etc.; i.e. banks and developers are very reluctant to deal with land under lease from the Crown.

The purpose of this report is to provide an update on this matter and seek direction from Council as to whether it wishes to commit more resources to the Master Plan project.

Key Issues

- Crown land
- Use of Council resources on Crown land

Discussion

In November 2022 Council staff met with representatives from Crown lands to discuss ways in which development of the land could progress.

Council staff expressed the view that it's difficult to justify committing money and staff resources to a project on land not owned by Council. Site investigations, reports etc. are required to support a rezoning of the land to facilitate development as per the Master Plan.

5.3 Ballina Marina Master Plan

The Crown representatives acknowledged these issues and both parties agreed that the path forward could be for the Crown and Council to enter into a memorandum of understanding (“MOU”) detailing tasks to be undertaken by the parties and how Council would be compensated if it were to assume stewardship of the project.

Compensation could take the form of reimbursement for funds expended on site investigations and Council staff time, and / or Council being granted a portion of the site.

Terms and conditions for a Crown Lands site investigation licence were agreed to in principle. Council staff drafted an MOU and issued same to the Crown in March 2023.

An aerial of the site is as follows.



In December 2023 the Crown advised Council that at this stage it did not wish to enter into an MOU but wants to pursue a two stage approach.

The first stage being the issuing of a licence over the respective lands to allow Council to undertake preliminary investigations.

The second stage would be to reach an agreement between the Crown and Council to determine how Council might be compensated in undertaking costly planning investigation works to support a rezoning.

This response from the Crown is essentially revisiting the work previously done by Council staff; i.e. negotiating a site investigation licence and MOU.

The problem with the investigation licence proposal is that Council then needs to commit funds, which potentially could be in excess of \$100,000 plus, without there being any guarantee that Council will be reimbursed for the expenditure incurred and with no guarantee we will have any equity in any future development.

With the Crown subject to changes in Ministers, the expenditure of these funds with no security cannot be justified.

Community Engagement Strategy

The Ballina Marina Master Plan was adopted following significant community consultation.

Financial / Risk Considerations

It is unknown what it may cost to undertake studies and reports to support a rezoning of the proposed West Ballina Marina Site, however it is likely to be well in excess of \$100,000 plus.

The proposal from the Crown is for the stage one licence to undertake preliminary investigations, with that definition not clarified. Those investigations will need to be significant to justify a second stage agreement.

Options

The MOU proposed by staff to the Crown was based on Council having guaranteed equity in the project, if the rezoning proceeded. This MOU was drafted and subject to being approved by the Crown, the next step was to report it to Council for approval.

Attachment 2 is a copy of the draft MOU proposed, which was still in the negotiation process.

What appears to have happened is that with the change in State Government following the election, there has been a change in policy and the Crown is no longer interested in providing those guarantees to Council.

Rather the proposal is more for Council to undertake a first stage licence, do all the “hard yards” to try and obtain a rezoning, with no certainty over what will happen if the rezoning is secured. This process cannot be supported as even though it may help with advancing the master plan, this is Crown land that the State Government should be investing in.

The recommendation is not to proceed with the proposed licence agreement and to seek support for the Mayor to make representations to the State Government to advance the Ballina Marina Master Plan, either through State Government agencies, or by re-establishing the potential for an equity agreement with Council.

RECOMMENDATIONS

1. That Council notes the contents of this report in respect to the current status of the Ballina Marina Master Plan.
2. That Council authorises the Mayor to make further representations to the State Government to progress the Ballina Marina Master Plan, either through State Government agencies or through an equity agreement with Council.

Attachment(s)

1. Ballina Marina Master Plan - Site Plan [↓](#)
2. Ballina Marina Master Plan - Draft MOU [↓](#)



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Proposed West Ballina Marina Site

ballina shire council
geographical information system

Projection: GDA94 / MGA zone 56
Date: 7/02/2024

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While every care is taken to ensure the accuracy of this product, Ballina Shire Council and the Local / State / Federal Government departments and Non-Government organisations whom supply datasets, make no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which you might incur as a result of the product being inaccurate or incomplete in any way and for any reason.

BALLINA MARINA DEVELOPMENT PROPOSAL

MOU – BALLINA SHIRE COUNCIL & NSW CROWN LANDS

1. Ballina Shire Council ("Council") and NSW Crown Lands ("the Crown"), ("the parties"), share a vision that the Ballina Trawler Harbour and adjoining Crown Land holdings be developed having regard to the Ballina Marina Master Plan October 2017 Issue E ("the Master Plan") as commissioned by Council and accessed via the following web link:

[Ballina Marina Master Plan 2017 \(nsw.gov.au\)](https://www.nsw.gov.au/ballina-marina-master-plan-2017)

2. This memorandum of understanding ("MOU") sits beside, and is to be read in conjunction with the Site Investigation Licence granted by the Crown to Council as contained in Attachment 1.
3. The land pertaining to the MOU and Masterplan are noted as follows and hereafter referred to as "the Site":-

| | | | |
|------------------|--------------|---------|--------|
| Local Govt. Area | Ballina | | |
| County | Rous | | |
| Parish | Ballina | | |
| Locality | West Ballina | | |
| | | | |
| Status | Lot | Section | DP |
| Crown land being | 1 | | 791628 |
| Crown land being | 232 | | 755684 |
| Crown land being | 458 | | 728654 |
| Crown land being | 459 | | 728654 |

A site plan is contained in Attachment 2.

4. As the Masterplan has gone through a public consultation process, including consultation with the Crown, and has been adopted by Council, the parties agree that this document will form the basis for a rezoning proposal for the Site, creating associated or necessary planning instruments and dealing with interested parties.
5. The parties agree that until such time as the Site is rezoned to permit development generally in accordance with the Masterplan, property values cannot be determined. Please note that this may also include preparation of a development control plan (or similar) to regulate floor space ratios, building heights, flood heights, car parking requirements, development contributions etc.
6. The parties agree that to maximise value and provide certainty for developers seeking to be involved in the Project, those sections of the Site to be developed for residential, commercial and residential uses need to be converted from Crown land to freehold title.
7. Those sections of the Site to be designated as public open space and or recreation may at its discretion, be retained by the Crown.
8. Council, at its cost, shall undertake all necessary investigations and studies required to support a rezoning proposal and development control plan (if required for the Site).

Page 1 of 2

9. In recognition of Council coordinating, funding and promoting a rezoning proposal for the Site and applying its commercial acumen and experience to maximise value, it (Council) shall be paid a performance fee based upon 20.00% of the uplift in value of the Site.

The 20.00% performance fee shall be paid upon completion of rezoning of the Site and at the earlier of:-

- a) Within twelve months from that date of creating freehold titles for the various components of the Site (should the Crown wish to retain the Site); or
 - b) Within six months of the sale of any component of the Site to a third party. Please note a third party may include another NSW government department of agency.
10. Council to be granted first right of refusal over any components of the Site zoned or designated for mixed use development. The purchase price for any such property shall be determined by independent valuation less 20.00% after allowing for the performance fee referred to above.
11. Should, at any stage during the rezoning process the Project be terminated and not proceed, Council shall be entitled to a reimbursement of costs incurred up to that point in time plus a margin of 10.00% to cover staff time. Please note that costs shall include all consultants and site investigation reports.
12. Should at any time the Minister determine that Council no longer be involved in the Project, but the Project still proceeds, then Council shall be entitled to compensation in the form of:
- a) A performance fee based upon 20.00% of the uplift in value of the Site; and
 - b) Reimbursement of all costs incurred by Council associated with the Project as detailed in Point 11 above.
13. The parties agree that other NSW Government agencies maybe involved from time to time for consultative purposes only.
14. For many years Transport for NSW ("TfNSW"), and its predecessors, have occupied a works depot on Lot 232 DP 755684, however they will have to relocate to enable redevelopment of the Site to proceed. Council will enter into discussions with TfNSW to determine their spatial and locational needs should they wish to relocate.
- Any costs associated with relocating TfNSW shall be deemed to be a cost of development and funded out of the sale proceed of the Site.
15. Council reserves the right to extend the term of the Site Investigation Licence referred to above should more time be required to complete the process of rezoning the Site.
- Should the Site Investigation Licence terminate for any reason, Council's rights under this MOU shall prevail.

5.4 Southern Cross Expansion Precinct - Rezoning

5.4 Southern Cross Expansion Precinct - Rezoning

Section Commercial Services

Objective To provide Council with an update on the rezoning proposal for the Southern Cross Expansion Precinct.

Background

For a number of years Council has been pursuing a rezoning of land it owns adjacent to the Ballina Byron Gateway Airport (the Airport), to cater for expansion of the Southern Cross Industrial Estate.

There is a deficit of employment land in the Shire, and recent regional studies indicate that there is also a deficit for the Northern Rivers region.

Rezoning of the Southern Cross Expansion Precinct (the SCEP) for industrial purposes has been difficult to advance for a number of reasons including biodiversity constraints and flooding considerations. Recently, updated flood modelling has been undertaken assessing the impacts of filling a smaller part of the site. The modelling also included assessment of the future works associated with the recently adopted Airport Land Use Plan (LUP).

The modelling indicates the potential for significant flood impacts associated with undertaking both proposals (SCEP and LUP projects). Preliminary flood modelling assessments indicate that it may not be possible to appropriately mitigate all impacts.

The combination of biodiversity issues and flood impacts suggest it is likely the current rezoning proposal for the SCEP will be unsuccessful.

The purpose of this report is to provide Council with an update on the progress of the SCEP rezoning and Airport LUP projects, and issues facing those projects.

This report also highlights the need to investigate potential alternative locations for employment land within the Shire.

Key Issues

- Need for additional employment land.
- Biodiversity and ecological issues.
- Flood impacts and potential mitigation.
- Competing projects.

Discussion

Southern Cross Expansion Precinct

Council owns approximately 35 hectares of land directly adjacent to the Airport, which has been included in Council's Strategic Plans for many years as a potential expansion area to the Southern Cross Industrial Estate (see Figure 1). A Master Plan for the SCEP precinct area was adopted by Council in 2008, identifying the land earmarked for future industrial subdivision (see Figure 2).

5.4 Southern Cross Expansion Precinct - Rezoning

Council and the State Government subsequently included the site in the Local Growth Management Strategy 2012 and the North Coast Regional Plan as an investigation area for employment land.



