



## Notice of Ordinary Meeting

Notice is hereby given that an Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street, Ballina on **Thursday 22 November 2012 commencing at 9.00 am.**

### Business

1. Australian National Anthem
2. Acknowledgement of Country
3. Apologies
4. Confirmation of Minutes
5. Declarations of Interest and Reportable Political Donations
6. Deputations
7. Mayoral Minutes
8. Regulatory Services Group Reports
9. Strategic & Community Services Group Reports
10. General Manager's Group Reports
11. Civil Services Group Reports
12. Public Question Time
13. Notices of Motion
14. Advisory Committee Minutes
15. Reports from Councillors on Attendance on Council's behalf
16. Questions Without Notice
17. Confidential Session

Paul Hickey  
**General Manager**

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

### **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. 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.

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 5 minutes allocated for the deputation.

### **Public Question Time – Guidelines**

A public question time has been set aside during the Ordinary Meetings of the Council. Public Question Time is held at 12.45 pm but may be held earlier if the meeting does not extend to 12.45 pm.

The period for the public question time is set at a maximum of 15 minutes.

Questions are to be addressed to the Chairperson. The period is set aside for questions not statements.

Questions may be on any topic, not restricted to matters on the agenda for the subject meeting.

The Chairperson will manage the questions from the gallery to give each person with a question, a "turn". People with multiple questions will be able to ask just one before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, the multiple questions can then be invited and considered.

Recording of the questions will not be verbatim.

The standard rules of behaviour in the Chamber will apply.

Questions may be asked from the position in the public gallery.

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**1. Australian National Anthem**

The National Anthem will be performed by Jesse Matthews.

**2. Acknowledgement of Country**

In opening the meeting the Mayor provided an Acknowledgement of Country by reading the following statement on behalf of Council:

I would like to respectfully acknowledge past and present Bundjalung peoples who are the traditional custodians of the land on which this meeting takes place.

**3. Apologies**

Cr Keith Johnson has been granted leave of absence.

An apology was received from Cr Jeff Johnson.

**4. Confirmation of Minutes**

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 25 October 2012 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 25 October 2012.

**5. Declarations of Interest and Reportable Political Donations**

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

**8.1 DA 2012/274 - Alterations to the Ballina Fair Shopping Centre**

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**8. Regulatory Services Group Report**

**8.1 DA 2012/274 - Alterations to the Ballina Fair Shopping Centre**

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<b>Applicant</b>	Ardill Payne and Partners
<b>Property</b>	Lot 254 DP 755684 and Lot 443 DP 726497 84 Kerr Street Ballina
<b>Proposal</b>	Alterations and Additions to the Southern End of the Ballina Fair Shopping Centre including Demolition of Existing Pool and Gym Tenancy and Relocation of Mini Major Tenancy (Best & Less) into the Demolished Pool and Gym Space, Creation of a Mall and Retail Specialty Shops linking the Centre to the Cinemas and Construction of a New Loading Dock in the South-Western Corner of the site
<b>Effect of Planning Instrument</b>	The land is zoned 3 "Business Zone" under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

**Introduction**

Council is in receipt of a Development Application for alterations and additions to the southern end of the Ballina Fair Shopping Centre including demolition of existing pool and gym tenancy and relocation of mini major tenancy (Best & Less) into the demolished pool and gym space, creation of a mall and retail specialty shops linking the Centre to the cinemas and construction of a new loading dock in the south-western corner of the site.

The application is being reported to Council for determination due to the significant number of public submissions received raising objection to the loss of the Swim & Gym facility, and the impact that the loss of the facility will have on the Ballina Shire residents.

The key issue in relation to this application is the social impact of the proposed development with regard to the loss of the Ballina Swim & Gym facility and its subsequent conversion into retail space.

Refer to the attached site plan and elevation drawings that illustrate the proposed development.

The proposed development includes alterations and additions to the existing shopping centre comprising the following:

- Demolition of existing pool & gym tenancy which is currently accessed from the rear (south-western corner) of the shopping centre;

## 8.1 DA 2012/274 - Alterations to the Ballina Fair Shopping Centre

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- Relocate the existing mini major tenancy (Best & Less) into the demolished pool & gym space, and construct a new loading dock to replace the existing loading zone opposite the cinema entry;
- Relocate the Centre Management office to the end of the existing service passage;
- Internal reconfigurations to construct new specialty retail sites and mall circulation providing direct connection between the retail mall space and the existing cinema complex;
- Extension of the existing footpath and awning structure to provide covered customer access from the external dining area to the cinema complex;
- Additional shop-front glazing/awning to the southern building elevation to the east of the cinemas to provide activated frontage between food-court and cinemas; and
- Reconfigure several car parking spaces resulting in net loss of 3 on-site car parking spaces.

The shopping centre has an approved gross leasable floor area (GLFA) under the terms and conditions of DA 2011/554 of 17275m<sup>2</sup>. As a consequence of this proposal, the shopping centre will have a GLFA of 16876m<sup>2</sup>, being an overall reduction in GLFA of 399m<sup>2</sup>.

Wall panels, roof materials, building height, floor height and external colours and finishes are to match the existing building.

The existing operating hours for the centre are to be retained and will not change.

There are no proposed or consequential changes to any site landscaping.

### **Zoning History**

Development Application 1986/256 was submitted to Council on 5/1/87 seeking consent for the construction of a "regional shopping and leisure centre" on the subject land.

The land the subject of DA 1986/256 (being Portion 254 Parish of Ballina, corner Kerr and Fox Streets, Ballina) was at the time zoned Living Area 2(a) under Ballina LEP 1987 (BLEP).

### **Clause 33 of the BLEP**

Clause 33 of the BLEP was published in the NSW Government Gazette No. 38 on 27 February 1987 and provided as follows:

33 (1) *This clause applies to portion 254. Parish of Ballina. Corner of Kerr and Fox Street, Ballina.*

(2) *Notwithstanding the provisions of clause 9, the council may consent to the commercial development of land to which this clause applies if the development includes a major department store and integrated recreational facility.*

(3) *The Council may not consent to the commercial development of the land to which this clause applies without having regard to any representations made by the Department*

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*of Main Roads concerning vehicular access between the Pacific Highway and the land.*

On or about the 14 February 1997, Clause 33 of BLEP was repealed and the site was zoned "Zone No. 3 Business Zone" under the BLEP, which remains the present zoning of the site.

### **Development History**

Following the commencement of Clause 33, Council granted consent to DA 1986/256 in March 1987. Council subsequently granted consent on 7 July 1988 to DA 1988/190 for the construction of "a shopping centre and integrated leisure facilities including Fast Food outlets, a Twin Cinema, an Indoor Heated Pool, Recreational Community Facilities, Tavern and associated parking facilities." The shopping centre development proceeded under this development application.

### **Current Application**

DA 2012/274 seeks consent to demolish the existing pool and gymnasium and to relocate an existing mini major tenancy onto the cleared portion of the site. If approved, the development will result in the loss of the swimming pool and gymnasium facilities as approved on the site as part of the integrated recreational facility component of the originally approved development.

This loss of a component of the recreational facility is a core issue that Council must be aware of when considering this application. The recreational facility was an integral requirement of the use of the site under Clause 33 of the BLEP and is reflected in the consent granted for the shopping centre.

Council has received the following legal advice in relation to the current application:

1. Council is not bound by its prior determination of DA 1986/256 and DA 1988/190 or the prior zoning of the site.
2. The current use of the site for both commercial and recreational purposes, the integrated nature of the recreational uses and Council's intention to achieve this outcome via rezoning and the grant of development consent are matters to which Council may have regard in determining DA 2012/274 in accordance with Section 79C of *the Environmental Planning and Assessment Act 1979* (NSW).
3. The weight to be afforded to the considerations under Section 79C in determining DA 2012/274 is a matter for Council.

Further to this, Council should be mindful that the relevant term within the existing approval is "integrated leisure facility" which could also refer to the cinemas, coffee shops and specialty outlets along with the other community uses that the mall spaces are used for within the Centre, and not just the swimming pool and gymnasium.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The application was placed on public exhibition in accordance with Council's Public Notification Policy. During this exhibition period 100 submissions and a petition containing 2,375 signatures by way of objection were received.

At the request of Council, additional information was submitted by the applicant addressing the matters raised within the submissions regarding the social impact resulting from the loss of the Swim & Gym facility. The social impact assessment report will be separately addressed within the body of this report.

The main issues raised in the **petition** are outlined below:

- *The closure of the "Ballina Swim & Gym" facility, and the resultant loss of an all-weather 25 metre heated swimming pool, will have a negative impact upon the physical wellbeing and social amenity of residents within the Ballina Shire.*

### **Comment**

The closure of the heated swimming pool component of the Ballina Swim & Gym facility will have an impact upon the local community in that there is not another facility that offers an enclosed heated pool within Ballina.

There exists an enclosed heated swimming pool and gym facility at Lennox Head. This pool was approved for private swim classes and swim squad training only. Subsequently, via DA 2008/114, the facility was also approved to include the establishment of a gymnasium as an ancillary component of the swimming centre.

