

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2017NTH024
<b>DA Number</b>	2017/509
<b>LGA</b>	Ballina Shire
<b>Proposed Development</b>	Alterations and Additions to Lennox Head Public School including the demolition of a number of demountable buildings and construction of new classrooms and amenities including administration building, two storey homebase building (exceeding the 8.5 metre building height standard), canteen, covered outdoor learning area, basketball court, landscaping and associated works
<b>Street Address</b>	Lot 1 DP 603799 & Lot 1 DP 435547  No. 25 Byron Street, Lennox Head
<b>Applicant/Owner</b>	Conrad Gargett (on behalf of the NSW Department of Education)
<b>Date of DA lodgement</b>	13 September 2017
<b>Number of Submissions</b>	Three
<b>Recommendation</b>	Approval with conditions
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	Clause 5 - Crown development that has a capital investment value of more than \$5 million.
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Ballina Local Environmental Plan 2012</li> <li>• Ballina Development Control Plan 2012</li> <li>• State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 71 – Coastal Protection</li> <li>• Draft Coastal Management State Environmental Planning Policy</li> <li>• Regulation clauses 92 and 94</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment 1 - Architectural Plans</li> <li>• Attachment 2 - Clause 4.6 Request for Exception to Development Standard</li> <li>• Attachment 3 - Assessment of Design Quality Principles</li> <li>• Attachment 4 - Shadow Diagrams</li> <li>• Attachment 5 - Public Submissions</li> </ul>

	<ul style="list-style-type: none"> <li>Attachment 6 - Draft Conditions of Consent</li> </ul>
<b>Report prepared by</b>	Peter Drew
<b>Report date</b>	March 2018

### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## **EXECUTIVE SUMMARY**

Development consent is sought for alterations and additions to Lennox Head Public School.

The application was placed on public exhibition in accordance with the requirements of Chapter 1 of the Ballina DCP 2012. Three submissions were received in relation to the application. The matters raised in these submissions have been considered in the body of this report, and where appropriate, have been addressed by way of condition.

The application has been lodged on behalf of the Crown. The applicant has approved the recommended conditions of consent (refer to attachments 6), pursuant to Section 89 of the Environmental Planning and Assessment Act 1979 NSW (EP&A Act).

All relevant matters under Section 79C of the EP&A Act have been considered in the assessment of the application. The proposed variation to the development standard relating to the maximum height of a building on the site is considered to be well founded, and is therefore supported in this instance.

The proposed development will provide a significant upgrade to the existing educational facilities which will benefit the local community. The proposed development is considered to be suitable for the site, and it is therefore recommended that Development Application 2017/509 be approved, subject to the attached conditions.

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## **Introduction**

Development Application 2017/509 was lodged with Council on 13 September 2017.

An assessment of the development application has now been completed and the application is presented to the Joint Regional Planning Panel for determination.

## **Details of Proposal**

Development Application 2017/509 seeks consent for alterations and additions to the Lennox Head Public School. The proposal comprises the following works, all of which are confined to Lot 1 DP 435547 (ie the northern portion of the site):

- Construction of a new two-storey administration building
- Construction of a two-storey 'homebase block'
- Construction of canteen and Covered Outdoor Learning Area (COLA)
- Relocation of the basketball court
- Refurbishment of the computer room
- Demolition of building A, building B, building H, covered walkway and shade structure
- Removal of seven demountable classrooms (since removed) and canteen demountable building
- The provision of associated servicing and landscaping.

Refer to proposed architectural plans (Attachment 1)

The applicant has advised that the development will not result in an increase in student or staff numbers.

## **Description of Subject Site**

The subject site comprises Lot 1 DP 603799 & Lot 1 DP 435547, and is known as no. 25 Byron Street, Lennox Head. The site is relatively flat and has a total area of 2.57 hectares.

Existing school buildings are contained wholly within Lot 1 DP 435547.

The development site is bound by Byron Street to the north, residential properties to the north-east, south and west, and community facilities/public reserve to the south-east, as depicted below in Figure 1.



**Figure 1 – Aerial Photograph of Subject Site**

### **Matters for Consideration**

The proposed development has been assessed under the heads of consideration in Section 79C of the EP&A Act. The assessment has identified the following key issues which are elaborated upon for the Panel's consideration.