Figure 1: The SCEP Site



Figure 2: Southern Cross Masterplan Precinct 2008

5.4 Southern Cross Expansion Precinct - Rezoning

Council initiated a rezoning proposal for the site in mid-2012, proposing that the whole of the site be zoned as B7 Business Park. This was subsequently adjusted to propose a zoning of IN1 General Industry.

Based on the environmental studies undertaken to support the rezoning proposal, the (then) state agency of the Office of Environment & Heritage (OEH) opposed the rezoning on the grounds that development of the site would have significant impacts on areas identified as containing Ecologically Endangered Communities (EECs).

In response, the rezoning proposal was amended to a staged proposal, with a smaller area adjacent to Airport Boulevard put forward for the first stage.

OEH, by then renamed Biodiversity and Conservation Division (BCD), maintained their objection to the proposal and their position that all EECs within the site should be zoned for environmental protection.

Assessments undertaken showed that the entire site contains vegetation that meets the criteria for EEC, albeit much of the area is degraded and of low ecological quality.

Given the BCD objection, the rezoning proposal could not proceed and was formally withdrawn.

Subsequent discussions with BCD indicated potential support for a process of *Biodiversity Certification*, whereby an area of approximately nine hectares adjacent to Airport Boulevard could be considered for an industrial zoning, with the remainder of the land protected in perpetuity by way of a C2 Environmental Conservation Zone and subject to implementation of a Biodiversity Rehabilitation Plan.

Council resolved at the 28 April 2022 Ordinary meeting to proceed with the studies required to prepare a concurrent Biodiversity Certification application and Rezoning Proposal.

This process required a comprehensive and detailed biodiversity assessment, in addition to detailed assessments of other key development considerations, notably flooding and cultural heritage.

Council firstly engaged consultants to undertake the biodiversity assessment, which was required to establish an ecological basis for the location and extent of the proposed industrial zone and the boundary with the area to be protected and rehabilitated.

Establishment of that area then allowed for a detailed flood impact assessment to commence, based on the extent of filling that would be required to establish the industrial area.

The revised zoning proposal is shown in Figure 3.

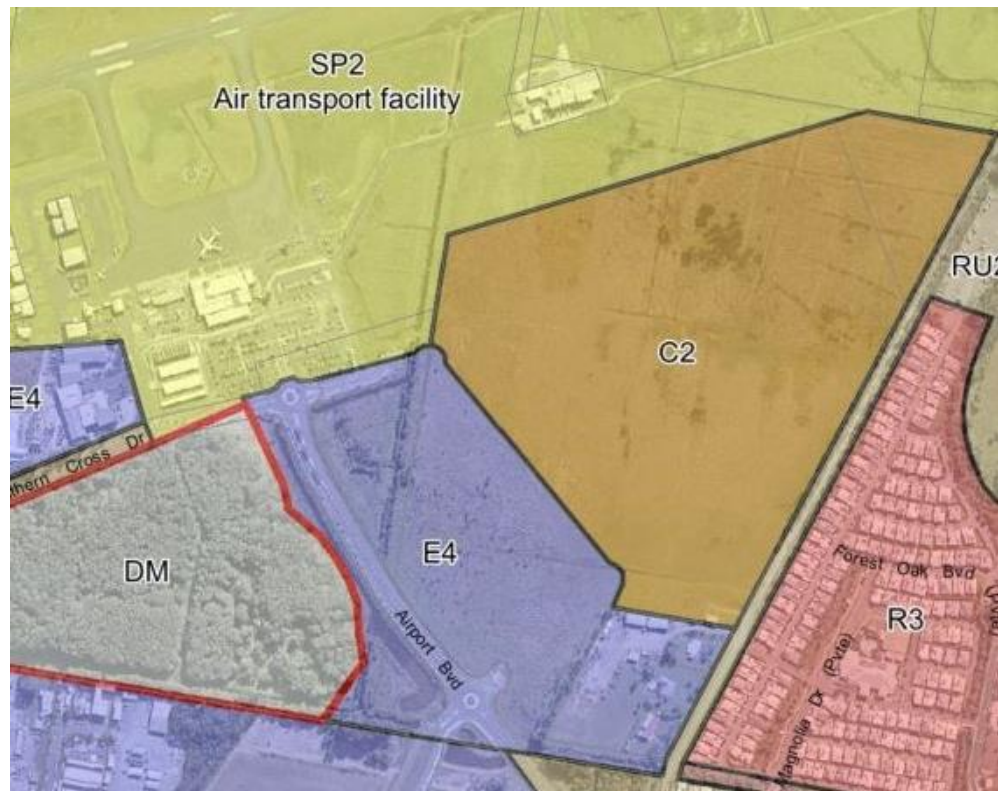


Figure 3: Current Proposed Zoning

Given the location of the site directly adjacent to the Airport, the flood impact assessment also needed to factor in future Airport projects identified in the Airport LUP.

Future Airport Development Projects

To ensure the Airport is well placed to meet future air traffic demand, a LUP was prepared as a guide for future Airport development.

The resultant 2022 LUP was adopted by Council in April 2022 and provides a graphic presentation of the anticipated development of the Airport precinct over a twenty-year planning horizon.



Figure 4: BBGA Land Use Plan – Indicative Concept Plan for Future Works

5.4 Southern Cross Expansion Precinct - Rezoning

The significant development works or projects identified in the LUP require site filling and have been included in flood modelling undertaken by BMT.

These works and projects are as follows:

Five Year Horizon

- Car Park - eastern expansion and equipment upgrade. Proposed to accommodate approximately 250 car spaces to meet current and future passenger demand
- RPT Apron – passenger jet parking area expansion and upgrade to meet current and future air traffic requirements
- Terminal Expansion Works – required to accommodate an upgraded baggage make up area. The current baggage make-up area struggles to cope with the existing passenger traffic, particularly in periods of wet weather, and affects aircraft turnaround times
- General Aviation Precinct – additional hangar sites required to meet current demand from private airport operators for aircraft storage.

Ten Year Horizon

- Parallel Taxiway – required to maintain safe and efficient airport operations and improve aircraft turnaround times
- Terminal upgrade works – expansion of departure lounge and arrivals hall to accommodate a second baggage carousel
- Runway strengthening and overlay works required as part of an ongoing maintenance program
- General Aviation Precinct – ongoing project as referred to above.

BMT flood modelling undertaken to date suggests it may be very difficult to accommodate the proposed Airport works *and* the proposed SCEP site works as filling for both will impact upon flood levels on surrounding properties and overland flows.

The topography of the land makes it difficult to implement flood mitigation works that would allow projects in both precincts to proceed without potentially unacceptable impact on surrounding lands.

Flood Modelling

Previous Modelling

Flood modelling was previously undertaken in 2021, to assess the impacts of filling all the SCEP site (35 hectares) as well as the proposal to widen and/or lengthen the Airport runway.

5.4 Southern Cross Expansion Precinct - Rezoning

To accommodate these proposed works, the modelling indicated the need for significant mitigation including three floodways or drainage channels.

One floodway is north of the Airport runway, and would involve excavating a channel approximately 1,200m long and 40m wide.

The second proposed floodway is south of the runway, approximately 630m long and 108m wide, with the third floodway located along the southern boundary of the SCEP site, approximately 915m long and 80m wide.

See Figure 5 below.



Figure 5: Proposed Floodways – Mitigation Works

There was no other investigative works undertaken for these proposed floodways regarding environmental issues such as acid sulfate soils, biodiversity, and cultural heritage.

Current Modelling

BMT has again been engaged to assess the flood impacts associated with the current rezoning / biodiversity certification proposal for the SCEP and the works associated with the Airport LUP.

The key differences in terms of the inputs and assumptions for the current modelling compared with the 2021 work are the inclusion of the following:

- Airport Boulevard
- The projects as detailed in the Airport LUP and detailed above under “Future Airport Development Projects”; and
- The filling proposed for the scaled down SCEP site of about nine hectares.

5.4 Southern Cross Expansion Precinct - Rezoning

The initial run of this modelling looked at the impacts of the works with no mitigation proposed and identified significant flood impacts on land in the locality, as shown in Figure 6.

The areas coloured blue in Figure 6 have a reduction in flood levels, whereas those coloured orange to red have increased levels, mostly with an increase of more than 10cm (10cm or less is considered acceptable; flood level increase of more than 10cm is typically not accepted).