There are other enclosed and/or heated pool facilities for recreational use, learn to swim classes, and rehabilitation purposes within the Ballina Shire that are available for public use at a cost. However, as there are no directly comparable facilities within the town, the proposed demolition of the Swim & Gym facility will have a considerable impact on the local community

- *Council, when it originally considered the establishment of the Ballina Fair shopping complex on the subject land based its support on the premise that the complex was to include an integrated recreation facility.*

### **Comment**

In August 1986, the Council received an application to develop land on the north-western corner of Fox & Kerr Streets to allow the establishment of a "regional shopping and leisure centre".

The application was both a rezoning and development application as the subject land was not zoned for business purposes.

The proposal was controversial due to its proximity to adjoining residential development and local residents were concerned about the amenity of the area. In addition, local main street retailers were concerned about loss of business due to the fragmentation of the Town's Business Centre.

During the process of considering the dual rezoning/development application, a modification was made to the then newly developing Draft Shire Plan that allowed for the development to proceed.

This modification was in the form of an additional Clause being inserted in the Draft Shire Plan (Cl 33) as opposed to rezoning the land 'Business'.

Clause 33 was included in Ballina Local Environmental Plan No. 13 on 9 February 1987, amending the then planning instrument Interim Development Order No. 1- Municipality of Ballina.

The rezoning was in the form of the inclusion of a "notwithstanding" provision that contained words to the effect that; "...notwithstanding any other provision of Clause 9, the Council may consent to the commercial development of the land if the development includes a "major department store and integrated recreation facility".

During the Council's deliberations relating to supporting the rezoning of the land, it did not specifically require the establishment of a swimming pool and gymnasium facility, but rather a facility that would cater for the physical and or social needs of the community such as an indoor recreation space for the community or a social club or the like. The type of recreation facility was left up to the developers of the complex to determine to the satisfaction of the Council.

"Recreational facility" was at the time, and still is, a defined term that means "a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of a like character used for recreation and whether used for the purpose of gain or not, but does not include a place of assembly".

Development Application 1988/190 was subsequently approved on the 7 July 1988 for the "*construction of a shopping centre and integrated leisure facilities including Fast Food outlets, a twin Cinema, an indoor heated pool, Recreational facilities, Tavern and associated parking facilities*". As previously stated this consent is the consent that established the Ballina Fair shopping complex.

Clause 33 has since been repealed (14th February 1997) from the Plan, and the subject land is now zoned 'Business' under Ballina LEP 1987.

The new Ballina Draft LEP 2011 is currently with the Department of Planning & Infrastructure for Gazettal. With respect to the subject land, the Draft LEP 2011 is imminent & certain. It allocates conventional business zonings for the shops in this centre and adjoining centres.

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Given that the Council has specifically amended its plan (since the originally Gazetted version) to consolidate the locality of the 'Ballina Fair' centre as a regional shopping centre, the original "notwithstanding clause" has no direct force or effect.

The main issues raised in the **letters of objection** are outlined below:

- Noise and dust impacts from the construction of the extensions;

### **Comment**

*Council's Environmental Health Section has commented on this issue and has recommended the imposition of a number of conditions of consent to address these concerns.*

- Lack of trolley collection area at the southern end of the complex

### **Comment**

*The proposed development has been revised to include a trolley storage bay within the south western corner of the site adjacent to Fox Street*

- Lighting along the western boundary adjacent to the disabled parking area

### **Comment**

*Council's Environmental Health Section has commented on this issue and has recommended the imposition of a number of conditions of consent to address these concerns.*

- Dilapidated state of repair of the fence along the western boundary and the noise from the existing loading areas.

### **Comment**

*Council's Environmental Health Section has commented on this issue and has recommended that conditions of consent be imposed requiring the acoustic barriers along the western boundary be upgraded to minimise the noise impacts from the existing and proposed development from the adjoining residential properties.*

### **Report**

As mentioned previously, Council has received legal advice in relation to the proposed development indicating that Council is not bound by its prior rezoning of the site enabling the construction of a "major department store and integrated recreation facility" or its prior determination of DA 1986/256 and DA 1988/190, and that Council is required to give consideration to the matters outlined below under Section 79C of the *Environmental Planning & Assessment Act 1979*.

Among the matters that the Council can properly give weight to under this section are "the current use of the site for both commercial and recreational purposes, the integrated nature of the recreational uses and Council's intention to achieve this outcome via rezoning and the grant of development consent".

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The proposed development has been assessed under the heads of consideration in Section 79(C) of the Environmental Planning and Assessment Act 1979, with the following being particularly relevant in Council's determination of the Application

### ***79c (1) (a) (i) - the provisions of any environmental planning instrument***

#### **Ballina Local Environmental Plan 1987 (BLEP 1987)**

##### **Clause 9 – Zone objectives and development control table**

The subject land is zoned 3 - Business Zone under the provisions of the BLEP 1987.

The proposal to carry out alterations and additions to the southern end of the Ballina Fair Shopping Centre including "*Demolition of Existing Pool and Gym Tenancy and Relocation of the Mini Major Tenancy (Best & Less) into the Demolished Pool and Gym Space, Creation of a Mall and Retail Specialty Shops linking the Centre to the Cinemas and Construction of a New Loading Dock in the South-Western Corner of the site*", is permissible within the zone subject to Council approval.

Under the provisions of the BLEP 1987 & the adopted 1980 Model Provisions, the proposed development may be defined as:

"Commercial premises" means a building or place used as an office or for other business or commercial purposes, but does not include a building or place specifically defined for the purposes of this plan, or a building or place at which a land use so specifically defined is carried on; and

"shop" means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but does not include a building or place elsewhere specifically defined in this clause, a building or place used for a purpose elsewhere specifically defined in this clause.

The proposed development involves alterations and additions to the existing shopping centre (as mentioned above).

The objectives of Zone No. 3 - Business Zone are:

- A. *The primary objectives are -*
- (a) *to regulate the subdivision and the use of the land within the zone to maintain the status of the Ballina Central Business District as the retail, commercial and administrative centre of the Shire of Ballina;*
  - (b) *to allocate sufficient land for retail, commercial and administrative purposes within the Shire of Ballina and to regulate the subdivision and use of that land so that it is developed in accordance with a commercial hierarchy;*
  - (c) *to permit a wide range of uses within the zone that are associated with, ancillary to or supportive of the retail and service facilities within the zone, particularly tourist developments and industries referred to in Schedule 2; and*
  - (d) *to permit development where it is compatible with the commercial character of the zone and provides its residents*

*with appropriate leisure facilities to ensure a high level of residential amenity.*

- B. *The secondary objectives are -*
- (a) to ensure there is adequate provision for car parking facilities within the vicinity of the zone; and*
  - (b) to minimize conflicts between pedestrians and vehicular movement systems within the vicinity of the zone.*
- C. *The exception to these objectives is development of land within the zone for public works and services outside the parameters specified in the primary and secondary objectives.*

The proposed development is considered to be consistent with the Primary Objectives (a), (b) and (c) of the zone. With regard to Primary Objective (d) it is considered that the proposed alterations and additions involving the demolition of the existing Swim & Gym facility are not necessarily inconsistent with this specific objective as the proposed retail complex would continue to provide residents with substantial leisure facilities that would assist to ensure a continued high level of amenity (despite the loss of the Swim & Gym facility).

Whilst the term "leisure facilities" encompasses swimming pools and gymnasiums, it also extends to include cinema complexes, coffee shops, and to a lesser degree other retail stores. The cinemas, coffee shops, etc. are leisure facilities that, together, may be assessed as being sufficient to maintain a high degree of residential amenity for the residents of the Shire in the context of the Council's overall aims when it conditionally supported the rezoning of the site that allowed the Ballina Fair Centre to be built.

Neither the BLEP nor the Model Provisions provide definitions for "residential amenity", "recreational activities" or "leisure facilities", so the terms are to be understood by application of the ordinary dictionary meaning of the words used.

Whilst in relation to the loss of the gym facility, there are a number of privately run gyms within the town and the Shire that can service the needs of local residents there are currently only limited alternative facilities that would assist to off-set the loss of the indoor heated pool; particularly given the nature, size, and/or location of other centres.

This aspect of the application will be further addressed within the Social & Economic Impact assessment section of this report.

**Clause 17 – Limitation on building height**

Clause 17(2) states:

- (2) Except as provided by subclauses (2A), (4), a person shall not, on any land to which this plan applies, erect a building taller than 6.4 metres in height unless the council is satisfied that the building will not:*
- (a) adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy,*
  - (b) significantly obstruct views from adjacent buildings and public places,*
  - (c) have an adverse impact on the scenic or landscape quality of the locality, or*
  - (d) exceed 2 storeys.*

Clause 17 provides a general height reference level of 6.4m for buildings in Ballina Shire. The height of the proposed extensions is in the order of 8.6-9.1m which will match existing building height.