### **Section 79C(1)(a)(i) provisions of any environmental planning instrument**

#### **State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)**

Clause 7(1) of SEPP 55 states that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

Council has in its assessment considered whether there is a possibility that a previous land use has caused contamination of the site, as well as the potential risk to health or the environment. To this end an initial assessment has been undertaken in accordance with the requirements of '*Managing Land Contamination – Planning Guidelines SEPP 55 – Remediation of Land*' (DUAP, 1998). The initial assessment considered that:

- there are no previous investigations about contamination of this land,
- Council records do not show a past history of any contaminating land uses,
- the site's zoning has not suggested possible contaminating land uses,
- the current land use is not a known contaminating land use,
- the site has never been regulated in relation to land contamination,
- the land has not been the subject of restriction in relation to land contamination, and
- there is no information held that there is any nearby contamination which may impact on the subject property.

Council has considered that the site has been used continuously as a school since 1882 and no change in use is currently proposed. Therefore, based on all the information available for the initial investigation it can be concluded that there is no indication that the land might be contaminated and no further investigation is warranted at this time. The development application satisfies the requirements of SEPP 55.

#### **State Environmental Planning Policy (Educational Establishments and Child Care Facilities)**

Clause 35(1) of the SEPP stipulates that development for the purpose of a school is permitted within R3 Medium Density Residential zone with development consent.

Clause 35(6) requires the consent authority to take into consideration

*(a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 4.*

The application was accompanied by a detailed design statement which adequately addresses the seven design principles set out in Schedule 4 (refer to Attachment 3).

*(b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.*

The applicant has advised that the school currently provides for shared use of facilities with the community (in particular the school hall). The proposed development will not restrict this from occurring in the future.

### **Clause 57- Traffic-generating development**

Clause 57 applies to development for the purpose of an educational establishment that will result in the educational establishment being able to accommodate 50 or more additional students, and that involves an enlargement or extension of existing premises, or new premises, on a site that has direct vehicular or pedestrian access to any road. It requires that written notice of the application be made to the Roads and Maritime Services (RMS) and consideration be given to the matters referred to in subclause (3), including:

- (a) any submission that RMS provides, and
- (b) the accessibility of the site concerned, including:
  - (i) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and
  - (ii) the potential to minimise the need for travel by car, and
- (c) any potential traffic safety, road congestion or parking implications of the development.

It should be noted that the proposal does not seek consent to increase the number of students at the school. However, the development does involve a significant increase in floor area which, if approved, will be able to accommodate 50 or more additional students. As a consequence, the application was referred to the RMS pursuant to Clause 57(3). In correspondence dated 5 December 2017, the RMS provided the following advice:

*The development application proposes no changes to existing student or staff numbers; no changes to existing car parking, drop-off, pick-up and servicing area; and no changes to existing facilities for pedestrians, cyclists and public transport. The development application should identify the existing number of students and staff to inform any determination.*

Council's Civil Services Group has advised that there has been no significant traffic hazards identified as a result of the assessment, with congestion at peak times appearing to be at an acceptable level. In assessing the accessibility of the site for the proposed development, it is considered that the existing site is adequate from a traffic safety and road congestion perspective. The location of the school, being within the Lennox Head village, promotes travel by means other than cars (ie walking, cycling, or via the bus).

The Department of Education provided the following predicted enrolment numbers:

- Enrolments for 2017 – 392 students and 24 staff
- Anticipated enrolments for 2018 – 420 students and 26 staff
- Department of Education forecast numbers post development – 368 students and 16 staff.

Having regard for the advice from Council's Civil Services Group, the Department's information on predicted student numbers and the principles outlined in Planning Circular PS 17-004 (20 September 2017), it is not considered necessary in this instance to impose conditions to restrict future student numbers at educational establishment.

### **State Environmental Planning Policy No. 71 - Coastal Protection**

The subject site falls within the Coastal Zone which is defined on maps issued by the NSW Department of Planning & Environment. The provisions of State Environmental Planning Policy No 71 - Coastal Protection (SEPP 71) require the consent authority to consider the Aims of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP (and other relevant clauses) when determining an application within the Coastal Zone.

The type, location and design of the development and its relationship with the surrounding area, is considered to be suitable. The site is removed from the coastal foreshore and therefore will not have any impacts on the coastal environment.