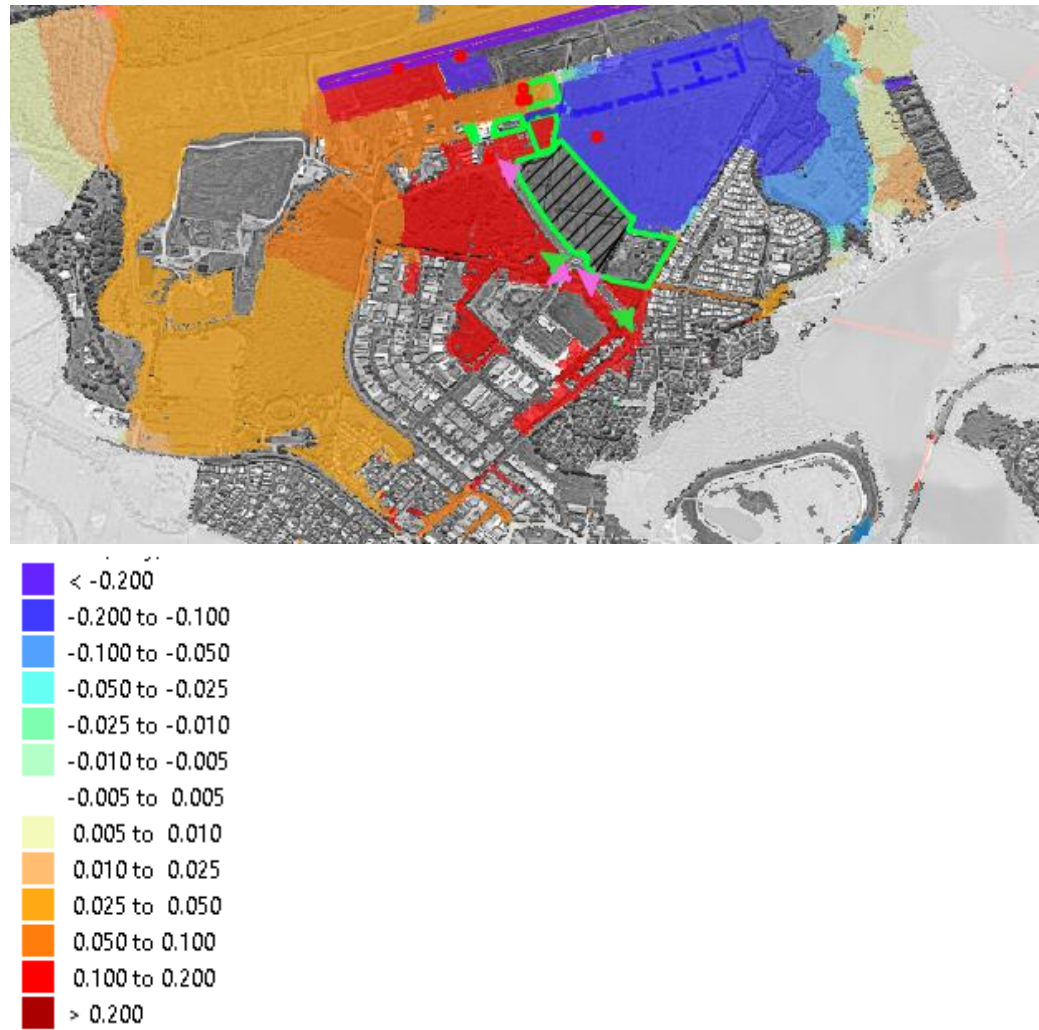


Figure 6: Preliminary Flood Model Results

The modelling indicates wide-spread flood level increases upstream of the works, with increases that could not be justified under the provisions of the NSW Floodplain Development Manual.

It is worth noting that areas highlighted in orange indicate an inundation level of 25 mm to 50 mm, which is not significant when one considers the impacts of tides, storm surges, low pressure systems, etc.

BMT has completed preliminary assessment and modelling, factoring in the Airport LUP works and SCEP filling works (about nine hectares) and examined possible mitigation works.

BMT's recommendation from this assessment is as follows:

"It is BMT's opinion that it is unlikely to be possible to achieve a viable design for the Site that does not cause adverse flood impacts to neighbouring properties.

It is recommended to focus on achieving a mitigation solution for the proposed Airport upgrade as a priority, excluding development of the Southern Cross Industrial Expansion Area."

If Council were of a mind to consider how the flood mitigation works, it will be necessary to consider, for the impacted lands, details such as the current land uses, potential future uses, environmental considerations, public safety, and property ownership.

With this information, Council would be in a position to assess whether the trade-off between the development benefits and the flood impacts are reasonable in the circumstances.

If the Council is of a mind to proceed, it is likely direct representations to the Minister for Planning will be necessary to provide direction to the various agencies involved in the assessment of the proposal.

Employment Land Needs

Council's Local Strategic Planning Statement 2020 (LSPS) adopted by Council in 2020, states that, *"The bulk of the demand for industrial zoned land to 2041 is likely to be met from the existing and proposed expanded Southern Cross Industrial Estate at Ballina"*.

This assumed that the whole of the SCEP, approximately 35 hectares, would be suitable for development.

However, as outlined, due to biodiversity constraints, the potentially developable area will be limited to about nine hectares (assuming agreement can be reached with the State through the rezoning process) and could be further reduced if Council decides the flood impacts are unacceptable.

Therefore, to meet forecast demand and given the time involved in rezoning and developing land, Council needs to consider other sites for industrial / employment zoned land in the Shire.

2019 Employment Land Supply and Demand

Council engaged Hill PDA to undertake an employment land supply and demand analysis in 2019. That analysis considered eight sites with potential to supply industrial land in Ballina Shire.

Of these, Hill PDA noted that the only land (other than the Southern Cross Expansion Area) likely to progress to the rezoning and/or evaluation stage between 2020 and 2025 is the Russellton Expansion Area (23 hectares) at Alstonville/Wollongbar.

This land is also nominated in the Wollongbar Strategic Plan 2039 as an investigation area for industrial land.

5.4 Southern Cross Expansion Precinct - Rezoning

However, the land is also mapped as State Significant Farmland and, to date, the Department of Planning, Housing, and Infrastructure has not supported inclusion of this land as potential employment land in the North Coast Regional Plan and progression of an employment land zoning.

This aside, the land appears to have few environmental constraints and good transport linkages.

Furthermore, it is understood there is a willingness on the part of the landowner to progress rezoning the land.

2023 Employment Land Supply and Demand

In 2022 Hill PDA was commissioned by the Northern Rivers Joint Organisation (NRJO) to undertake an employment lands study (the Study) for the Northern Rivers region.

The Study was completed in September 2023 and provides a comprehensive demand and supply analysis of employment land across the Northern Rivers looking forward 20 years and beyond.

The Study found that the highest priorities for rezoning land in the region for employment purposes are in the Ballina and Tweed LGAs.

Further, *'it would be logical to plan for new development in areas where there is a supply deficit across all scenarios, including Ballina...'*

With respect to Ballina Shire, the Study also found that:

- if existing unconstrained land in Ballina LGA is excluded, an additional 26 to 30 hectares should be investigated for rezoning
- Council's five Strategic Urban Growth Areas (SUGAs) that are also identified in the North Coast Regional Plan (NCRP) for investigation are all highly constrained for development and only 0.7ha is without hard constraints
- investigation of two additional sites not currently in the NCRP, being the Russellton Expansion Area discussed and land at Wardell adjoining the Pacific Highway, indicates there are manageable constraints relating to these areas and both have good highway access and availability of sewer and water.

The 2023 Hill PDA study reinforces the need to progress investigation of additional developable land for rezoning for employment purposes.

Its findings will inform Council's review and update of the Local Strategic Planning Statement this year.

Community Engagement Strategy

There has been limited public consultation to date.

Any future rezoning proposal for SCEP would be subject to consultation requirements as outlined in a Gateway Determination.

Financial / Risk Considerations

A considerable amount of money has been spent on flood studies and modelling and ecological reports for the rezoning to date. There are also significant risks for the projects outlined in the report, relating to flood mitigation, employment land supply, biodiversity matters, airport land use plans and grant funding.

Council has the opportunity to apply \$3.95m in approved grant funding from the State Government to develop the land adjacent to Airport Boulevard, if the site is rezoned. That grant was allocated to Council in 2019 and it is likely that the funding will shortly be withdrawn by the State Government due to the uncertainty over any future rezoning taking place.

Options

Based on the matters raised in this report, there are no easy solutions in creating additional employment lands in the Ballina Shire.

The most recent advice from BMT indicates Council is unlikely to achieve a viable flood mitigation design that does not cause adverse flood impacts to neighbouring properties and that Council should focus on a flood mitigation solution for the proposed Airport upgrade works, as detailed in the LUP. Once this is done, Council may wish to revisit flood mitigation design solutions to enable the SCEP rezoning to proceed.

Alternatively, Council may wish to consider making further representations to the NSW Minister for Planning seeking dispensation on provisions of the Floodplain Development Manual and biodiversity matters if the objective is to create additional employment lands on the SCEP.

If Council is not of a mind to pursue the SCEP, then apart from future expansion of the existing Russellton Industrial Estate at Wollongbar, there are few alternate locations for new employment lands in the Ballina Shire.

The recommendation is to authorise the Mayor to make further representations to the NSW Minister for Planning, recognising that there is a significant shortfall of employment lands in the Northern Rivers, and this precinct has been identified as a priority for the provision of such lands.

RECOMMENDATIONS

1. That Council notes the contents of this report regarding the land use planning conflicts between the Southern Cross Expansion Precinct Rezoning and the Ballina Byron Gateway Airport Land Use Plan.
2. That Council authorises the Mayor to make further representations to the State Government and Minister for Planning to identify opportunities that would allow the Southern Cross Expansion Precinct – Rezoning to proceed, to then provide critical employment lands for the Northern Rivers region.

Attachment(s)

Nil

5.5 Industrial Land Subdivision - Lot 1 Boeing Avenue, Ballina - Update

5.5 Industrial Land Subdivision - Lot 1 Boeing Avenue, Ballina - Update

Section Commercial Services

Objective To provide an update on the development of a 12 lot industrial subdivision and to confirm whether Council wishes to sell the completed lots by public auction.

Background

At the 1 August 2023 Commercial Services Committee meeting, Council was provided with a progress report on the industrial subdivision at Lot 1 and Lot 2 Boeing Avenue Ballina, with Lot 2 having been sold for an expansion to the Harvey Norman complex.

As per that report, civil construction works on Lot 1 commenced in March 2023 to create 12 serviced industrial lots and one residual lot.

A plan of the proposed subdivision is included as Attachment 1 to this report.

The other key matter in the report was the potential for Council to retain lots to develop a long-term car park or car storage facility for rental cars.

The outcome of this feasibility assessment was to be reported back to Council prior to finalisation of the subdivision works to determine if any lots are to be retained for a commercial venture.

The purpose of this report is to provide an update on the feasibility assessment for the car park and storage facilities and to seek Council direction on the sale or otherwise of the 12 completed lots.

Key Issues

- Sale of Council assets
- Maximising financial return
- Financial sustainability

Discussion

The original completion date for the industrial subdivision was September 2023 however civil construction works have been delayed due to wet weather, electrical works and sewer connection works with a new estimated completion date of March 2024.

Once the civil works are complete a plan of subdivision will be lodged with Council and when approved, an application for plan registration will be made to NSW Land Registry Services.

This will enable Council to progress with the potential sale, or development, of the subdivided lots.

Enquiry for the 12 lots has been strong due to the limited supply of serviced industrial lots on the NSW Far North Coast (FNC), summarised as follows:

- **Ballina Shire**
Boeing Avenue – 12 lots under construction.
Russellton Estate – 27 lots under construction
- **Byron Shire**
Supply is limited to the odd block available in Byron, Bangalow or Mullumbimby. Future supply (if approved) is sometime away. A significant amount of enquiry for the Boeing Avenue and Russellton lots comes from tenants in the Byron Shire seeking to relocate to Ballina.
- **Lismore**
A few lots remain in the Goonellabah Industrial Estate but vary in terms of size and topography. Council is seeking to rezone more land for industrial purposes but lacks the ownership of the land and has no control over when the land might be developed and available for sale.