Having regard to Clause 17(2) matters, it is considered that the retention of the existing building heights in relation to the proposed extensions meets the exception provisions of this Clause and is satisfactory.

***Clause 36 – Development on land identified on Acid Sulfate Soils Maps***

The subject site is classified as Class 2 on the Acid Sulfate Soils Planning Maps. Under the provisions of Clause 36 of the BLEP, development consent is required for works below the ground surface and works by which the water table is likely to be lowered.

Council's Environmental Health Section has reviewed the proposal in relation to Acid Sulfate Soils (ASS) and has appropriately recommended the imposition of conditions of consent covering the potential disturbance of ASS during the demolition and removal of the swimming pool and associated infrastructure.

***Clause 37 – Controls for advertisements***

All future signage will be subject to other approvals (if required).

***EP & A Model Provisions 1980 – Relevant clauses***

Clauses 5(2) and 13 of the EP& A Model Provisions 1980 (as adopted in Clause 6 of the Ballina LEP) are relevant in the assessment of the proposal.

- Existing points of access from Fox Street and Kerr Street will be retained.
- An additional two bay loading dock (accessed from Fox Street) will be established at the rear of the cinema complex that will service the proposed mini/major (currently Best & Less) department store. The existing loading docks accessed via Fox Street are to remain the same size.
- The proposed development includes a traffic assessment of the changes in floor area for the entire site.

Council's Civil Services Group have assessed the traffic reports submitted with the proposal and have raised no objections to the development subject to the imposition of a number of conditions of consent.

***Clause 13 Off-street loading, facilities***

An additional two bay loading dock (accessed from Fox Street) will be established at the rear of the cinema complex that will service the proposed mini/major (currently Best & Less) department store (currently serviced by a loading bay adjacent to the entrance to the cinemas). The acoustic fencing adjacent to the western boundary fence is proposed to be upgraded to suitably attenuate the potential noise impacts upon the adjoining residents.

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The existing loading bays for the remainder of the complex are located at the rear of the existing building, accessed via Fox Street. No changes are proposed for these bays.

### **The North Coast REP**

Division 2 – Coastal Development  
Cl 32B – Coastal Lands & Cl 33 – Coastal Hazard Areas

Clause 32B Development Control – Coastal Lands.  
The proposed development is generally consistent with the NSW Coastal Policy, the Coastline Management Manual and the North Coast: Design Guidelines.

A detailed assessment is contained within the DA Assessment Report on the Development Application file.

***79c (1) (a) (ii) –the provisions of any proposed environmental planning instrument that has been publicly exhibited and has been notified to the council (unless the Director General has notified the council that the making of the proposed EPI has been deferred indefinitely or has not been approved)***

### **Draft Ballina Local Environmental Plan 2011 (DBLEP)**

Draft BLEP 2011 was publicly exhibited from 19 September 2011 to 19 October 2011 and is currently before the Minister. An exhibited draft LEP merits significant determining weight when considering a development application.

Under Draft BLEP 2011, the site will be zoned "B3 Commercial Core" which permits the construction of Commercial premises, including retail premises.

The subject land is identified on the Draft BLEP mapping as follows:

- Land Zoning Map – B3 – Commercial Core
- Lot Size Map – 10,000m<sup>2</sup>
- Height of Buildings Map – 8.5m maximum building height
- Building Height Allowance Map – Minimum fill – 1:100 year – 2.0m
- Acid Sulfate Soils Planning Map – Class 2
- Flood Planning Map – land within flood planning area

### **Aims of the Draft LEP (relevant to this application)**

In relation to 1.2 (2)(a) (i), (ii) & (iv) of the aims of the Draft BLEP 2011 it states the following:

*"Provide for a sustainable Ballina Shire that recognises and supports community and economic value through the establishment and maintenance of the following:*

- (i) a built environment that contributes to health and well-being;*
- (ii) a diverse and balanced land use; and*
- (iii) a healthy, resilient and adaptable community.*

It is considered that although there will be no other similar recreational facility within the Ballina township if the swimming pool and gymnasium were to be demolished, there are sufficient outdoor and indoor recreation facilities and associated activities within the Shire to enable the maintenance of a healthy, resilient and adaptable community. Also, the proposed alterations and additions are consistent with the proposed commercial zoning of the land and hence the proposed development is considered to be consistent with the aims of the Draft LEP 2011.

**Draft LEP Zone Objectives**

The objectives of the B3 Zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community;
- To encourage appropriate employment opportunities in accessible locations;
- To maximise public transport patronage and encourage walking and cycling;
- To maintain a distinct retail hierarchy as identified in Council's strategic planning framework;
- To enable residential and tourist development compatible with the commercial nature of activities in the zone;
- To ensure a safe and accessible built environment;
- To encourage development that recognises natural, cultural and built heritage; and
- To encourage development that achieves the efficient use of resources such as energy and water.

The proposed development is defined as "commercial premises" which for the purposes of the Draft Ballina LEP means any of the following:

- (a) business premises,*
- (b) office premises,*
- (c) retail premises."*

Each of these uses is expressly permitted with consent within the B3 Zone. The proposal involves alterations and additions to an existing lawfully established shopping centre/complex that are expressly consistent with the above zone objectives.

Clause 4.3 relates to height of buildings and provides that the height of any building is not to exceed the maximum height shown on the Height of Buildings Map (being 8.5m).

The proposed height of the extensions is consistent with the existing building, being approximately 8.6 – 9.1 metres.

Clause 4.6 provides exceptions for compliance with development standards (which includes height) and provides that Council may approve such departures upon a written request from an applicant where it is satisfied that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- that there are sufficient environmental planning grounds to justify contravening the development standard

The Draft LEP 2011 has not been gazetted and the requirements of the existing Ballina Shire LEP allow for a merit based assessment of the height reference levels. It is considered reasonable that the minor variation in the height limit be supported as the work will fit with the existing building design.

The proposal complies with all other relevant provisions of the Draft BLEP

**79C (1) (a) (iii) – any development control plan (DCP)**

**Ballina Shire Combined Development Control Plan – Chapter 1 – Urban Land**

**Part 3 – Control Plan Areas**

The subject land is designated C4 – Special Centre. The objectives of the control plan are as follows:

*“To recognise the establishment of an out-of-centre supermarket/discount department store complex on Ballina Island.”*

The preferred land uses are *“Supermarket/discount department store, speciality shops and leisure related commercial developments.”*

Whilst it is acknowledged that the term “leisure related commercial developments” would include the Ballina Swim & Gym facility, it could also include uses such as the cinema complex and cafes. The loss of the Swim & Gym facility does not in itself mean that the proposed development is inconsistent with the preferred land uses as identified within the DCP. The resultant uses remain consistent with the identified preferred uses.

The proposed development is consistent with the control plan area objectives and preferred land uses.

**Policy Statement No. 2 – Car Parking and Access**

This component of the Combined DCP relates to car parking and vehicular access requirements on urban land.

Council’s Civil Services Group have assessed the proposal and provide the following comments in relation to the carparking provided onsite in association with the proposed alterations and additions to the Ballina Fair Shopping centre:

**Parking Numbers**

Council’s parking requirements are outlined in the DCP at Chapter 1, Policy Statement No 2, Car Parking and Access

The following is a summary of the parking requirements:

<b>Car Parking Credit for Current Pool &amp; Gym Use</b>			
<b>Council Requirement</b>		<b>Proposed Gross Floor Areas</b>	<b>Required Number of Parking Spaces</b>
<b>Use</b>	<b>Rate</b>		
Pool	5 spaces per 100m <sup>2</sup> Pool Area	Pool Area = 150 m <sup>2</sup>	7.5
Gym	4.5 spaces per 100m <sup>2</sup> Gross Floor Area	573 m <sup>2</sup>	25.8
		<b>Total Existing Credit</b>	33.3

<b>On-site Car Parking Provision</b>			
Proposed Increase in Retail Stores	4.5 spaces per 100m <sup>2</sup> Gross Leaseable Floor Area	639 m <sup>2</sup>	28.7
Proposed Increase in Office	4.5 spaces per 100m <sup>2</sup> Gross Leaseable Floor Area	29 m <sup>2</sup>	1.3
		<b>Total Proposed Requirement</b>	30
		<b>Total Net</b>	3 spaces credit or <b>782</b> spaces for the total development

The proposal is acceptable as it meets the minimum car parking requirements of Council's DCP.

The building is a Class 6 use under the BCA and therefore requires disabled spaces to be provided at a rate of 1 space for every 50 spaces or part thereof. The revised car park layout under DA 2011/554 provided 16 disable spaces and therefore complies with the requirements of the BCA "Table D3.5 Car parking spaces for people with disabilities" based on the provision of a total of 782 spaces on site.

In regards to taxi services, the site's taxi zone was relocated to the southern end of the site adjacent to the cinemas in April 2008. The taxi zone appears to have worked effectively at this location. The application proposes to retain it in this location and realign it to suit the revised car park layout. The proposed design is acceptable.