#### *Clause 8 Matters for Consideration*

(a) the aims of this Policy:

(1) *This Policy aims:*

- (a) *to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*
- (b) *to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (c) *to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*
- (d) *to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*
- (e) *to ensure that the visual amenity of the coast is protected, and*
- (f) *to protect and preserve beach environments and beach amenity, and*
- (g) *to protect and preserve native coastal vegetation, and*
- (h) *to protect and preserve the marine environment of New South Wales, and*
- (i) *to protect and preserve rock platforms, and*
- (j) *to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and*



- (k) *to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (l) *to encourage a strategic approach to coastal management.*

The proposal is considered to be consistent with the aims of SEPP 71.

*(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*

The proposed development will not impact upon public access to and along the coastal foreshore. Improvements to existing public access are not warranted in this instance.

*(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

The provision of new public access to and along the coastal foreshore is not warranted in this instance.

*(d) the suitability of development given its type, location and design and its relationship with the surrounding area,*

The proposed development, being an upgrade to the existing school, is considered to be suitable for the subject site and surrounding environment.

*(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*

The proposed development will not have any detrimental impact on the amenity of the coastal foreshore or result in significant loss of view from a public place to the foreshore.

*(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

The proposed development will not have an unreasonable impact on the scenic qualities of the coast.

*(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

The Threatened Species Conservation Act 1995 was recently repealed. Notwithstanding this, the proposed development is not considered to result in unreasonable impacts on any animals or plants within meaning of the Biodiversity Conservation Act 2016 or their habitats.

*(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats,*

Subject to compliance with the recommended conditions, the proposed development will not impact on *fish (within the meaning of Part 7A of the Fisheries Management Act 1994)* and marine vegetation (within the meaning of that Part), and their habitats.

*(i) existing wildlife corridors and the impact of development on these corridors,*

The development site is not identified as containing a Wildlife Corridor on Council's Wildlife Corridor Map, as referred to in the Ballina DCP 2012, Chapter 2, Section 3.3.

*(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

The development is unlikely to impact on coastal processes and coastal hazards and will not be unreasonably affected by such processes and hazards.

*(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,*

The proposed development will not directly conflict with water-based coastal activities.

*(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

AHIMS 04-5-0009 and the Aboriginal objects identified on the site will be potentially harmed by the proposed development. An Aboriginal Heritage Impact Permit (AHIP) will therefore be required from the NSW Office of Environment and Heritage pursuant to the NSW National Parks and Wildlife Act 1974, prior to the commencement of works. Refer to additional commentary further in this report (Cultural Heritage).

*(m) likely impacts of development on the water quality of coastal waterbodies,*

The proposed stormwater management strategy will comply with the Water Sensitive Design requirements of Council's Development Control Plan Chapter 2 – Section 3.9 - Stormwater Management and therefore will therefore not result in unreasonable impacts on the water quality of coastal waterbodies.

*(n) the conservation and preservation of items of heritage, archaeological or historic significance,*

Refer to additional commentary further in this report (Cultural Heritage).

*(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*

Not applicable.

*(p) only in cases in which a development application in relation to proposed development is determined:*

*(i) the cumulative impacts of the proposed development on the environment, and*

The proposed development is not expected to result in cumulative impacts on the environment.

*(ii) measures to ensure that water and energy usage by the proposed development is efficient.*

The development will be required to comply with Section J – Energy Efficiency of the Building Code of Australia. The design incorporates suitable water and energy efficiency measures (refer to Attachment 3 - Assessment of Design Quality Principles).

#### *14 Public access*

*A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.*

The proposed development will not impede or diminish public access to or along the coastal foreshore.

#### *16 Stormwater*

*The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.*

The application has been accompanied by a stormwater drainage plan and will comply with the Water Sensitive Design requirements of Council's Development Control Plan Chapter 2 – Section 3.9 - Stormwater Management.

The proposed development is considered to be consistent with the aims and objectives of SEPP 71 and the matters for consideration set out in Clause 8 of the plan.

## **Ballina Local Environmental Plan 2012 (BLEP 2012)**

### **Aims of BLEP 2012 (Clause 1.2)**

The proposed development is generally consistent with broad aims of the BLEP 2012.

### **Zoning & Permissibility (Clause 2.3)**

The site is zoned R3 – Medium Density Residential under BLEP 2012. Development for the purposes of an 'Educational Establishment' is permissible within the R3 zone.