Industrial land is available in South Lismore, however the level of flood affectation varies depending on location. Land is zoned on the fringe of East Lismore but remains undeveloped.
- **Richmond Valley**
A limited number of serviced industrial lots are available with the Council seeking to significantly increase supply.

The current demand and supply of serviced industrial land on the FNC should ensure the level of enquiry for the proposed lots will continue to escalate as the project reaches construction completion.

Given current and potential demand for the proposed lots a public auction is the fairest way to sell the lots and deliver the best financial return to Council, if Council's preference is to sell.

Council has previously conducted three public auctions of industrial lots by engaging an auctioneer to conduct the auction. Council staff managed the marketing campaigns.

Real estate agents were able to nominate a buyer up to 24 hours prior to the auction but were only eligible for a commission upon production of written proof that they introduced a successful buyer.

A public auction is the best way to test the market and gain the best price for a vendor, particularly in a tight market.

Outside of a sale by public auction, Council could sell by private treaty, through setting a price, and selling the lots by appointing one or two local agents.

This approach has drawbacks including:

- Setting prices does not fully test the market given the current demand and supply scenario for industrial lots on the FNC.
- Selling by private treaty involves fielding numerous bids, including conditional and unconditional bids, and can lead to disputes as to who offered what price and when.

5.5 Industrial Land Subdivision - Lot 1 Boeing Avenue, Ballina - Update

- Appointing one or two local agents means disappointing other local agents and possibly leading to disputes over commissions etc.

The preferred approach is auction to maximise transparency and selling price.

Council previously resolved to undertake a feasibility assessment on retaining two or three lots to develop a long-term car park for the Ballina Byron Gateway Airport (BBGA), or a car storage facility for rental cars. Two or three lots could accommodate about 200 cars.

Since the original report to Council the need to investigate these options further is no longer necessary for the following reasons:

- Based on a Council resolution, investigations are underway to expand the existing BBGA car park (to the east of the existing car park) which could be capable of accommodating about 250 cars; and
- The hardstand area to the west of the BBGA terminal created by Fulton Hogan for the recent runway upgrade can be modified to accommodate storage for rental cars. This portion of land is approximately 7,000m² and could accommodate about 230 cars.

With this land forming part of the BBGA precinct, the preference is to maximise the use of the BBGA land, for car parking and rentals, rather than utilising scarce industrial land from the Boeing Avenue, subdivision.

Community Engagement Strategy

An auction would include a marketing campaign promoting to ensure the public is adequately informed.

Financial / Risk Considerations

An indicative feasibility assessment has been updated and is summarized as follows, indicating a net surplus of \$12.337m including the sale proceeds from Lot 2 that was sold to Harvey Norman with settlement occurring in 2022.

Table 1 - February 2024 - Feasibility – Lots 1 and 2 Boeing Avenue

| Item | Amount (\$) |
|--|-------------------|
| Estimated Net Sale Proceeds – Lots 1 to 12 (being Lot 1) | 12,974,000 |
| Net Sale Proceeds – Lot 2 Sale to Harvey Norman | 8,261,000 |
| Less Actual Costs to 30 June 2023 | (6,432,000) |
| Less Actual Costs for 2023/24 to Date | (1,530,000) |
| Less Estimated Costs to Complete (civil works, professional fees, developer contributions, interest etc) | (936,000) |
| Estimated Net Proceeds | 12,337,000 |

Council has several loans and forecast loans for commercial projects underway or scheduled.

A summary of this debt is as follows:

| Project | Loan (\$) | Comment |
|-------------------------------|------------------|--------------------------------------|
| Boeing Avenue – Loan 1 | 3,600,000 | Balance paid out from Harvey Norman |
| Boeing Avenue – Loan 2 | 5,524,000 | To be paid out from Lot 1 sales |
| Airport Boulevard – Loan 1 | 1,500,000 | To be paid out from Lot 1 sales |
| Airport Boulevard – Loan 2 | 2,800,000 | To be paid out from Lot 1 sales |
| Wollongbar – Stage 3 – Loan 1 | 2,000,000 | Balance paid out from Harvey Norman |
| Wollongbar - Stage 3 – Loan 2 | 2,000,000 | Balance paid out from Harvey Norman |
| Russellton Estate – Loan 1 | 3,000,000 | To be paid out from Russellton sales |
| Russellton Estate – Loan 2 | 4,000,000 | To be paid out from Russellton sales |

Traditionally Council has not carried loan debt for commercial property projects, as this reduces the project risk and associated costs, such as loan interest.

Council's Long Term Financial Plan is based on the initial surplus funds from the various commercial projects repaying loan debt to eliminate any loan debt that exists.

Based on current forecasts, the sale of the 12 Boeing Avenue lots, should leave surplus funds of around \$3m to \$4m, with the income generated having repaid \$9.124m in Boeing Avenue loan debt (this loan funded the development costs in Table 1), \$4.3m in Airport Boulevard loan debt and \$4m in Wollongbar – Stage 3 loan debt.

The only loan debt then remaining is the forecast loans for the Russellton Estate Industrial Project (currently underway), along with any future loans for the Wollongbar – Stage 3 – Key Worker Housing Proposal, if it proceeds.

The Russellton Industrial development has the potential to generate surplus funds of approximately \$9m to \$10m, after repaying loan debt and development costs, based on the preliminary feasibility.

It is likely that a large part of these funds will be applied to the Alstonville Cultural Centre refurbishment, which now has an estimated cost of around \$16m based on a January 2024 estimate.

The magnitude of the Russellton surplus funds applied to the Alstonville Cultural Centre refurbishment will be dependent on the level of grant funds secured, the magnitude of Section 7.11 contributions held and able to be applied, and whether Council wishes to secure any loan funding against the project.

Options

In respect to the Lot 1 Boeing Avenue subdivision, the options available are:

1. Proceed with public auction and authorise the General Manager to set price reserves and sell the 12 lots in plan of proposed subdivision of Lot 1 DP 1290238 by public auction.

Auction is recommended, however there is also the option of not selling all 12 lots.

2. Resolve to sell a smaller number of lots and retain certain lots for potential use by Council for another development, or try and find a tenant who is

5.5 Industrial Land Subdivision - Lot 1 Boeing Avenue, Ballina - Update

prepared to lease the land, and / or a building, from Council to generate a recurrent revenue stream.

Following the acquittal of significant loan debt there should be approximately \$3m in surplus funds from this project.

This does allow possibly three lots to retained and potentially placed on the market for lease. This lease could be a land only lease, or potentially a land and building lease, where Council constructs the building for the tenant.

Council has examples of this already in its commercial property portfolio including land leases for the Shelly Beach Café and Norfolk Homes, as well as major commercial buildings constructed by Council at Tamar Street and Cessna Crescent.

Any leasing proposal would be subject to an individual feasibility assessment, and with this potentially being the last large release of Council industrial land in Ballina, combined with Council's comparably low level of average rate income per property, it is becoming more and more important for Council to generate recurrent revenue streams.

If Council wanted to pursue this option the recommendation would be to retain Lots 9, 10 and 12, as these are large lots that could be attractive to industries that may consider a land lease or a construct and lease deal.

The option is recommended, to allow Council to test the market for leasing. If no viable options are forthcoming the remaining three lots can be auctioned at a future date.

Finally, one other aspect to consider in respect to the auctioning of land, as per option 1, is to determine whether Council wishes to prevent the lots falling into the hands of land bankers and speculators who may seek to secure and hold one or more lots to profit from capital gain without actually developing the land.

The preference is for the land to be sold to businesses that maximise local employment opportunities, rather than having more passive industrial developments, for example storage sheds.

This is important as it is highly likely that there will be no further industrial land available in this precinct, due to the constraints that exist due to flooding and environmental impacts, as per the separate report in this agenda regarding the Southern Cross Expansion Precinct.

The preliminary advice appears to be that Council is not in a position to include in the sale contracts a clause that specifies the type of business to be built on the land, as overall land use permissibility is governed by the zoning on the land which is E4 – General Industrial.

Council could potentially include in the sale contract, conditions that ensure that the land is developed in a reasonable time, and giving Council the option of taking purchasing the land back at the initial sale price; i.e. a “use it or lose it clause” as was included in both sale contracts with Harvey Norman.

This could form part of the marketing campaign for the lots to deter land bankers and speculators.

The recommendations confirm this as the preferred approach.