**79C (1) (a) (iv) – any matters prescribed by the regulations**

The proposal complies with the provisions of the NSW Coastal Policy.

**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.**

**Context, Settings, Site Design and Internal Design**

The proposed development involves alterations and additions to the existing Ballina Fair shopping centre and is in keeping with the design of the existing buildings on the subject land.

The net decrease in the gross leasable floor area (GLFA) of the shopping centre is 399m<sup>2</sup>, as a result of the loss of the Swim & Gym facility. This will result in the shopping centre having a total GLFA of 16,876m<sup>2</sup>.

Wall panels, roof materials, building height, floor height and external colours and finishes are to match the existing building.

The existing operating hours for the centre are to be retained and will not change.

The proposed development principally involves internal changes to the layout of the retail space. The existing footprint of the shopping centre remains unchanged with the exception of an external loading dock being incorporated into the south-western corner of the site adjacent to the rear wall of the cinemas.

**Access, Transport and Traffic**

Vehicular access to the site will remain via the three existing access points, with both of the Fox Street accesses remaining unchanged.

Service and delivery vehicles will continue to access the site as current, which is primarily via the western Fox Street access. Swept paths for delivery vehicles for the amended car parking layout are satisfactory.

A total of 782 on-site car parking spaces are proposed which includes 16 disabled spaces.

Kerr and Fox Streets are constructed urban roads with bitumen sealed kerb and gutter and footpaths for the property frontage.

**Public Domain**

The proposed alterations and additions to the Ballina Fair shopping complex have created a significant amount of public interest during the exhibition period.

This public interest included a petition containing 2,375 signatures raising objection to the loss of the Swim & Gym facility, and in excess of 100 written and electronic submissions raising the same concerns in relation to the loss of the recreation facility.

Council received two submissions raising concerns with the noise impacts during the construction phase of the development.

The issues in relation to the loss of the Swim & Gym facility are not insignificant. Nevertheless, the proponents are entitled to make a commercial decision relating to the commercial leases. Council's role in this aspect is limited as business decisions (that comply with the statutory planning requirements) are not relevantly matters that can be used as determining factors in a decision to change a use of one commercial premise to another.

Council, when determining a development application must take into consideration all the relevant statutory requirements under the Environmental Planning & Assessment Act 1979 (as amended), in particular the Heads of Consideration under Section 79C of the Act. Section 79 (1)(b) of the Act specifically relates to the social and economic impact that a development proposal will have on the community.

Council when determining whether or not to approve a development application must decide whether there is a significant social impact as a result of the loss of the recreational facility and if so, the extent of determining weight that the Council can and should place upon this social impact when making its decision.

### **Social and Economic Impacts**

#### ***Social Impacts***

The proposed development enables the creation of additional retail space and improved connectivity between the Cinemas and the shopping centre.

The proposal complies with the relevant statutory provisions and Council requirements in relation to the relevant Development Control Plans.

These are not the only relevant issues that Council must take into account when determining the application.

Consideration must also be given to the extent of public objection relating to the loss of the Swim & Gym facility and the associated impacts that the loss of this recreation facility will have on the physical well being and residential amenity of Ballina Shire residents.

It could be argued that there is no such facility within the Ballina Township that offers a combination of gymnasium and indoor heated swimming pool that provides for the physical wellbeing and amenity that such an integrated facility of this type provides in the locality.

However, as stated previously within this report, residential amenity can also be gained from the other experiences offered within the shopping centre, whilst the physical wellbeing of residents can be catered for within other existing recreational facilities within the Ballina Township and the Shire as a whole.

Council, during the processing of the current application, requested the proponent to prepare a Social Impact Assessment of the proposed development that addressed the impact that the loss of the Swim & Gym Facility would have on the residents of the Shire.

The report concluded that there is provision of gym facilities within the Ballina local area and, whilst the Lennox Head indoor 25 metre heated indoor pool and gym facility is not as well located, it is privately run and has the capacity to accommodate some of the patrons that would have used the Ballina Swim & Gym facility. The indoor swimming pool facility is one of four swimming pool complexes available for use by the public, and there are two heated therapy pools available for public bookings/appointments.

***Economic Impacts***

The economic impacts are considered to be significant when taking into account the multiplier effect as a consequence of employment generation during the construction phase of the development and the enhanced opportunities for the building materials supply industry.

The proposed development will also result in ongoing employment as a result of the additional retail outlets.

Council has recently commissioned a retail strategy report addressing the availability and the demand for retail floor space within the Ballina CBD and the Ballina Fair & Ballina Central precincts.

A commercial land audit undertaken as part of this study indicates that the supply of zoned commercial land, available for development is approximately 21.4 hectares (in 2008), including an allowance for development of 50% of town centre commercial properties to two stories.

With respect to the anticipated future demand for commercial land, the audit estimates approximately 20.5 hectares of commercial land will be required between 2008 and 2028. This suggests that the supply of existing commercial zoned land is sufficient to accommodate the projected demand for the forthcoming planning period (to 2028), although supply may need to be augmented at some stage in the future to maintain an adequate buffer of commercial zoned land.

The assessment does not include the areas that have previously been identified as longer term potential industrial and commercial sites, nor does it include any allowance for additions to the existing large shopping centre areas on Kerr Street, Ballina.

The land audit suggests that sufficient supplies of commercial zoned land exist in Ballina Shire, with a land supply buffer (supply as % above the projected level of demand) at 25% as of 2008. This supply buffer is projected to decline to less than 1% by 2028. The maintenance of an adequate buffer of commercial land supply will be monitored and reviewed regularly through the periodic review of the Ballina Shire Growth Management Strategy.

It is considered that the minor alterations and additions to the Ballina Fair Shopping Centre, representing a decrease of approximately 4% in Gross Leasable Floor Area (due to the fact that the swimming pool & gym area are being removed and a majority of this space will be converted into mall area for access to the cinemas) will not significantly impact upon the existing retail operations and viability of the town.

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

The site attributes are conducive to the development and the proposal fits with the development of the locality.

**Conclusions**

As mentioned previously within this report, Council has received legal advice that it is not bound by its previous decision to rezone the land for the specific use of a *“major department store and integrated recreational facility”* nor its subsequent approval of the relevant development application. The repeal of Clause 33 and the current business zoning of the land require the Council to consider the application on its merits.

In this regard Council, when determining this application must be satisfied that all relevant heads of consideration under Section 79C of the Environmental Planning & Assessment Act 1979 have been addressed.

This report has provided assessment comments against all relevant heads of consideration and has provided an overview of all matters that are before Council for its deliberations.

It is considered that the proposal currently before Council can be favourably supported, in that it is a functional redesign of the southern sector of the Ballina Fair Shopping Centre that provides weather protection to patrons, enables internal connectivity between the shops and the cinema, and will ensure the commercial viability of the centre as a regional shopping complex.

Council has two options in relation to determining the subject application:

1. Approve development application 2012/274 subject to relevant planning, environmental and engineering conditions.

The rationale behind this option is that the proposed alterations and additions to the Ballina Fair shopping centre and change of use is largely a commercial decision that the operators of the centre have a right to make and subject to addressing relevant environmental planning provisions, would have a legitimate expectation of obtaining consent. The subsequent loss of the swimming pool will have an impact on the current users of this facility however, with regard to the residents of the Shire, it is considered that there are other indoor and outdoor recreation facilities available that will assist to maintain a healthy, resilient and adaptable community. There still remain substantial 'leisure facilities' within the centre and the proposed development is consistent with the commercial zoning of the land.

2. Refuse development application 2012/274.

The rationale behind this option is that the proposed development will result in the loss of an established recreation facility and will likely cause a negative impact upon the residents of Ballina as it does not provide them with appropriate leisure facilities to ensure a high level of residential amenity.

Option one is the preferred approach as per the contents of this report.

**RECOMMENDATIONS**

That development application 2012/274 for alterations and additions to the southern end of the Ballina Fair Shopping Centre (Stage 4B) including demolition of existing pool and gym tenancy, relocation of mini major tenancy into the demolished pool and gym space, the creation of a retail mall with access to the Cinemas and construction of a new loading dock in the south-western corner of the site upon Lot 254 DP 755684 & Lot 443 DP 726497, 84 – 100 Kerr Street Ballina be **APPROVED** subject to the imposition of appropriate planning, environmental and engineering conditions.

**Attachment(s)**

1. DA 2012/274 - Locality Plan
2. DA 2012/274 - Site Plans
3. DA 2012/274 - Roof Plans
4. DA 2012/274 - Site Elevation Plan
5. DA 2012/274 - Petition
6. DA 2012/274 - Submitter Letters

## 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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### 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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<b>Applicant</b>	Fishheads at Byron Pty Ltd
<b>Property</b>	Lot 1 DP 1095427 and Lease Area Part Lot 402 DP 755684, Shelly Beach Road, Ballina.
<b>Proposal</b>	To Undertake the Redevelopment of Shelly Beach Café with a New 120 Seat Café with upper storage level, Removal of Trees, Compensatory Regeneration & Landscaping
<b>Effect of Planning Instrument</b>	The land is zoned 7(f) – Environmental Protection (Coastal Lands) under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached.