### **Zone Objectives (Clause 2.3)**

The objectives of the R3 – Medium Density Residential zone are:

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

The proposed development has regard for and is generally consistent with the objectives of the R3 zone. The upgrade to the school will improve the provision of educational facilities and services, which will assist with meeting the day to day needs of the local residents, and is designed to be compatible with the character and amenity of the surrounding neighbourhood. The proposal achieves the efficient use of resources such as energy and water (as described in the applicant's Assessment of Education SEPP Design Quality Principles – refer to Attachment 3).

### **Height of Buildings (Clause 4.3)**

The maximum height control for the subject site, as shown on The Height of Buildings Map, is 8.5 metres. The proposed Homebase building has a maximum height of 9.04 metres and therefore does not comply with this development standard. The extent of variation is up to 540mm (which equates to a variation of approximately 6%). The area of non-compliance with the maximum height control occurs over approximately 320m<sup>2</sup> of the roof area, as shown below (in red hatching) in Figure 1. The applicant has submitted a request for an exception to the maximum height control (development standard) pursuant to clause 4.6 of the BLEP.

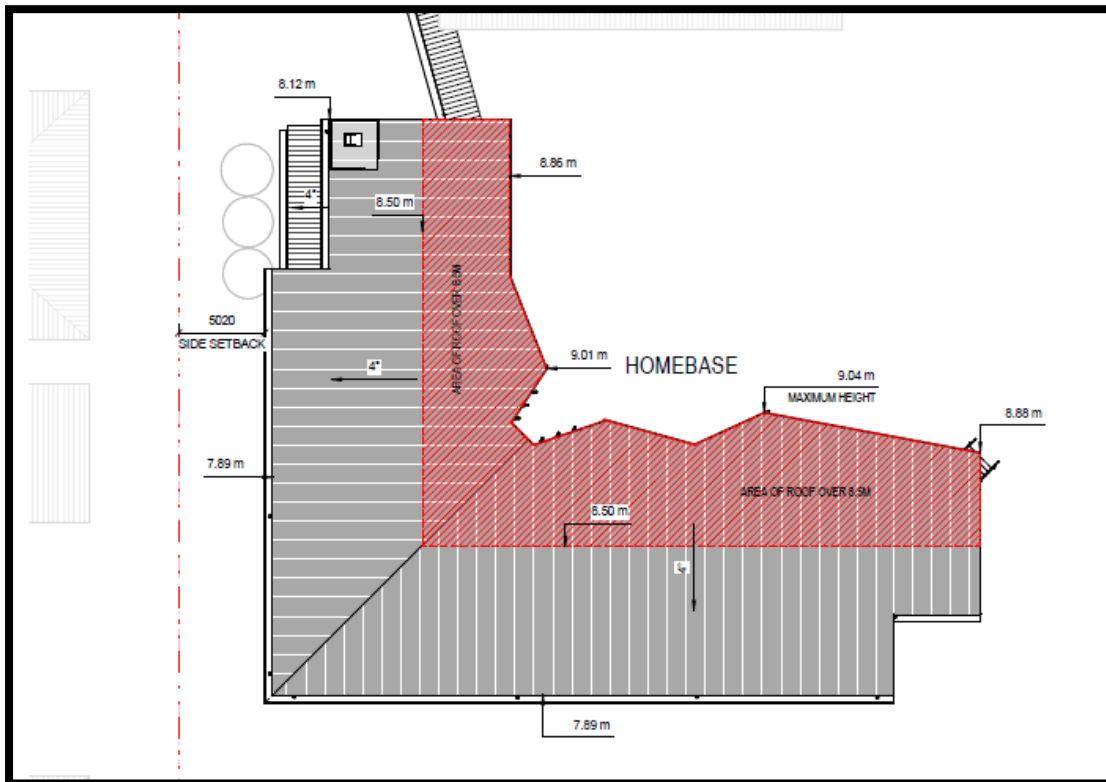


Figure 2 – Extent of Variation to Height Control (shown in red hatching)

### Exceptions to Development Standards (Clause 4.6)

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The development application was accompanied by a written request that addresses the above matters (refer to Attachment 2). The applicant's justification for the departure from the development standard is summarised as follows:

- The proposed roofline of the structure provides a low roof pitch which adds to the architectural interest of the proposed building.
- The Department of Education require higher than normal ceiling heights within classrooms, which raise the height of the structure.
- The building will not significantly overshadow residential development
- There are no adverse impacts of the proposal on the school, streetscape or amenity of the area.