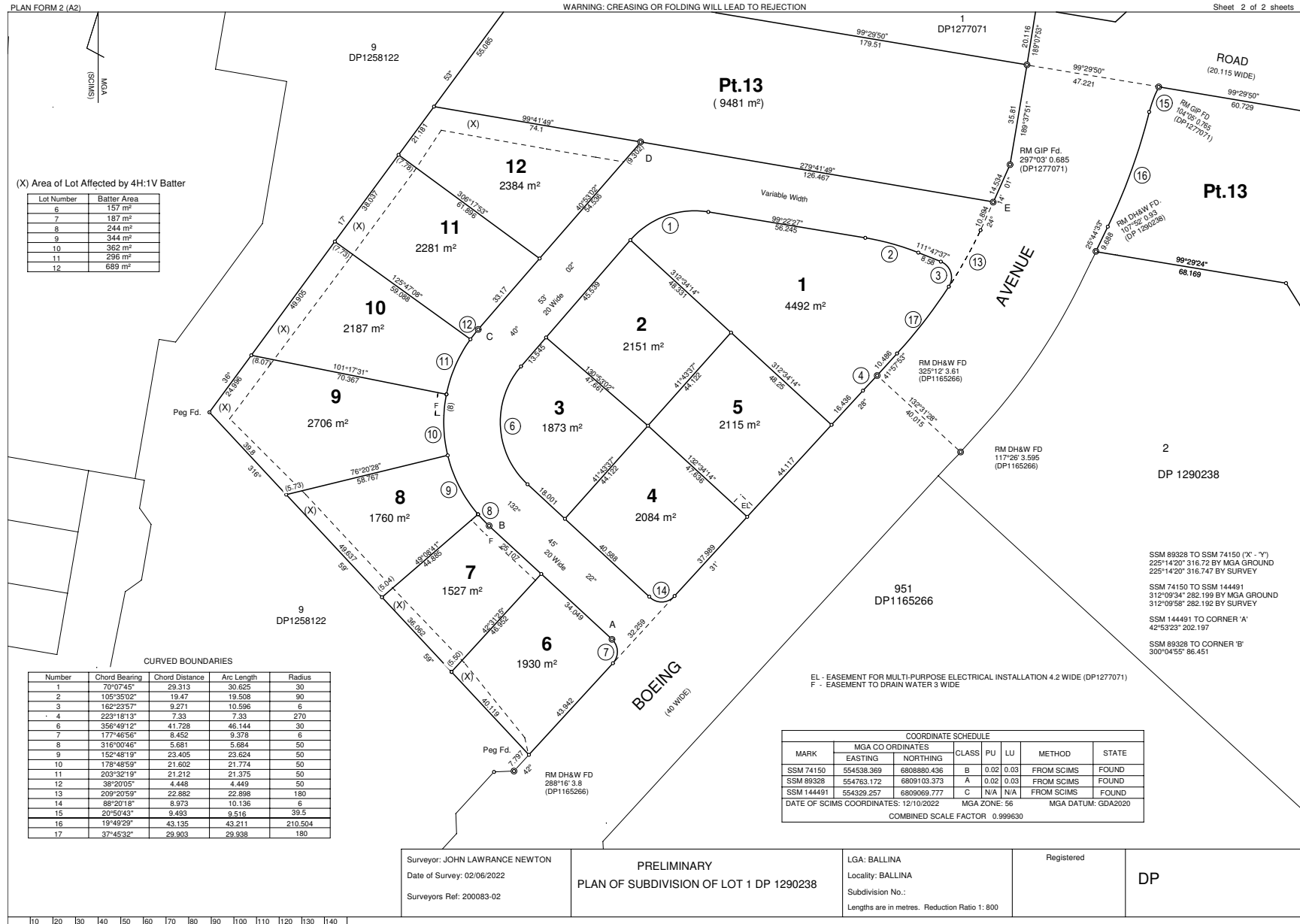
RECOMMENDATIONS

1. That Council authorises the sale of Lots 1 to 9 (inclusive) in proposed plan of subdivision of Lot 1 DP 1290238 and authorises the General Manager to set the price reserve based on market conditions and the current high level of demand for industrial land.
2. That the contracts for sale of Lots 1 to 9 (inclusive) in point 1, are to include “use it or lose it” provisions to reduce the possibility of land purchase for property speculation and land banking.
3. That Council retain Lots 10 11 and 12 in plan of subdivision of Lot 1 DP 1290238 for potential lease, with the General Manager authorised to undertake a marketing campaign for prospective tenants for the remaining lots, with any proposal to be reported back to Council.
4. That Council notes the preferred approach for the provision of additional car parking and car storage facilities for the Ballina – Byron Gateway Airport (BBGA) is located on BBGA land, as per the contents of this report.
5. That in respect to point 1, the General Manager is authorised to execute all necessary sale documents and affix the Council seal to same.

Attachment(s)

1. Lot 1 Boeing Avenue, Ballina - Plan of Proposed Subdivision [↓](#)

5.5 Industrial Land Subdivision - Lot 1 Boeing Avenue, Ballina - Update



5.6 Tender - Key Worker Housing Proposal

5.6 Tender - Key Worker Housing Proposal

Section Commercial Services

Objective To provide Council with an update on negotiations with the preferred tenderer for the provision of consultancy services for the planning, design and project management of a key worker housing proposal for Council's Wollongbar residential estate.

Background

At the Commercial Services meeting held on 28 November 2023 Council considered two tender proposals to provide planning, design and project management services for a residential development on Council land at Wollongbar. The two proponents were Bridge 42 and The Kollektive.

The tender called for the proponents to prepare concept designs, cost estimates, feasibility assessments and fee proposals to develop key worker housing on 12 lots (Lots 19 – 30) on Stage 3 of the Wollongbar Residential estate. A layout plan of the estate is included as Attachment 1.

The resolution arising from that meeting, as adopted at the 15 December 2023 Ordinary meeting, was as follows:

1. *That Council in accordance with the Local Government (General) Regulation 2021 Section 178(1)(b), declines to accept any tenders for the Tender – Design and Planning – Key Worker Planning Proposal - Wollongbar as neither tender is acceptable due to concerns over the assumptions applied, the financial risk, the value of the contract and the current volatile construction market.*
2. *That Council, in accordance with Local Government (General) Regulation 2021 Section 178(3)(e) authorises the General Manager to enter negotiations with Kollektive Kendall Pty Ltd, with a view to providing additional information on the scope of works, an option for a staged project as well as the total project, and updated pricing with financing costs included, for the Tender - Design and Planning – Key Worker Planning Proposal – Wollongbar.*
3. *That in accordance with the Local Government (General) Regulation 2021 Section 178(4)(a) the reason Council has declined to invite fresh tenders is that the tender process has established sufficient market interest and it is more efficient and timelier to negotiate with preferred proponents than call for new submissions due to the complexities of the contract.*
4. *That in accordance with the Local Government (General) Regulation 2021 Section 178(4)(b), Council has determined to negotiate with Kollektive Kendall Pty Ltd with a view to entering a contract based on a demonstration that they have the requisite experience, the capability to undertake the project, demonstrated delivery of similar projects in the local market, and their overall design concepts provide the best advantage to Council.*

5.6 Tender - Key Worker Housing Proposal

5. *That the updated information (as set out in point two) be presented to Council for acceptance of any tender proposal.*

Since December 2023, Council staff have met with The Kollektive to discuss requirements regarding the updated feasibility assessments. That work is now complete and forms the subject of this report.

A confidential memorandum is included with this report in respect to The Kollektive's fee proposal.

Key Issues

- Obtain value for money
- Project viability
- Outcomes in respect to residential housing for key workers
- Financial sustainability

Discussion

The Kollektive development scheme can be undertaken in three stages. The staging plan is included as Attachment 2 to this report. Table 1 sets out potential dwelling typologies for Stage 1 as well as for all three stages (12 lots).

There are many permutations as to how the proposed development could be staged depending upon factors such as Council's risk appetite, the availability of builders, construction prices, supply chain issues etc. For the purposes of this report and in accordance with point two of the Council resolution, it has been assumed the development proposal could be undertaken as:

- Stage 1 – Comprising five lots; or
- All Stages – Comprising twelve lots.

Table 1 – Dwelling Typology Breakdown

| No. | Item | Stage 1 (5 lots) | All Stages (12 lots) |
|-----|------------------------------------|---------------------|-------------------------|
| 1 | Number of lots used | 5 | 12 |
| 2 | Total number of dwellings | 15 | 38 |
| 3 | Total number of beds | 42 | 102 |
| | Breakdown of dwelling types | | |
| 4 | 1 bedroom apartments | 2 | 4 |
| 5 | 2 bedroom apartments | 1 | 4 |
| 6 | 2 bedroom adaptable apartments | 0 | 4 |
| 7 | 3 bedroom apartments | 1 | 4 |
| 8 | 4 bedroom apartments | 2 | 4 |

5.6 Tender - Key Worker Housing Proposal

| No. | Item | Stage 1 (5 lots) | All Stages (12 lots) |
|-----------|--|---------------------|-------------------------|
| 9 | 3 bedroom adaptable apartments | 0 | 4 |
| 10 | 3 bedroom terrace dwellings | 9 | 14 |
| | Total Dwellings | 15 | 38 |
| 11 | Total number of open car spaces | 0 | 0 |
| 12 | Total number of garages | 17 | 42 |
| 13 | Total parking | 17 | 42 |
| 14 | Staging (see notes as follows) | 1 | 3 |
| 15 | Construction Costs (excl. land) | \$7,165,000 | \$17,585,000 |
| 16 | Overall cost/dwelling (\$) | 477,700 | 462,760 |
| 17 | Overall cost/bed (\$) | 170,600 | 172,400 |
| 18 | Estimated Development Time Frame | 24 months | 30 months |

An analysis of the updated feasibility assessment for each staging option is included in the Financial / Risk Considerations section of this report.

The estimated development timeframe for constructing the whole project at once (all three stages) is difficult to determine as different strategies will have varying risk profiles and cost implications.

For example, Stage 1 could be undertaken by local builders who have lower cost overheads and are generally more flexible to deal with.

This approach could be repeated if Council went with three separate stages, by completing Stage 2 after Stage 1 and Stage 3 after Stage 2. This could result in the total development time extending to more than 30 months.

Alternatively, a large construction company could undertake all three stages at once, but this may be more expensive due to the overhead such firms carry. Other risks may include labour shortages, supply chain issues and wet weather depending upon construction programs.

The preferred option is to support local builders, where possible.

Community Engagement Strategy

If Council resolves to proceed with the key worker housing proposal a community engagement strategy would need to be formulated and implemented.

Financial / Risk Considerations

A feasibility assessment has been undertaken based on two scenarios:

1. Develop and sell the completed project; and
2. Develop and hold the completed project.

Scenario 1 - Develop and Sell Completed Project

The Kollektive have updated their feasibility assessments for the project assuming both scenarios (i.e., Stage 1 only or alternatively all three stages at once) assuming the dwellings are developed and sold. These analyses are summarised in Tables 2 and 3.

The “Initial Assessment” has also been updated to include interest on borrowings, as per point two of the Council resolution.

Table 2 – Develop and Sell Feasibility - Stage 1 (5 lots) (\$)

| # | Description | Initial | Revised |
|------------|--|------------------------|------------------------|
| 1. | Development Viability | | |
| | Estimated on completion value | 11,750,000 | 11,750,000 |
| | Less | | |
| | Dev. costs incl prof fees | 7,165,000 | 7,144,000 |
| | Land value of 5 lots (see foot notes re lot values) | 1,750,000 ¹ | 2,250,000 ² |
| | Interest @ 5.20% (p.a.) | 280,000 | 280,000 |
| | Sales costs and marketing @ 3% | 352,500 | 352,500 |
| | Strata subdivision costs | 25,000 | 25,000 |
| | Estimated net development profit | 2,177,500 | 1,698,500 |
| | Return on development costs incl. lot values and interest | 23% | 17% |
| 2. | Rental Returns on Development Costs | | |
| 2.1 | Est. total gross market rental of dwellings (p.a.) | 572,000 | 572,000 |
| | Est. total development costs incl. land costs, interest but excl. selling costs | 9,220,000 | 9,699,000 |
| | Gross rental return of total development costs | 6.20% | 5.90% |
| 2.2 | Est. total net market rental of dwellings after deducting est. property outgoings and a 2% vacancy factor (p.a.) | 457,600 | 457,600 |
| | Gross rental return of total development costs (incl. land but excluding selling costs) | 6.42% | 5.90% |

Notes:

1. Land values for the initial assessment were based on \$350,000 (excl. GST)
2. Land values for the revised assessment are based on \$450,000 (excl. GST)

The difference between the Initial and Revised Assessments is due to the assumed land value rising from \$350,000 to \$450,000 per lot (excluding GST) which increases the costs base, and a reduction in professional fees.