#### Introduction

Council is in receipt of a development application for the redevelopment of the Shelly Beach Café, comprising the following:

- The demolition of the existing kiosk building and site levelling works;
- The relocation of 2 Pandanus Trees (Screw Pines) and possible relocation of a third Pandanus Tree;
- The removal of 11 littoral rainforest trees;
- The erection of a new replacement 120 seat café with upper storage level, kitchen and toilet facilities; and
- Compensatory regeneration and landscaping on adjoining land.

The building is proposed to be constructed of a mix of rendered painted masonry block and timber, with a colourbond roof in colours sympathetic to the surrounding beach environment. Glass sliding doors dominate the eastern elevation of the building.

Submitted plans show the proposed building varies in height due to a skillion roof. The height of the building on the southern end of the eastern elevation from ground level to top plate is 4.6m, and the northern end of the eastern elevation of the building has a height of 6.4m from ground level to top plate. The building is proposed to be constructed on the boundaries of the subject allotment.

The café will operate within the days and hours of operation approved in the original kiosk approval (DA 1992/215), being 7am to 10pm daily.

Refer to the **attached** plans that detail the proposed development.

The proposed building has a total floor area of 322m<sup>2</sup> comprising ground floor area of 292m<sup>2</sup>, and a first floor area of 30m<sup>2</sup>. The proposed building is sited on Lot 1 DP 1095427 (260m<sup>2</sup>) owned by Ballina Shire Council, and a lease area of 83m<sup>2</sup> comprising part Lot 402 DP 755684 owned by the Crown.

## **8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe**

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Submitted Plan DA08A (attachment 6 – existing site plan) provides a comparison between the existing site usage areas and the proposed building footprint. The proposed redevelopment will encompass the existing footprint of the building, and the outdoor dining areas.

As the proposed building is located partly on Crown Land, owner's consent from the Crown is required for the application. Council is currently in negotiations to acquire Part Lot 402 DP 755684, which Council currently leases from the Crown. Submitted plans show that the eaves of the proposed building encroach approximately 1.5 metres beyond the existing lease area and land to be acquired by Council from the Crown. The Department of Primary Industries – Catchments and Lands has advised that they will not be entering into any agreements or licenses for areas of encroachments onto the Crown Reserve.

In this regard, the Crown is withholding landowner's consent for the development application until this matter is resolved.

Aside from the issue of landowner's consent, there are a number of other issues requiring consideration in Council's determination of this application. This report is seeking the Council's determination of the applicable key assessment issues and its authority to issue a conditional consent to the application once the issue of landowner consent has been resolved.

The Development Application history for the site is as follows:

- DA 1992/215 – Kiosk (approved 22 September 1992).
- DA 1998/24 – All weather sails to replace shadecloth in existing refreshment room (approved 23 October 1997).
- DA 2005/612 – Alterations and Additions, including disabled toilet facilities (approved 13 April 2005). This application has not yet been commenced and expired on 13 April 2010.
- DA 2010/336 – Alterations and Additions, including new food preparation area and coolroom, toilet facilities, demolition of existing shade structures and new solid roof, glass sliding doors around existing eating areas (approved 31 May 2010). This application has not yet been commenced.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The proposed development was placed on exhibition in accordance with Council's policy for the period of 13 September 2012 to 29 September 2012. During this period, six submissions were received from surrounding landowners and residents.

The main grounds of objections can be summarised as follows:

- Proposed development not consistent with existing approved use of site
- Scale of the development
- Seating capacity

## 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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- Development overhanging Crown Land outside of proposed Lease Area and use of non-leased area of Crown Land
- Car Parking
- Nil Building Setbacks
- Sale of Alcohol from Premises
- Noise & Lighting
- Location of Advertising Signage on Building
- Use of Outdoor Lighting
- Waste Disposal – location of waste bins on property and also waste management from take away component of premises
- View Loss from Planting of Morton Bay Fig Tree in Regeneration Works & Roof Line of Building
- No Outdoor dining opportunities
- Water Dragons Environment
- Advertising Signage
- Conflicting information within Statement of Environmental Effects e.g. bar area within building

These issues are addressed below under the heading 'report'

### **Applicable Planning Instruments**

The proposed development has been assessed under the heads of consideration in Section 79(C) of the Environmental Planning and Assessment Act 1979, with the following being particularly relevant in Council's determination of the application.

#### *Ballina Local Environmental Plan 1987*

The proposed development is defined as a "refreshment room", in accordance with the Environmental Planning and Assessment Model Provisions 1980, adopted by the Ballina Local Environmental Plan 1987 (BLEP), being:

**"refreshment room** means a restaurant, café, tea room, eating house or the like."

The subject property is located within the 7(f) – Environmental Protection (Coastal Lands) Zone.

The objectives of the 7(f) – Environmental Protection (Coastal Lands) Zone are:

- A. *The primary objectives are:*
  - a. *To protect environmentally sensitive lands, and*
  - b. *To prevent development which would adversely affect or be adversely affected, in both the short and long term, by the coastal processes.*
- B. *The secondary objectives is to enable the development of public works and recreation amenities where such development does not have significant detrimental effect on the habitat, landscape or scenic quality of the locality.*
- C. *The exception to these objectives are:*

## 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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- a. *To permit the development of public works, outside the parameters outlined in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on the coastal lands being minimized, as much as is reasonably practical, and*
- b. *Development of surf life saving, environmental education facilities and like facilities.*

Refreshment rooms are permissible with development consent within the 7(f) zone in accordance with Clause 9 of the BLEP.

The proposed refreshment room is not expected to be affected by the coastal processes in the short or long term. Extensive revegetation works are proposed as part of the development. The proposed development is to be undertaken within the footprint of the existing building and outdoor dining areas, and will not have a significant detrimental impact on the habitat, landscape or scenic quality of the locality. It is therefore considered that the proposed development is consistent with the objectives of the 7(f) zone. The design of the building is compatible with its coastal setting.

Clause 17 of the BLEP is also applicable in the assessment of the proposal.

### *Clause 17. Limitation on building height*

- (1) *In this clause "height", in relation to a building the topmost floor of which has a ceiling, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.*
- (2) *Except as provided by subclauses 2(A) and (4), a person shall not, on any land to which this plan applies, erect a building taller than 6.4 metres in height unless the council is satisfied that the building will not –*
  - a) *Adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy;*
  - b) *Significantly obstruct views from adjacent buildings and public places;*
  - c) *Have an adverse impact on the scenic or landscape quality of the locality; or*
  - d) *Exceed 2 storeys.*

The maximum height of the building is 6.4m in the north-eastern corner of the building.

The proposal complies with the 6.4m height reference.

Clause 23 of the BLEP is also applicable in the assessment of the proposal.

### *Clause 23 – Development within Zone 7(f)*

*A person shall not, on land within Zone 7(f):*

- (a) *Notwithstanding clause 8 of the Environmental Planning and Assessment Model Provisions 1980, cut down, top, lop or otherwise destroy a tree (other than a tree planted for commercial or landscaping purposes), or*
- (b) *Clear, fill or otherwise alter the surface level of land,*

*Without the consent of the council.*

The proposed development involves the removal of 11 trees from the subject site and the relocation of two Pandanus Trees (Screw Pines). During the assessment of the application it has been identified that a third Pandanus tree will require relocation. The impact associated with the siting of the building in proximity to the littoral rainforest and removal of the subject trees is discussed later in this report. Council's Open Spaces and Reserves Manager has provided comment in relation to the Pandanus trees, and is discussed further in this report.

Clause 32 of the BLEP is also applicable in the assessment of the proposal.

*Clause 32 – Development within Zone 7(f)*

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

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

The environmental issues raised by the proposed building works, safeguards and rehabilitation measures for the environment are addressed in this report. As previously discussed, it is considered that the proposed development is consistent with the objectives of the 7(f) zone.

*State Environmental Planning Policy 71 – Coastal Protection*

The subject site is located within the coastal zone and is thus subject to the provisions of SEPP 71.

The proposed development has been assessed against the provisions of Clause 8 of this SEPP which contains matters for consideration for development proposals on land within the coastal zone.

The proposed development is located within the footprint of the existing café and also the outdoor dining areas. It is considered that the redevelopment of the café is generally in accordance with the aims of the Policy and the desired outcomes detailed in the Clause 8 matters for consideration.

The demolition and construction works and on-going use of the building is unlikely to have a significant adverse impact on the coastline or estuary and will not impact on access to foreshore areas. The compatibility of the development with surrounding uses and its suitability for the site is addressed elsewhere in this assessment. Should the development be approved, it will be subject to relevant and applicable land use and construction conditions to regulate the impacts of the construction on the surrounding land located within the coastal zone.

The building location does not restrict the existing public walkway/cycle path adjacent to the subject site.