- The proposed variation is minor and was consistent with the SEPP controls for complying development.
- The height will reduce the hard stand footprint of the building on the site which will allow more open space for the students.
- Will future proof the school by providing additional classroom space.
- The architectural design adds to the streetscape and amenity of the school and neighbourhood.
- The proposal is important to the community by expanding an essential piece of public infrastructure.

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

The extent of variation is relatively minor and occurs approximately 14 metres from the western boundary. Accordingly, the non-compliant portion of the roof will not have unreasonable impacts, in terms of overshadowing of neighbouring properties, add excessive bulk to the proposed Homebase building, or impact upon views from any public places. The proposal therefore achieves the objectives of Clause 4.3 of the BLEP 2012 and the broader objectives of the R3 Medium Density zone and approval of the application is considered to be in the public interest. Accordingly, it is deemed unreasonable and unnecessary to require strict compliance with the standard, in this instance.

The concurrence of the Secretary may be assumed pursuant to Planning Circular PS 08-003 (issued 9 May 2008).

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

In assuming the concurrence of the Secretary it is considered that the contravention of the development standard raises no issues of State or regional planning significance, and there is no benefit, in this instance, in maintaining the development standard.

### **Development within the Coastal Zone (Clause 5.5)**

Clause 5.5(2) states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
  - (i) *maintaining existing public access and, where possible, improving that access, and*
  - (ii) *identifying opportunities for new public access, and*
- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
  - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
  - (ii) *the location, and*
  - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*
- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
  - (i) *any significant overshadowing of the coastal foreshore, and*
  - (ii) *any loss of views from a public place to the coastal foreshore, and*
- (d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*
- (e) *how biodiversity and ecosystems, including:*
  - (i) *native coastal vegetation and existing wildlife corridors, and*
  - (ii) *rock platforms, and*
  - (iii) *water quality of coastal waterbodies, and*
  - (iv) *native fauna and native flora, and their habitats, can be conserved, and*
- (f) *the cumulative impacts of the proposed development and other development on the coastal catchment.*

Clause 5.5(3) states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:

- (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*
- (b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

- (c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*
- (d) *the proposed development will not:*
  - (i) *be significantly affected by coastal hazards, or*
  - (ii) *have a significant impact on coastal hazards, or*
  - (iii) *increase the risk of coastal hazards in relation to any other land.*

Having regard for the location, size and design of the proposed development, and the matters contained in Clause 5.5 of BLEP 2012 (as well as those previously discussed in this report under SEPP 71) the proposal is considered to be suitable for the site and consistent with the objectives of Clause 5.5.

### **Heritage Conservation (Clause 5.10)**

Clause 5.10(2) of BLEP 2012 requires Development consent for the following:

- (a) *demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):*
  - (i) *a heritage item,*
  - (ii) *an Aboriginal object,*
  - (iii) *a building, work, relic or tree within a heritage conservation area,*
- (b) *altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*
- (c) *disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
- (d) *disturbing or excavating an Aboriginal place of heritage significance,*
- (e) *erecting a building on land:*
  - (i) *on which a heritage item is located or that is within a heritage conservation area, or*
  - (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*
- (f) *subdividing land:*
  - (i) *on which a heritage item is located or that is within a heritage conservation area, or*
  - (ii) *on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

Consent of the Joint Regional Planning Panel is sought to erect buildings on land on which Aboriginal objects are located. Refer to commentary further in this report (Cultural Heritage).



(8) *Aboriginal places of heritage significance*

*The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:*

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

The subject site is not considered an 'Aboriginal place of heritage significance' pursuant to Clause 5.10(8) (ie the land or general location is not identified in an Aboriginal heritage study adopted by Council).

**Acid Sulfate Soils (Clause 7.1)**

A Geotechnical and Acid Sulfate Soil Investigation, prepared by Bligh Tanner Consulting Engineers and dated June 2017, was submitted by the applicant to support the application. The site is mapped as Class 5 in the acid sulfate soil risk planning maps. This suggests that works that lower the water table below one metre in adjacent class 1, 2, 3 or 4 ASS land may disturb Acid Sulfate Soils. The proposed works are not likely to alter the water table. Despite this, the Acid Sulphate Soils assessment involved sampling at three borehole locations to a depth of two metres below ground level (one metre more than the proposed disturbance level). Twenty-four samples underwent a field screening test. Based on the results of the field test 12 samples were submitted to the laboratory for analysis. The results showed all samples were below the action criteria of actual and potential Acid Sulphate Soil, and therefore the risk of acid generation as a result of the proposed works is very low and an acid sulfate management plan is not required.