The same applies to all 12 lots as per Table 3 as follows.

5.6 Tender - Key Worker Housing Proposal

Table 3 – Develop and Sell Feasibility - All Stages (12 lots) (\$)

| # | Description | Initial | Revised |
|------------|--|------------------------|------------------------|
| 1. | Development Viability | | |
| | Estimated on completion value | 29,050,000 | 29,050,000 |
| | Less | | |
| | Dev. costs incl prof fees | 17,585,000 | 17,525,000 |
| | Land value of 12 lots (see foot note re lot values) | 4,200,000 ¹ | 5,400,000 ² |
| | Interest @ 5.20% (p.a.) | 680,000 | 680,000 |
| | Sales costs and marketing @ 3% | 871,500 | 871,500 |
| | Strata subdivision costs | 40,000 | 40,000 |
| | Estimated net development profit | 5,673,500 | 4,533,500 |
| | Return on development costs incl. lot values and interest | 24% | 19% |
| 2. | Rental Returns on Development Costs | | |
| 2.1 | Est. total gross market rental of dwellings (p.a.) | 1,393,600 | 1,393,600 |
| | Est. total development costs incl. land costs, interest but excl. selling costs | 22,505,000 | 23,645,000 |
| | Gross rental return of total development costs | 6.20% | 5.88% |
| 2.2 | Est. total net market rental of dwellings after deducting est. property outgoings and a 2% vacancy factor (p.a.) | 1,114,880 | 1,114,880 |
| | Gross rental return of total development costs (incl. land but excluding selling costs) | 4.95% | 4.70% |

Notes:

1. Land values for the initial assessment were based on \$350,000 (excl. GST)
2. Land values for the revised assessment are based on \$450,000 (excl. GST)

The difference between the Initial and Revised Assessments is due to the assumed land value rising from \$350,000 to \$450,000 per lot (excluding GST) which increases the cost base, and a reduction in professional fees.

The updated assessments indicate the project to be viable for Stage 1 and for all three stages if developed and sold as indicated in Table 4 as follows.

Table 4 – Summary – Develop and Sell

| | Stage 1 | All Stages |
|---|----------------|-------------------|
| Estimated net development profit | \$1,698,500 | \$4,533,500 |
| Return on development costs incl. lot values and interest | 17% | 19% |

Scenario Two - Develop and Hold the Completed Project

This scenario is based on the following assumptions:

- a) Council develop and holds all dwellings for a period of 20 years.
- b) Upon completion of construction, a 20-year principal and interest loan at a rate of 5.20% p.a. is taken out to fund the construction debt. This is estimated to be \$5,607,000 for Stage 1 and \$13,663,000 for Stages 1, 2 and 3.
- c) Council injects cash and land as equity into the project to ensure the project is cash flow neutral at the commencement of the 20-year loan; i.e. net rental covers loan repayments.
- d) The value of Council's land (lots) is accounted for as an equity contribution.
- e) Net rentals grow at a rate of 2.00% p.a.
- f) Capital value of the asset increases at a rate of 2.00% p.a.

The analysis provides for a Stage 1 and All Stages approach.

The results for Stage 1 are summarised in Table 5.

Table 5 - Develop and Hold Stage 1 (\$)

| | |
|---|------------|
| 1. Forecast Cash Surplus | |
| Total rental received | 11,118,000 |
| Less: total loan payments | 9,152,000 |
| Cash surplus after 20 years | 1,966,000 |
| 2. Total Return to Council (asset value + cash surplus) | |
| Estimated capital value on completion of construction | 11,750,000 |
| Capital value growth rate over 20 years @2.00%p.a. | |
| Forecast Capital Value (20 years @ 2% p.a.) | 17,460,000 |
| Add surplus cash received | 1,966,000 |
| Total return to Council (if dwellings are sold after 20 years) | 19,426,000 |
| 3. Council Equity Contribution | |
| Equity/cash invested | 1,842,000 |
| Land - 5 lots @ \$450,000/lot (excl. GST) | 2,250,000 |
| Total (equity/funds/assets applied) | 4,092,000 |
| 4. Return on Council's Equity Contribution | |
| Total return to Council (if dwellings are sold after 20 years) | 19,426,000 |
| Less: Initial Council Equity Contribution (equity/funds/assets applied) | 4,092,000 |
| Net Return to Council | 15,334,000 |
| ROE (Total return divided by initial equity / funds / assets applied) | 375% |

5.6 Tender - Key Worker Housing Proposal

The results indicate Stage 1 to be viable assuming Council makes an equity contribution of \$4,092,000, which includes the notional value of five lots (\$2.25m) at the commencement of the project enabling it to be cash flow positive throughout the 20 year period.

At the expiry of the 20 year loan the debt is fully repaid and the asset is estimated to have a future value of \$17,460,000. If the rental surplus remains unspent over this same period the total value of the asset plus cash surplus is estimated to have a future value of \$19,426,000.

The total return on equity ("ROE") over a 20 year period on Council's equity of \$4,092,000 is estimated to be 375%.

Table 6 - Develop and Hold Stages 1, 2 and 3 (\$)

| | |
|---|------------|
| 1. Forecast Cash Surplus | |
| Total rental received | 27,092,000 |
| Less: total loan payments | 22,300,000 |
| Cash surplus after 20 years | 4,792,000 |
| 2. Total Return to Council (asset value + cash surplus) | |
| Estimated capital value on completion of construction | 29,050,000 |
| Capital value growth rate over 20 years @2.00%p.a. | |
| Forecast Capital Value (20 years @ 2% p.a.) | 43,167,000 |
| Add surplus cash received | 4,792,000 |
| Total return to Council (if dwellings are sold after 20 years) | 47,958,000 |
| 3. Council Equity Contribution | |
| Equity/cash invested | 4,582,000 |
| Land - 12 lots @ \$450,000/lot (excl. GST) | 5,400,000 |
| Total equity/funds/assets applied) | 9,982,000 |
| 4. Return on Council's Equity Contribution | |
| Total return to Council (if dwellings are sold after 20 years) | 47,958,000 |
| Less: Initial Council Equity Contribution (equity/funds/assets applied) | 9,982,000 |
| Net Return to Council | 37,976,000 |
| ROI (Total return divided by initial equity / funds /assets applied) | 380% |

The results indicate Stage 1, 2 and 3 to be viable assuming Council makes an equity contribution of \$9,982,000 at the commencement of the project, which includes the notional value of 12 lots (\$5.4m), enabling it to be cash flow positive throughout the 20 year period.

At the expiry of the 20 year loan the debt is fully repaid and the asset is estimated to have a future value of \$43,167,000. If the rental surplus remains unspent over this same period the total value of the asset plus cash surplus is estimated to have a future value of \$47,958,000.

The total return on equity ("ROE") over a 20 year period on Council's equity of \$9,982,000 is estimated to be 380%.

5.6 Tender - Key Worker Housing Proposal

The “Develop and Hold” analysis confirms the project is viable, based on assumptions applied.

Either option, Stage 1 or all three stages, could proceed by way of a combination of debt and equity.

The Stage 1 proposal, as per Table 2, has total development costs of \$7.449m which includes the nominal land value of \$2.25m for the five lots. This means the cash needed is \$1.842m calculated as follows:

| Description | Amount (\$) |
|--|------------------|
| Construction costs and professional fees | 7,144,000 |
| Interest on construction costs | 280,000 |
| Strata title subdivision fees | 25,000 |
| Total | 7,449,000 |
| Less: Cash / Equity contribution | 1,842,000 |
| Borrowings required | 5,607,000 |

Stage 1 would require cash equity of \$1,842,000 and borrowings of \$5,607,000. As per the assumptions applied comments, the borrowings figure is based on the net rental income offsetting the principal and interest repayments.

The cash equity could be sourced from the net sale proceeds of the balance of the lots on the estate as follows:

| Description | Amount (\$) |
|--|-------------------|
| 18 lots @ \$450,000/lot (excl. GST) | 8,100,000 |
| Childcare lot (excl. GST) | 2,000,000 |
| Net Sale Proceeds (after comms, legals & GST) | 10,100,000 |

Similarly, the \$4,582,000 in cash equity for Stages 1, 2 and 3 could be sourced from the net sale proceeds of \$10,100,000.

Funding avenues through State and Federal Government programs have also been considered.

The recent initiative through the Federal Government’s Housing Australia Future Fund excludes local government from borrowing funds through their program. These loans are limited 30% of total development costs and come with numerous conditions including rentals that can be charged and minimum time periods that a project must be held before being sold.

Typically other State and Federal Government programs require a percentage of social or affordable housing, or the project to be managed by a community housing provider.

The analysis undertaken indicates Council is capable of funding this project and in doing so is free to manage the asset as it sees fit.

5.6 Tender - Key Worker Housing Proposal

Council's Property Investment and Development Policy includes the following risk matrix when undertaking commercial property projects.

| Risk | Benchmark Above 90 Day BBSW |
|-------------|------------------------------------|
| Low | <2% |
| Medium | 2% to 5% |
| High | 5% to 10% |
| Speculative | >10% |

The current Bank Bill Swap Rate (BBSW) is approximately 4%. The risk for this project could be considered to be medium or high, based on Council not having previously undertaken a residential housing project.

Offsetting this is the fact that demand for housing is very high, and likely to remain high.

On a develop and hold basis the annual return on equity (ROE), land and cash contributed is estimated to be 7.00%, which is consistent with Council's benchmark for a medium risk project.

Attachments 3 and 4 provide the detailed figures applied in determining the feasibilities outlined in this report.