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The design of the building and its relationship with the surrounding area is considered to be complementary to the coastal location. The building has a distinctive coastal style and, whilst larger than the existing café, is proposed to be constructed of contemporary materials, suitable for its coastal setting. The colours of the proposed café will blend in with the surrounding vegetation. In addition, the building is complementary to the topography of the land, being nestled into the hillside, utilising the existing vegetation to help partially screen the building from view from nearby residences.

No unreasonable overshadowing of the coastal foreshore or restriction of coastal views from a public place will result from the proposed development. It is expected that the café, once completed, will enhance views of the coast for patrons of the café.

The proposed café will be highly visible from the immediate beach and coastal walkway areas, however, will not adversely impact views due to its significant setback and elevation from the beach. A portion of the roof may be visible from the residential properties which are located above the subject site. The roof is proposed to be a mid-dark grey/green colour, which will assist in blending the roof into the surrounding vegetation and minimising its visual impact.

No adverse impacts on coastal processes are expected.

There is not expected to be any adverse cumulative impacts on the environment as a result of the proposed development. Significant regeneration works are proposed to the adjoining littoral rainforest, involving weed eradication and revegetation, improving the natural habitat of native animals and also the amenity of the area.

As it is considered the proposed building is to be constructed within the footprint of the existing café (both indoor and outdoor areas) it is not anticipated the development will adversely impact places of cultural heritage significance.

It is therefore considered that the proposed development is consistent with the provisions of Clause 8 of SEPP 71.

*North Coast Regional Environmental Plan (State Environmental Planning Policy – North Coast Regional Environmental Plan)*

Division 1 – The Natural Environment - Clause 28 provides:

*Clause 28 – Objectives*

*The objectives of this plan in relation to the natural environmental are:*

- a) To protect areas of natural vegetation and wildlife from destruction and to provide corridors between significant areas,*
- b) To protect the scenic quality of the region, including natural areas, attractive rural areas and areas adjacent to waterbodies, headlands, skylines and escarpments, and*
- c) To protect water quality, particularly within water catchment areas.*

The proposed development is not anticipated to have an adverse impact on the scenic quality of the coastline, as the building will only be visible from nearby sections of the public walkway and Shelly Beach. The building is nestled into the hillside and shielded from view from nearby residences by the existing vegetation on the site. Proposed revegetation works will further protect the coastline and minimise impacts of the building on the coastal environs.

Clause 30 – Division 2 – Coastal Development provides:

*Clause 30 – Objectives*

*The objectives of this plan in relation to coastal planning are:*

- a) To enhance the visual quality of the coastal environment,*
- b) To provide for the appropriate recreational use of beaches,*
- c) To protect the water quality of the coastal environment,*
- d) To minimise risks to people and property resulting from coastal processes,*
- e) To minimise changes to coastal processes resulting from further development, and*
- f) To encourage retention of natural areas and regeneration of those natural areas which are already degraded.*

The roof of the building will be partially visible above the existing tree canopy, and the residential properties located above the subject site may sight the proposed building in their foreground view, however, it is not expected that the roof will impact unreasonably on their ocean views. The proposed building will not impact the use of the adjoining beaches and no impacts are expected on the water quality of the coastal environment. As previously discussed, extensive revegetation and rehabilitation works are proposed in the adjoining littoral rainforest.

Clause 32B – Development Control – Coastal Lands provides:

*Clause 32B – Development Control – Coastal Lands*

- 1) This clause applies to land within the region to which the NSW Coastal Policy 1997 applies.*
- 2) In determining an application for consent to carry out development on such land, the Council must take into account*
  - a. The NSW Coastal Policy 1997,*
  - b. The Coastline Management Manual, and*
  - c. The North Coast: Design Guidelines.*
- 3) The council must not consent to the carrying out of development which would impede public access to the foreshore.*
- 4) The council must not consent to the carrying out of development:*
  - a. On urban land at Tweed Heads, Kingscliff, Byron Bay, Ballina, Coffs Harbour or Port Macquarie, if carrying out the development would result in beaches or adjacent open space being overshadowed before 3pm midwinter (standard time) or 6.30pm midsummer (daylight saving time), or*
  - b. Elsewhere in the region, if carrying out the development would result in beaches or waterfront open space being overshadowed before 3pm midwinter (standard time) or 7pm midsummer (daylight saving time).*

The proposed development is consistent with the NSW Coastal Policy and the North Coast Design Guidelines.

## 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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The proposed development will have no impact on the natural processes and hazards of the coast line. The proposed development is at such an elevation and distance from the shore line that it is unlikely to be affected by the potential effects of climate change.

As previously discussed, the proposed development will not detrimentally impact on the aesthetic quality of the coast line. The proposed development is of a design which is considered to complement the natural environment of the coast line.

As the proposed development sits on the current footprint of the café it is unlikely to impinge on any cultural heritage place, items or landscapes and will not impact on any public access to the foreshore.

The proposed development will not overshadow the beach or adjacent open space to any great extent before 3.00pm midwinter and 6.30pm midsummer.

### *Draft Ballina Local Environmental Plan 2011*

The subject land is proposed to be zoned E2 –Environmental Conservation under the Council Adopted Draft BLEP 2011.

The proposed development would be defined as a ‘food and drink premises’, being:

*“food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:*

- (a) A restaurant or café,*
- (b) Take away food and drink premises,*
- (c) A pub.*

*Note: Food and drink premises are a type of retail premises.”*

A food and drink premises is prohibited under the Draft BLEP 2011.

The Department of Planning and Infrastructure has indicated that the environmental protection zones are proposed to be excised from the Draft BLEP, until a review of the zones can be undertaken. If the Department proceeds to remove the environmental protection zones, the Ballina Local Environmental Plan 1987 will likely continue to apply to the subject site. Given the uncertainty in relation to the application of the E2 zone to the subject land at this time, it is considered that the Council could reasonably determine the subject application based primarily on the framework applicable under the current LEP zoning, as per Clause 1.8A of the Draft LEP.

Schedule 1 of the Draft BLEP provides for the additional permitted use of certain land within the Shire. The subject site is not included in this schedule, however, if the application for redevelopment of the site is approved, the site would have the benefit of existing use rights.

## 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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Clause 4.3 – Height of Buildings is applicable to the proposed development. This clause provides that buildings are not to exceed the maximum height shown on the Height of Buildings Map. The Height of Buildings Map shows that the maximum building height on the subject site is 8.5m. The building height definition within the Draft LEP provides “*building height means the vertical distance between the ground level and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*”

The maximum height of the proposed building as defined under the DBLEP 2011 is 7m. The proposed development is considered to comply with this clause.

Clause 5.5 – Development within the Coastal Zone also applies to the proposed development. As previously discussed in the section of this report on SEPP 71, there is not expected to be any unreasonable impacts on the coastal zone as a result from the proposed development.

Clause 5.9 – Preservation of Trees or Vegetation is also applicable to the proposed development. The proposed café is to be constructed adjacent to Littoral Rainforest on the western boundary of the site, and it is also listed as an Endangered Ecological Community (EEC) pursuant to the Threatened Species Conservation Act (1995) and the Environment Protection and Biodiversity Conservation Act (1999). The applicant has indicated that eight (8) trees require removal; however, it is now evident that eleven (11) native trees are proposed to be removed to facilitate the proposed development. The flora and fauna report submitted by the applicant with the development application and Council's Environmental Scientist agree that the proposed development will not significantly impact the EEC given that the rainforest edge is already suffering from dieback.

Clause 7.2 – Earthworks and Drainage is applicable to the proposed development. Earthworks will be required to be undertaken to level the land following the demolition of the existing café, and a 1.5m cut may be required to facilitate the construction of the building on the western boundary of the site. Appropriate conditions of consent can be applied, should the development be approved to mitigate any sediment and erosion impacts that may occur as a result of earthworks on the subject site.

Clause 7.8 – Natural Areas and Habitat is applicable to the proposed development. The subject site is proposed to be located within the E2 – Environmental Conservation Zone. Appropriate conditions of consent can be applied, should the development be approved to avoid or mitigate any potential adverse impacts associated with the development.

It is therefore considered that the proposed development is consistent with the above relevant clauses of the Draft Ballina Local Environmental Plan 2011.

### *Ballina Shire Combined Development Control Plan (DCP)*

The Ballina Shire Combined Development Control Plan is applicable to the site.

## **8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe**

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The proposed development is located within the 01 – Open Space Control Plan Area under the provisions of DCP Chapter No. 1 – Urban Land.

The preferred land uses within the 01 Control Plan Area are:

*Private and public open space, active and passive recreational activities, community buildings, clubhouse facilities, indoor recreation facilities, other landuses compatible with zone objectives. Uses authorised by an adopted Plan of Management for "Community Land" under the Local Government Act , 1993.*

The proposed development involves the redevelopment of an existing café partly located on Crown land. It is considered that the proposed development is consistent with the preferred land uses of the 01 – Open Space Control Plan Area.