**Essential Services (Clause 7.7)**

The site is currently serviced by reticulated water and sewer, electricity, stormwater, vehicle access and telecommunication services. Accordingly, all essential services can be made available to the development.

**Section 79C(1)(a)(ii) the provisions of any proposed instrument**

**Draft Coastal Management State Environmental Planning Policy 2016**

The Draft SEPP was placed on public exhibition from 11 November 2016 to 20 January 2017 and is therefore a matter for consideration under Section 79C(1)(ii) of the Environmental Planning and Assessment Act 1979.

The draft Coastal Management SEPP seeks to consolidate and improve current coastal-related SEPPs and ensure that future coastal development is appropriate and sensitive to the coastal environment, and public access to beaches and foreshore areas are maintained. The SEPP will repeal SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection) upon gazettal.

The subject site is identified under the Draft SEPP as being on the Coastal Use Area Map. The following provisions are therefore relevant to the assessment of the application.

*Clause 15 - Development on land within the coastal use area*

*Development consent must not be granted to development on land that is wholly or partly within the coastal use area unless the consent authority:*

- (a) is satisfied that the proposed development:*
  - (i) if near a foreshore, beach, headland or rock platform—maintains or, where practicable, improves existing, safe public access to and along the foreshore, beach, headland or rock platform, and*
  - (ii) minimises overshadowing, wind funnelling and the loss of views from public places to foreshores, and*
  - (iii) will not adversely impact on the visual amenity and scenic qualities of the coast, including coastal headlands, and*
  - (iv) will not adversely impact on Aboriginal cultural heritage and places, and*
  - (v) will not adversely impact on use of the surf zone, and*
- (b) has taken into account the type and location of the proposed development, and the bulk, scale and size of the proposed development.*

The proposed development is consistent with the provisions contained in Clause 15. The site is not located in close proximity to a foreshore, beach, headland or rock platform and will therefore not have impacts on these areas. The proposed bulk, scale and size of the development is considered to be appropriate for the location. As indicated previously, it has been determined that the proposed development will potentially harm identified Open Camp Site and Midden (AHIMS 04-5-0009) and Aboriginal objects comprising a hand axe, one basalt flake, and one basalt broken flake. Refer to commentary further in this report (Cultural Heritage).

*Clause 16 - Development in coastal zone generally—development not to increase risk of coastal hazards*

- (1) Development consent must not be granted to development on land within the coastal zone (other than land to which clause 13 applies) unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

The proposed development is unlikely to cause increased risk of coastal hazards on the subject land or any other land.

The proposal is considered to be generally consistent with the aims and relevant provisions of the Draft Coastal Management SEPP 2016.

**Section 79C(1)(a)(iii) provisions of any development control plan**

Clause 35(9) of SEPP (Educational Establishments and Child Care Facilities) 2017 stipulates that a provision of a development control plan that specifies a requirement, standard or control is of no effect, in this instance, regardless of when the development control plan was made. Despite this, the proposal is considered to meet the objective and be consistent with the General and Environmental Considerations of the Ballina DCP 2012.

**Section 79C(1)(a)(iiia) provisions of any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F**

There is no planning agreement or draft planning agreement applying to this development or the subject site.

**Section 79C(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)**

**NSW Coastal Policy 1997 (Clause 92)**

The proposed development is generally consistent with the principles and relevant goals/strategies of the NSW Coastal Policy 1997. It should be noted that the principles contained in Table 3 of the Policy have been considered in the preparation of the BLEP 2012 and Ballina DCP 2012.

**Provisions of AS 2601-1991 in relation to demolition of structures (Clause 92)**

The development application involves the demolition of structures. A condition of consent has been recommended to ensure the works are undertaken in accordance with the provisions of AS 2601-2001.

**Consent authority may require buildings to be upgraded (Clause 94)**

Based on the information submitted with the application, Council's Building Surveyor has advised that the existing buildings have satisfactory fire safety measures in place and an upgrade under clause 94 of the Regulations is therefore not required.

**Section 79C(1)(a)(v) provisions of any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)**

No specific coastal zone management plan applies to the site.

**Section 79C(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

**Built Environment**

Having regard for the existing use of the site, character of the immediate area, relevant planning controls and potential impacts, the design of the development is considered to be appropriate for the site and locality.