The Kollektive have also reviewed their fee proposal, the details of which are contained in a confidential memorandum, as per Attachment 5 to this report.

Attachment 6 is a copy of the concept plans provided by The Kollektive, which formed part of their confidential tender submission.

Options

There are a number of options available in respect to selling some or all of the lots and / or providing residential housing on some or all of the lots.

The main options are:

1. Do not accept a tender for these services and proceed to auction off the 30 residential lots available in the subdivision. This is the simplest and easiest option.
2. Council retains Lots 19 to 30 (inclusive) for the development of key worker housing as detailed in this report and accepts the tender from the Kollektive to undertake residential housing on a staged basis, with Stage 1 being for five lots. Council will then proceed to auction off lots 1 to 18 in the subdivision, subject to a further report on the timing of that auction.
3. Similar to Option 2, Council resolves to adopt the fee proposal from the Kollektive to undertake Stages 1, 2 and 3 as and accepts the tender from the Kollektive to undertake residential housing for all three stages. Council will still proceed to auction off lots 1 to 18 in the subdivision, subject to a further report on the timing of that auction.

On balance Option 2 is the preferred approach as it allows Council:

5.6 Tender - Key Worker Housing Proposal

- To sell off 18 lots to generate surplus funds to assist with this project and other projects
- To undertake a relatively small scale five lot residential housing development to allow Council to generate a recurrent income stream and provide diversity of housing in the market. The success or otherwise of this project will then allow Council to determine whether it wishes to develop further residential housing on the remaining seven lots, or sell those remaining seven lots.

The recommendations support this approach.

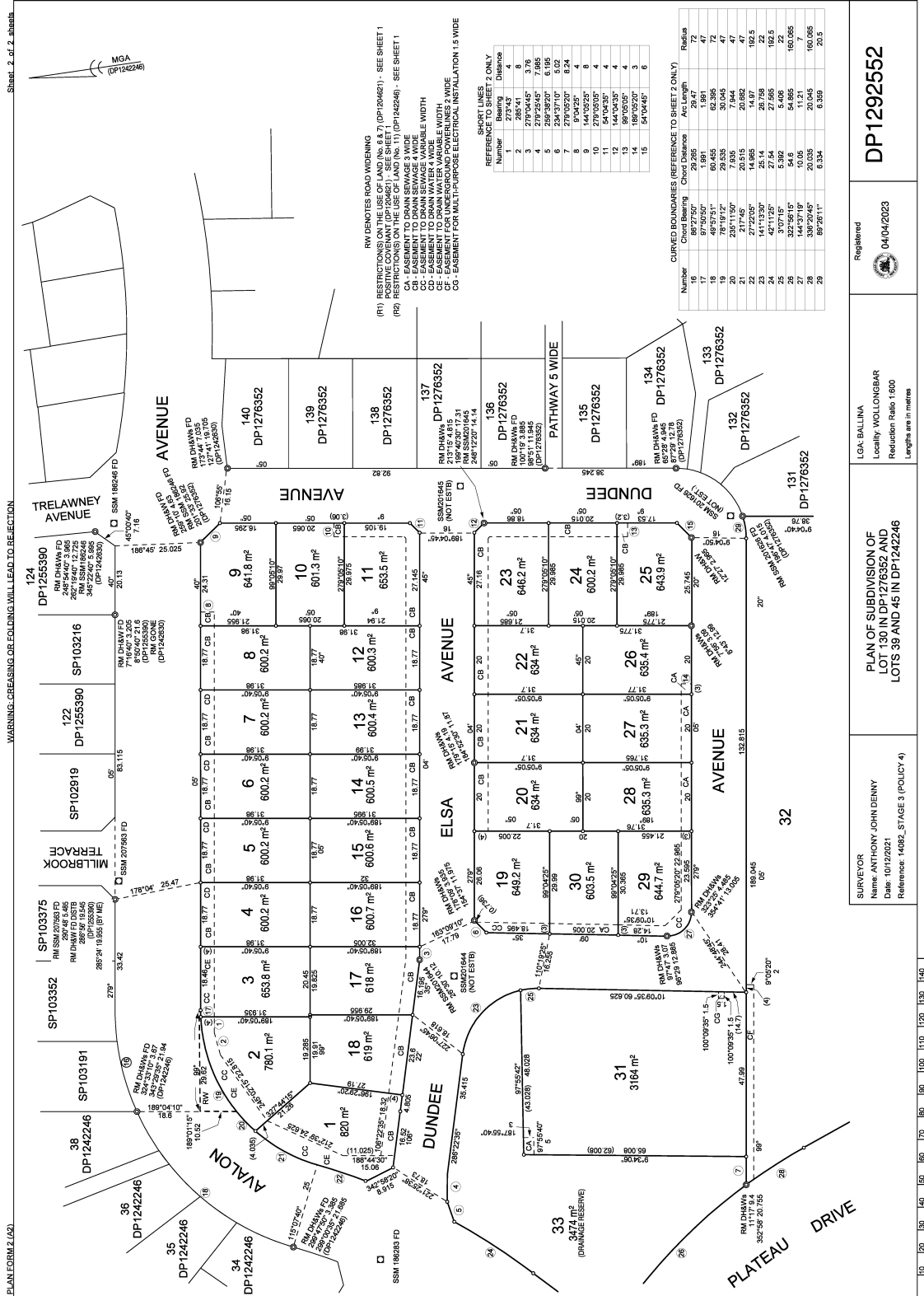
RECOMMENDATIONS

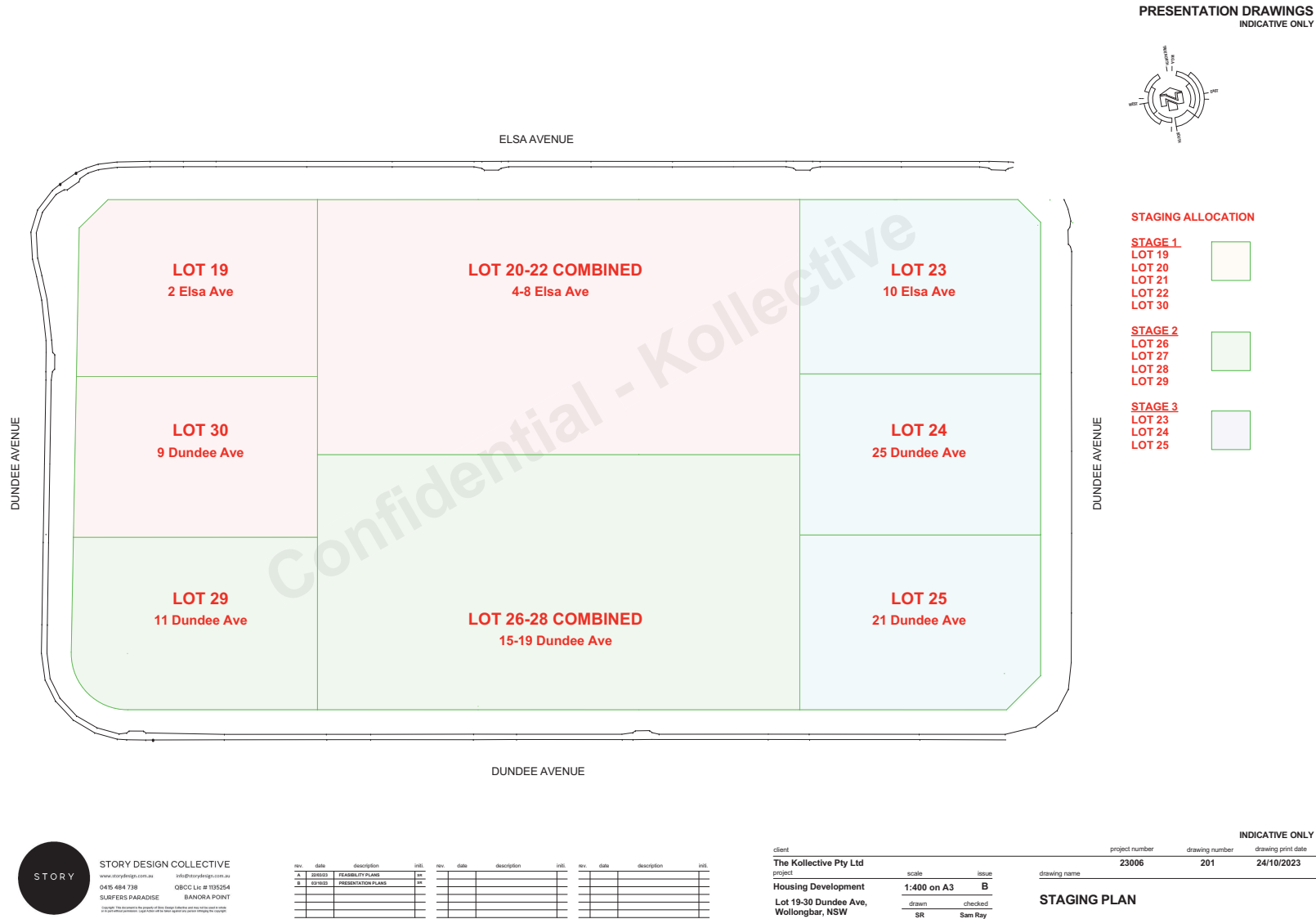
1. That Council confirms its preference is to undertake a residential housing development, on a staged basis, as outlined in Table 5, and as outlined in Attachment 2, to this report.
2. Lots 19 to 30 on the plan of subdivision, as per Attachment 1 to this report, are to be retained to allow the completion of Stage 1 (Lots 19, 20,21,22 and 30), with a determination on whether Council proceeds to Stage 2 or Stage 3 dependent on the outcomes secured from Stage 1.
3. That Council approves the sale of lots 1 to 18 on the plan of subdivision, as per Attachment 1 to this report, subject to a further report being presented to Council on the timing and method of sale for those lots.
4. That Council accepts the tender from The Kollektive, as per the confidential memorandum included as Attachment 5 to this report.
5. That Council confirms funding for Stage 1 of the residential housing project is to be sourced from a combination of loan funds, land value and cash held, with that mixture of funding to be confirmed through a future report to Council.
6. That Council approves the attaching of the Council seal to the contract documents as per point 1 and the sale contracts as per point 3.