The Control Plan Objectives for the 01 Control Plan Classification are:

- To identify existing and proposed open space areas within the Shire's towns and villages.
- To promote these areas use for open air recreational purposes and general community uses.
- To protect areas of environmental significance within the urban context.

The subject site is identified within the Ballina Shire Council Land Register and Principal Generic Plan of Management for Community Land – Version 04 – May, 2005 as available for the use of 'Shelly Beach Café'. The Ballina Coastal Reserve Plan of Management provides that commercial activities are prohibited on beaches, such as licensed vendors (e.g. ice cream van), unless approved by Council. The plan of management also states that a "*light refreshments kiosk or café/restaurant, appropriately positioned and operated to minimize visual and environmental impacts, and without adversely affecting the amenity of local residents*" is supported by Council.

The existing café was approved via DA 1992/215 on 22 September 1992, being consistent with the Ballina Coastal Reserve Plan of Management. The proposed redevelopment of the site is considered to be consistent with the plan of management, being located on the same site as the existing café.

In this regard, the proposed development is considered to be consistent with the Ballina Coastal Reserve Plan of Management.

### Policy Statement No. 2 – Car Parking & Access

Car parking for the existing café is provided in the adjacent car park to the immediate north of the site.

This car park has a total of 74 spaces, the majority of which are utilized by the customers of the café for breakfast and lunch, particularly during weekends. The car park is also utilized by beach goers and members of the surf club, where the most demand is required during weekends.

## **8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe**

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To date, Council has not received any reports of conflicting traffic issues between patrons of the restaurant and members of the public and Surf Club members. Car parking was raised as an issue in submissions received from adjoining residents and landowners.

Policy Statement No. 2 provides that the car parking rate for a refreshment room is 15 car parking spaces per 100m<sup>2</sup> gross floor area, or 1 space per 3 seats, whichever is the greater.

The proposed development has a ground floor area of 292m<sup>2</sup> and a proposed seating capacity of 120 seats. The greater car parking rate is based on the gross floor area of the building, requiring 44 car parking spaces. A first floor storage area of 30m<sup>2</sup> is also proposed.

There are 30 remaining car parking spaces to be shared between the surf club and members of the public.

A previous operator of Shelly Beach Café has provided a statement which has been attached to the development application that states that the café had previously accommodated up to a total of 126 people seated inside the building and also in the surrounding outdoor paved areas.

The gross floor area of the building is increasing as a result of the proposed development, however, the seating capacity is similar to the existing café, and therefore traffic generation and car parking is not likely to be an issue at the site. The café may become more regularly visited due to the all-weather dining options created by the proposed development; however, there is sufficient car parking and access arrangements to manage this more regular usage.

There is no additional car parking spaces required for the proposed development. The existing car parking area provides parking for the public, which includes parking for the existing café as well as any other users of the beach or reserve areas. An inspection of the car park revealed that its surface has deteriorated and the construction of a new building would likely contribute further deterioration to the car park. It is considered reasonable to condition the consent for the proposed development, if approved, to require the applicant to resurface and line mark an area for the required 44 car parking spaces.

No developer contributions are applicable as a result of the proposed redevelopment.

### **Chapter 13 – Stormwater Management**

A stormwater management plan was not provided with the submission of the development application, and the requirements of Chapter 13 have not been addressed. The impervious area of the site will increase as a result of the proposed development. Council's Development Engineer has recommended a condition of consent be applied to provide a stormwater management plan prior to issue of any Construction Certificate.

A stormwater pipe is shown traversing the subject site from west to east on the submitted plan prepared by Design Team Ink, 'Tree Removal and Regeneration Plan' Drawing Number 12/191-01, Dated 09.08.2012. Council's Policy is to not permit the construction of buildings over Council assets such as stormwater pipes. A condition of consent can be applied to the development requiring either the relocation of the pipe from underneath the proposed building, or to encase the stormwater pipe. If the application is approved, plans of the proposed works will be required to be submitted to and approved by Council prior to issue of the construction certificate and Council's Development Engineer and Environmental Scientist will be required to be consulted, due to the pipe being located within an Endangered Ecological Community. It is Regulatory Services' opinion that for ecological reasons, the best course of action is the encasement of the stormwater pipe, and not relocation.

### Report

As outlined above, the proposed development is consistent with the relevant environmental planning instruments and controls.

During the exhibition, a number of objections were received from surrounding landowners. Discussions on the issues raised in the submissions are provided below:

#### Development not consistent with Existing Approved Use of Site

Development Application 1992/215 (approved 22 September 1992) provided development consent to "*Establish a Refreshment Room comprising a Kiosk*".

The original building was octagonal in shape and had a total floor area of approximately 83m<sup>2</sup>. The kiosk was originally wholly located on Part Reserve No. 82765, Shelly Beach, which had a total area of 260m<sup>2</sup>. The remainder of the reserve was utilised as outdoor dining space. The site has since had its boundaries adjusted and is now located on Lot 1 DP 1095427 and Lease Area of Part Lot 402 DP 755684.

Development Application 1998/24 (approved 23 October 1997) provided development consent for "*The erection of All Weather Sails to replace shade cloth in existing Refreshment Room*". The erection of the sails did not generate any additional floor area.

Development Application 2005/612 (approved 13 April 2005) provided development consent for "*restaurant additions*", which involved the addition of a disabled toilet and screening on the building. This development has not been commenced and has since lapsed.

Development Application 2010/336 (approved 31 May 2010) provided development consent "*To undertake alterations and additions to an existing refreshment room (Shelly's on the Beach Café) involving the provision of a new food preparation area and coolroom, new toilet facilities, demolition of existing shade structures and the erection of a new solid roof over part of the existing seating areas, the provision of timber framed sliding glass doors around part of the existing eating areas, and the provision of a polished concrete floor*". This application did not increase the indoor dining, food preparation areas and outdoor dining area. The total gross floor area of the

## 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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development was 253m<sup>2</sup>. This development has not been commenced and is due to lapse on 31 May 2015.

A commercial activity, "limited to light refreshments kiosk or café/restaurant appropriately positioned and operated" is supported within the Ballina Coastal Reserve Plan of Management, and was originally approved via DA 1992/215.

The existing café has a floor area of 83m<sup>2</sup> and outdoor dining areas totalling 227m<sup>2</sup>. The total area of the current facility is 310m<sup>2</sup>. The proposed building will be undertaken on the same site and have a building footprint of 292m<sup>2</sup>. No additional outdoor dining areas are proposed and the café will be entirely enclosed within the building.

The proposed café will operate within the days and hours of operation approved in DA 1992/215, being 7am to 10pm daily. It is also expected that the venue may cater to functions within that time. It is acknowledged that the café is currently closed; however, it did not operate to the full extent of the approved hours.

### Scale of Development

The proposed building has a footprint of 292m<sup>2</sup>, which is contained within the current footprint of the existing café and outdoor seating areas.

The proposal complies with the 6.4m height limit and is single storey with a 30m<sup>2</sup> mezzanine storage level. The roof of the proposed building is expected to be partially viewed from Suvla Street by vehicles travelling north, and also by residential properties directly to the west of the subject site.

The architect has provided a statement in the Statement of Environmental Effects, which states as follows:

*"The building is proposed for a special site, nestled into the headland overlooking the beach and the rocky foreshore with the public pathway running past. The proposed building makes use of this connection with the water and the path, sitting under the existing canopy of the adjacent trees, and providing a visual destination at end of car park.*

*...We envisage the building structure to be constructed from heavy reclaimed timber, expressed to bring the natural into the café space. The enclosing sliding glass panels to the north and east will be able to be moved out of the way to maximise the openness of the space. The rear of the building will be a dark coloured rendered masonry to blend into the forest vegetation behind. The metal roofing will be a mid to dark grey to minimise the visibility of the building from above."*

Plans indicate that the building sits underneath the existing canopy of the trees when viewing the western and eastern elevation of the building. However, it is expected that the roofline of the building will be visible when viewed from the south travelling north by vehicles. The increase in size of the proposed building will mean the building is more prominent in the local landscape. However, given the site is largely obscured from view from more distant locations and that the proposed building sits within the existing footprint of the current café area, the scale of the proposed development is considered to be appropriate. The architect has attempted to minimise the

## **8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe**

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visual impact of the site by using contemporary materials compatible with the coastal setting, and using colours which complement the existing natural environment which surrounds the building.

Revegetation works surrounding the site will assist in minimising the visible impact of the building, however, it is expected that this will take a significant amount of time to allow seedlings to grow into mature trees.

Overall, the scale of the development is considered to complement the surrounding environment, and the development responds to site opportunities and constraints and will result in an appropriate relationship between the building and the public domain.

### Seating Capacity

Concerns have been raised regarding the seating capacity of the proposed café.

The original approval for the café DA 1992/215 did not provide for a restriction on the number of customers at the café, however, a statement from a previous operator of the café included with the development application provides that the café had previously catered for up to 126 patrons. The current application for the redevelopment of the site proposes to seat 120 customers.