**Natural Environment**

The proposed development is not expected to result in unreasonable impacts on the natural environment, provided all recommended conditions are adhered to.

**Cultural Heritage**

An AHIMS Search was undertaken for the development which identified that an aboriginal site was recorded in the vicinity of the subject site. As a consequence, Council requested that the applicant undertake a due diligence assessment in accordance with the NSW Office of Environment and Heritage Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales. An Aboriginal Archaeological Due Diligence Assessment prepared by VirtusHeritage (15 December 2017) was submitted to Council on 15 December 2017. The assessment confirmed that AHIMS 04-5-0009 (Open Camp Site and Midden – incorrectly registered on AHIMS site database) and Aboriginal objects identified during a site inspection (being a hand axe, one basalt flake, and one basalt broken flake) will be potentially harmed by proposed works.

The application (including the Aboriginal Archaeological Due Diligence Assessment) was referred to the OEH for their consideration. In correspondence dated 21 February 2018, the OEH advised the following:

The SEE bases its Aboriginal cultural heritage assessment on a search of the OEH Aboriginal Heritage Information Management System and the level of disturbance at the proposed development site. Clearly, this does not constitute an adequate Aboriginal cultural heritage assessment.

Under the *National Parks and Wildlife Act 1974* (NPW Act) all Aboriginal objects, including those that occur in a disturbed context, are protected in NSW. The NPW Act clearly establishes that Aboriginal objects and places are protected and may not be damaged, defaced or disturbed without appropriate authorisation. Importantly, approvals under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), do not absolve the proponent of their obligations under the NPW Act.

However, we understand that Virtus Heritage has recommended that further assessment to inform an application for an Aboriginal Heritage Impact Permit (AHIP) is required for this proposal.

The OEH advises the proposed AHIP application when it is finalised and lodged with us for review needs to demonstrate compliance with clauses 80C and 80D of the National Parks and Wildlife Regulation 2009. We note that this consultation process has already commenced and is currently being progressed.

The applicant will be required to obtain an Aboriginal Heritage Impact Permit (AHIP) from the OEH under the National Parks and Wildlife Act 1974 prior to the commencement of any works.

### **Social Impact**

The proposed development will provide improved facilities to the Lennox Head Public School which will be beneficial to the school and local community. In this regard, the development is expected to have a positive social impact.

### **Economic Impact**

No significant economic impacts are likely to arise from the proposed development. The proposed development is considered to achieve the orderly and economic use of the land. Due to the size and scale of the development, there is likely to be a reasonable economic benefit to the local community during the construction phase of the development.

### **Section 79C(1)(c) – The suitability of the site for the development**

It is considered that the site, which comprises an existing school, is suitable for the proposed development.

### **Section 79C (1)(d) Any submission made in accordance with this Act or the Regulations?**

The application was placed on public exhibition from 4 October 2017 to 19 October 2017 in accordance with Chapter 1 of the Ballina DCP 2012. A total of three submissions were received as a result of the exhibition period. The matters raised in these objections are summarised and addressed as follows:

1. *Consideration should be given to the provision of a specific on-site bus bay, set-down and pick-up for parents and staff parking, for reasons relating to the growing traffic volume/movements on Byron Street, current deficiencies in on-site parking numbers (forcing staff and parents to park within the street), and child safety.*

The proposal does not involve any changes to existing parking or traffic management at the site, as the applicant does not seek to increase the number of students or staff at the school. Furthermore, Council's Civil Services Group has not identified any significant traffic hazards during the assessment of the application.

2. *Impact of lighting and noise impacts on immediate neighbours to the west, including teachers, students, cleaners and air-conditioning overnight.*

The western and southern facades have been designed with angled solid blade walls and substantial articulation to assist in reducing noise transfer and light spill to the neighbouring dwellings. In addition, the use of insulation in external walls and internal materials (such as perforated plasterboard ceilings) will also help to assist the acoustic performance of the buildings.

The operation of air-conditioning and lights during the night and time in which classroom cleaning occurs is generally considered to be an operational/management issue for the school. Notwithstanding this, conditions have been recommended in relation to offensive noise from mechanical plant, and obtrusive effects of outdoor lighting.