Attachment(s)

1. Wollonbgar Residential Estate Stage 3 - Lot Layout Plan [↓](#)
2. The Kollektive - Staging Plan [↓](#)
3. Feasibility Analysis - Stage 1 [↓](#)
4. Feasibility Analysis - Stages 1, 2 and 3 [↓](#)
5. Confidential Memorandum - Tender Assessment Report - Design, Planning and Project Management for Key Worker Housing Project (Under separate cover)
6. Confidential Memorandum - The Kollektive - Concept Plans (Under separate cover)

5.6 Tender - Key Worker Housing Proposal





| Key Worker Housing Project - Stage 1 - 5 lots - 15 Dwellings - Cash Flow Forecast | | | | | | | | | | | | | | | | | | | | | | |
|---|--------------------|-------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Development Cost | \$7,449,000 | | | | | | | | | | | | | | | | | | | | | |
| Less : Council Contribution (cash) | <u>\$1,842,000</u> | | | | | | | | | | | | | | | | | | | | | |
| (Principal and Interest) | <u>\$5,607,000</u> | | | | | | | | | | | | | | | | | | | | | |
| Loan Interest Rate | 5.20% | | | | | | | | | | | | | | | | | | | | | |
| Year Ending | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | Totals |
| Rental Growth Factor | 2.00% | | | | | | | | | | | | | | | | | | | | | |
| Rent | | 457,600 | 466,752 | 476,087 | 485,609 | 495,321 | 505,227 | 515,332 | 525,639 | 536,151 | 546,874 | 557,812 | 568,968 | 580,347 | 591,954 | 603,793 | 615,869 | 628,187 | 640,750 | 653,565 | 666,637 | 11,118,476 |
| Loan Payments | | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 457,600 | 9,152,000 |
| Surplus / (Deficit) | | 0 | 9,152 | 18,487 | 28,009 | 37,721 | 47,627 | 57,732 | 68,039 | 78,551 | 89,274 | 100,212 | 111,368 | 122,747 | 134,354 | 146,193 | 158,269 | 170,587 | 183,150 | 195,965 | 209,037 | 1,966,476 |
| Capital Growth Factor | 2.00% | | | | | | | | | | | | | | | | | | | | | |
| Capital Value Growth | \$11,750,000 | 11,985,000 | 12,224,700 | 12,469,194 | 12,718,578 | 12,972,949 | 13,232,408 | 13,497,057 | 13,766,998 | 14,042,338 | 14,323,184 | 14,609,648 | 14,901,841 | 15,199,878 | 15,503,875 | 15,813,953 | 16,130,232 | 16,452,837 | 16,781,893 | 17,117,531 | 17,459,882 | |
| | | | | | | | | | | | | | | | | | | | | | | |
| Forecast Cash Surplus | | Amount (\$) | | | | | | | | | | | | | | | | | | | | |
| Total Rental Received | | 11,118,476 | | | | | | | | | | | | | | | | | | | | |
| Less: Total Loan Reayments | | 9,152,000 | | | | | | | | | | | | | | | | | | | | |
| Cash Surplus after 20 years | | 1,966,476 | | | | | | | | | | | | | | | | | | | | |
| Total Return to Council (Asset Value plus Cash Surplus) | | | | | | | | | | | | | | | | | | | | | | |
| Estimated Capital Value on Completion of Construction | | 11,750,000 | | | | | | | | | | | | | | | | | | | | |
| Capital Value Growth Rate over 20 years @ | | 2.00% p.a. | | | | | | | | | | | | | | | | | | | | |
| Forecast Capital Value (20 years @ 2% p.a.) | | 17,460,000 | | | | | | | | | | | | | | | | | | | | |
| Add Surplus Cash Received | | 1,966,476 | | | | | | | | | | | | | | | | | | | | |
| Total Return to Council (if dwellings are sold after 20 years) | | 19,426,476 | | | | | | | | | | | | | | | | | | | | |
| Council Equity Contribution | | | | | | | | | | | | | | | | | | | | | | |
| Equity / Cash invested | | 1,842,000 | | | | | | | | | | | | | | | | | | | | |
| Land - 5 lots @ \$450,000/lot (excl. GST) | | 2,250,000 | | | | | | | | | | | | | | | | | | | | |
| Total Equity / Funds / Assets Applied) | | 4,092,000 | | | | | | | | | | | | | | | | | | | | |
| Return on Concil Equity Contribution | | | | | | | | | | | | | | | | | | | | | | |
| Total Return to Council (if dwellings are sold after 20 years) | | 19,426,476 | | | | | | | | | | | | | | | | | | | | |
| Less: Initial Council Equity Contribution | | 4,092,000 | | | | | | | | | | | | | | | | | | | | |
| Net Return to Council | | 15,334,476 | | | | | | | | | | | | | | | | | | | | |
| ROI (Total return to Council divided by Equity Contribution | | 375% | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | |

| Key Worker Housing Project - Stage 1, 2 and 3 - 12 lots - 38 dwellings - Cash Flow Forecast | | | | | | | | | | | | | | | | | | | | | | |
|---|--------------|------------|------------|-------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|
| Development Cost | \$18,245,000 | | | | | | | | | | | | | | | | | | | | | |
| Less : Council Contribution (cash) | \$4,582,000 | | | | | | | | | | | | | | | | | | | | | |
| (Principal and Interest) | \$13,663,000 | | | | | | | | | | | | | | | | | | | | | |
| Loan Interest Rate | 5.20% | | | | | | | | | | | | | | | | | | | | | |
| Year Ending | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | Totals |
| Rental Growth Factor | 2.00% | | | | | | | | | | | | | | | | | | | | | |
| Rent | | 1,115,000 | 1,137,300 | 1,160,046 | 1,183,247 | 1,206,912 | 1,231,050 | 1,255,671 | 1,280,785 | 1,306,400 | 1,332,528 | 1,359,179 | 1,386,362 | 1,414,090 | 1,442,371 | 1,471,219 | 1,500,643 | 1,530,656 | 1,561,269 | 1,592,495 | 1,624,344 | 27,091,567 |
| Loan Payments | | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 1,115,000 | 22,300,000 |
| Surplus / (Deficit) | | 0 | 22,300 | 45,046 | 68,247 | 91,912 | 116,050 | 140,671 | 165,785 | 191,400 | 217,528 | 244,179 | 271,362 | 299,090 | 327,371 | 356,219 | 385,643 | 415,656 | 446,269 | 477,495 | 509,344 | 4,791,567 |
| Capital Growth Factor | 2.00% | | | | | | | | | | | | | | | | | | | | | |
| Capital Value Growth | \$29,050,000 | 29,631,000 | 30,223,620 | 30,828,092 | 31,444,654 | 32,073,547 | 32,715,018 | 33,369,319 | 34,036,705 | 34,717,439 | 35,411,788 | 36,120,024 | 36,842,424 | 37,579,273 | 38,330,858 | 39,097,475 | 39,879,425 | 40,677,013 | 41,490,553 | 42,320,365 | 43,166,772 | |
| | | | | | | | | | | | | | | | | | | | | | | |
| Forecast Cash Surplus | | | | Amount (\$) | | | | | | | | | | | | | | | | | | |
| Total Rental Received | | | | 27,091,567 | | | | | | | | | | | | | | | | | | |
| Less: Total Loan Reayments | | | | 22,300,000 | | | | | | | | | | | | | | | | | | |
| Cash Surplus after 20 years | | | | 4,791,567 | | | | | | | | | | | | | | | | | | |
| Total Return to Council (Asset Value plus Cash Surplus) | | | | | | | | | | | | | | | | | | | | | | |
| Estimated Capital Value on Completion of Construction | | | | 29,050,000 | | | | | | | | | | | | | | | | | | |
| Capital Value Growth Rate over 20 years @ 2.00% p.a. | | | | | | | | | | | | | | | | | | | | | | |
| Forecast Capital Value (20 years @ 2% p.a.) | | | | 43,166,772 | | | | | | | | | | | | | | | | | | |
| Add Surplus Cash Received | | | | 4,791,567 | | | | | | | | | | | | | | | | | | |
| Total Return to Council (if dwellings are sold after 20 years) | | | | 47,958,339 | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | |
| Council Equity Contribution | | | | | | | | | | | | | | | | | | | | | | |
| Equity / Cash invested | | | | 4,582,000 | | | | | | | | | | | | | | | | | | |
| Land - 12 lots @ \$450,000/lot (excl. GST) | | | | 5,400,000 | | | | | | | | | | | | | | | | | | |
| Total Equity / Funds / Assets Applied) | | | | 9,982,000 | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | |
| Return on Concil Equity Contribution | | | | | | | | | | | | | | | | | | | | | | |
| Total Return to Council (if dwellings are sold after 20 years) | | | | 47,958,339 | | | | | | | | | | | | | | | | | | |
| Less: Initial Council Equity Contribution | | | | 9,982,000 | | | | | | | | | | | | | | | | | | |
| Net Return to Council | | | | 37,976,339 | | | | | | | | | | | | | | | | | | |
| ROI (Total return to Council divided by Equity Contribution | | | | 380% | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | |

5.7 Land Acquisition - Opportunity

5.7 Land Acquisition - Opportunity

Section Commercial Services

Objective To provide an overview of the confidential report, included as the last report in this agenda, relating to a potential land acquisition.

Background

One of the functions of the Commercial Services Section is to identify opportunities for potential land purchases that might either Council's community infrastructure delivery or provide opportunities for future commercial developments.

Council operates on a very long-term horizon, with purchases today potentially providing opportunities in the decades to come.

One such opportunity has been identified and a confidential report has been prepared as per the last report in this agenda.

Key Issues

- Land acquisition opportunities
- Strategic planning

Community Engagement Strategy

Not applicable as this matter is being treated as confidential.

Financial / Risk Considerations

These issues are dealt with in the confidential report.

Options

This report has been prepared for information purposes only.

RECOMMENDATION

That Council notes the contents of this report, which provides the background to the Land Acquisition – Opportunity report, which is included as a confidential report in this agenda.

Attachment(s)

Nil

6. Confidential Session

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

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

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

6.1 Land Acquisition - Opportunity

Refer to Item 5.7 of this agenda.

RECOMMENDATION

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

6.1 Land Acquisition - Opportunity

Reason for Confidentiality

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

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as it may compromise negotiations.