3. *Proximity of buildings to neighbouring residents to the west.*

The proposed administration building is single-storey and has a side setback to the western boundary of between 3.1m (pump room) and 5.2m (main building). The larger Homebase building (both ground and first floor) has a side setback to the western boundary of approximately five metres. This is considered to be sufficient in this instance, having regard for the objectives of the R3 Medium Density zone, the design of the development and the expected level of impact on neighbouring properties (eg overshadowing and privacy).

4. *Loss of Privacy for neighbouring residents to the west.*

Upper level windows on the western and southern facades of the Homebase building are generally angled away from neighbouring properties and are shielded by angled solid blade walls to reduce overlooking. Additionally, a condition of consent has been recommended (and accepted by the applicant) which requires obscure glass, or similar, to be provided on the western windows of the Homebased building to a height of 1.5m. As a result, the proposed development is not expected to impact upon the level of privacy currently enjoyed by neighbouring residents.

5. *The development will block easterly winds for neighbouring residents to the west.*

The two-storey Homebase building will be located where the single-storey demountables were previously located. As shown in Figure 3 below, the new building will have a more compact building footprint and incorporates sufficient side setbacks to allow breeze and air flow from the easterly winds to reach neighbouring dwellings. The proposal is therefore considered to be acceptable in this regard.



6. *The proposed height of the buildings is inappropriate and will unreasonably overshadow neighbouring properties to the west of a morning.*

The application was accompanied by shadow diagrams which depict the shadows to be cast by the proposed development at 9am, 12pm and 3pm on 21 June (winter solstice) and 21 December (summer solstice). It is evident from this information that the proposed development will not unreasonably overshadow the neighbouring properties to the west, with each property maintaining a minimum of four hours sunlight to dwellings and rear courtyards.

The proposed variation to the maximum height control for the site will have negligible impacts on overshadowing.

7. *The orientation of the four upper level classrooms is inappropriate (ie facing west).*

The upper level windows along the western façade of the Homebase building are orientated to the south-west and shielded by blade walls. This will protect the building from the western sun, whilst still allowing adequate daylight and cross ventilation for upper level rooms.

## **Section 79C(1)(e) The public interest.**

### **North Coast Regional Plan 2036**

The proposed development generally achieves the goal of the North Coast Regional Plan 2036 through the provision of improved educational facilities for the Lennox Head and surrounding communities.

### **Public Interest**

The proposal has demonstrated general compliance with the applicable planning instruments (noting a minor variation to the maximum height control is sought) and the Ballina DCP 2012, and is considered to be suitable for the site. The facility will serve the interests of the community by providing new and additional educational facilities without unreasonably impacting upon amenity on neighbouring residents or the environment. The proposal is considered to be in the public interest.

### **Determination of Crown development applications**

Section 89 of the *Environmental Planning and Assessment Act 1979* stipulates that a consent authority must not:

- (a) *refuse its consent to a Crown development application, except with the approval of the Minister, or*
- (b) *impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister.*

The application is recommended for approval therefore Council has sought approval of the applicant, pursuant to Section 89 of the *Environmental Planning and Assessment Act 1979*, to impose the recommended conditions of consent to the Crown development (refer to attachment 6).

### **Conclusion**

The application has been assessed having regard to the relevant matters for consideration prescribed by Section 79C (1) of the *Environmental Planning and Assessment Act 1979*.

The proposed development is generally consistent with the provisions of the relevant environmental planning instruments and the Ballina DCP 2012. The request for an exception to the maximum height standard (as stipulated in Clause 4.3 of the BLEP 2012), in respect of portions of the proposed Homebase building, is considered to be well founded and is therefore supported in this instance.

The matters raised in the public submissions have been considering in the assessment of the application and, where possible, have been addressed by way of condition. The remaining concerns do not reasonably warrant refusal of the application.



The proposed upgrade to the Lennox Head Public School will provide a significant benefit to the community in terms of the provision of quality educational facilities and economic benefits during the construction phase of the development. The development achieves the orderly and economic development of the site, will have acceptable environmental impacts (subject to compliance with the recommended conditions) and is considered to be in the public interest.

### **Recommendation**

That Development Application 2017/509 for 'alterations and additions to Lennox Head Public School including the demolition of a number of demountable buildings and construction of new classrooms and amenities including administration building, two storey homebase building (exceeding the 8.5 metre building height standard), canteen, covered outdoor learning area, basketball court, landscaping and associated works' at Lot 1 DP 603799 and Lot 1 DP 435547, 25 Byron Street, Lennox Head be **APPROVED** subject to the conditions **attached**.