The current site area of the café is 310m<sup>2</sup>; the proposed ground floor area is 292m<sup>2</sup>. The proposed development is therefore not an increase in seating capacity but because it provides all weather enclosure, it allows for the café to be utilised more fully all year round.

### Development Overhanging Crown Land Outside Proposed Lease Area and Use of Non-Leased Area of Crown Land

As the application is located partly on Crown Land the approval of the Crown is required for the application. Council is in negotiations to acquire Part Lot 402 DP 755684, which Council currently leases from the Crown. Submitted plans show that the eaves of the proposed building encroach approximately 1.5 metres over the land currently leased and to be acquired by Council from the Crown. The Department of Primary Industries – Catchments and Lands has advised that they will not be entering into any agreements or licenses for areas of encroachments onto the Crown Reserve.

In this regard, the Crown is withholding landowners consent for the development application until this matter is resolved.

This report seeks Council's determination of the applicable key assessment issues and its authority to issue a conditional consent to the application upon receipt of the of landowner's consent.

It will therefore be necessary for the building design to be either amended to ensure the structure is within the boundary of the existing licence area, or additional land be acquired from the Crown to accommodate the submitted design.

Car Parking

As previously discussed, sufficient car parking is available for the proposed development.

Building Setbacks

The Ballina Shire Combined Development Control Plan provides that building setbacks within the 01 – Open Space Control Plan Area are to be determined on merit. The proposed building and subject site are isolated from any adjoining buildings.

Council has previously approved alterations and additions to the existing café, via DA 2010/336. This application originally proposed a zero setback on the western boundary, as does the current application.

The plans submitted for DA 2010/336 were requested by Council to be amended to ensure that the building was not impacting on the EEC, which Council subsequently approved. The building setbacks were approved as follows:

Northern Boundary – 1.8m

Southern Boundary – 1m

Western Boundary – 1.9m northern end and 4m at southern end

Eastern Boundary – 0.5m northern end and 2.8m at southern end

The proposed building setbacks include a significant intrusion into the EEC in the south-western corner of the site. Council's Environmental Scientist has advised that the current design of the café does not provide adequate separation between the proposed development and the existing EEC. It is considered that this long term conflict can be overcome by relocating the café back to the building line previously approved by DA 2010/336 to not intrude into the EEC on the south-western corner of the site (plans have been included as attachment 9 – building setbacks approved as part of DA 2010/336).

Alternatively, Council may allow the building to be constructed to the site boundary in the south-western corner of the site. In doing this, the existing vegetation will be affected along both the western and southern sides of the building. The additional information submitted to Council (dated 30 October 2012) proposes a 1.5m buffer adjacent to the building which is to be "maintained by regular pruning of adjacent vegetation and removal of any seedlings that establish within the 1.5m area". Should Council choose this option, any lease agreement must emphasize the initial clearing and maintenance is the responsibility of the lessee and not Council. This includes rehabilitation works on the road reserve. This can be achieved via an appropriate condition of consent.

Sale of Alcohol from Premises

Council does not regulate the sale of alcohol from premises within the Shire. Additional information provided by the applicant's consulting town planner states that the applicant does intend to seek a licence to serve alcohol with meals in accordance with the NSW Liquor and Gaming Authority's requirements. Plans do not indicate a 'bar area' within the building.

Noise & Lighting

Concerns were raised regarding the issues of light and noise coming from the premises.

As previously discussed, the existing café has development consent to operate from 7am to 10pm on a daily basis, via DA 1992/215. The previous operator had not operated the café to the full extent of the approved hours of operation for some time, and it is acknowledged that this may cause some concern for surrounding residents, particularly if functions are held within those hours.

Additional information was submitted by the applicant's consulting town planner following the exhibition period, which provided a noise assessment of air conditioning and refrigeration plant at the premises. It was noted that the background noise for the site was found to be between 60 – 65dBA due to ocean noise. The closest dwelling to the subject site is approximately 40m to the west. The assessment of the noise from the plant was 73dBA at 3 metres. It was therefore considered that the noise impact from the proposed plant to the nearest sensitive receiver is minimal.

Noise from within the building, such as amplified music does have the potential to cause disturbance to nearby residences. Additional information submitted to Council provides that the applicant does not intend to provide light entertainment and background music.

The proposed building does not include any outdoor dining areas, and therefore, all noise generating activity will be undertaken from within the building. The proposed building is also orientated to the east, which will direct any potential noise out to sea, if the glass sliding doors are open. A condition of consent can be applied to restrict the emission of offensive noise from the site.

Lighting from the proposed development is not considered to impact on surrounding residences. The building is set within the existing vegetation, and will be partially screened. The proposed building is also obscured by the topography of the land.

The proposed development will not impact on the Ballina Lighthouse in any way.

Location of Advertising Signage on Building

No details of proposed additional advertising signage have been provided with the development application. It is noted that one business identification sign is located on the northern boundary of the subject site, at the entrance to the café.

A condition of consent will be included on any consent notice requiring any advertising signage to be approved by Council, unless the signage complies with the exempt development requirements applicable at the time.

Use of Outdoor Lighting

No details regarding outdoor lighting have been provided, however, it is expected that some outdoor lighting will be used to provide light to the entrance of the building. The use of outdoor lighting at the café can be regulated via a condition of consent.

Waste Disposal

Concerns have been raised by submitters regarding waste disposal at the site from take way containers and the café. Plans indicate the provision of 10 waste and recycling wheelie bins within the services yard of the proposed building. The collection of waste is proposed to be by either private contractor or by Council.

Public waste bins are also located within the car park adjacent to the proposed development, and also adjacent to the Ballina Lighthouse and Lismore Surf Life Saving Club.

View Loss

A number of submissions have raised the loss of views as a potential impact from the proposed development.

As previously discussed, the proposed building is to be 6.4m at its highest point.

The 'Stella Maris' residential building to the west of the proposed building is likely to experience a small impact on view loss. Plans indicate that the roof of the building will be slightly above the existing tree canopy, and will be more visible from elevated locations nearby. An existing Norfolk Island Pine partially screens the location of the building.

Concerns have also been raised regarding the potential loss of view from the planting of a Morton Bay Fig Tree in the proposed regeneration plan. Additional information submitted by the applicant in response to the submissions has advised that the applicant has no objection to the deletion of the use of the Morton Bay Fig in the regeneration plan.

As previously discussed in this report, the location of the site is such that the structure will be visible from the beach in front of the building and the coastal walkway. A small portion of the roof may be visible from the residential properties which are located above the proposed development. The roof is proposed to be a mid to dark grey/green colour, which will assist in blending the roof into the surrounding vegetation and minimising its visual impact.

Outdoor Dining Opportunities

One submission raised the issue of the loss of outdoor dining opportunities as a result of the proposed development.

The proposed building has a footprint of 292m<sup>2</sup>, which is the entire site area. The applicant has advised in additional information submitted to Council in response to this issue:

## 8.2 DA 2012/348 - Redevelopment of Shelly Beach Cafe

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*“The eastern elevation of the building comprises glass sliding and folding doors which when open will provide a dining experience similar to being outdoors but with shelter from the sun. At times of inclement weather people will be able to patron the premises and enjoy a seaside experience which previously they were not able to do at the existing building.”*

The existing outdoor areas of the existing building are not proposed to be included in the new building, and all dining will be within the proposed new building.

### Water Dragons

It is acknowledged that there is a community of water dragons residing in the rainforest adjacent to the western boundary of the subject site. Council's Environmental Scientist has advised that the water dragons are not a threatened species, and that the removal of a small portion EEC is not expected to have a significant adverse impact given the rainforest edge is already suffering from dieback.

### Conflicting Information within Statement of Environmental Effects regarding Bar Area

The submitted Statement of Environmental Effects in its description of the proposed development references a bar area. Following the submission of additional information, the applicant has advised that the café intends to serve alcohol with a liquor licence, however, no 'bar area' is shown on the plans.

### Flora and Fauna

The submitted Flora and Fauna Report (FFR) identified the occurrence of Littoral Rainforest growing along the western boundary of the proposed cafe. Littoral Rainforest is listed as an Endangered Ecological Community (EEC) pursuant to the Threatened Species Conservation Act (1995) and the Environment Protection and Biodiversity Conservation Act (1999).

The applicant indicates the proposed development will remove eleven (11) trees growing along the eastern edge of the rainforest. Whilst the subject trees are considered part of the EEC their removal is not expected to have a significant adverse impact given the rainforest edge is already suffering from dieback. It is also important to note that a number of trees which require removal are not located on the same parcel of land occupied by the proposed cafe. Consequently, prior to works commencing the applicant will require permission from the landowner (Council) to remove and/or prune the subject vegetation.

Changes in the existing wind dynamics arising from the construction of the new building have the potential to adversely impact on the rainforests structure. Site inspections have confirmed prevailing south east oceanic winds are responsible for maintaining the forests existing canopy structure and shear. Consequently, given the roof pitch of the new cafe increases in height from south to north, rainforest canopy destruction arising from altered wind patterns is not considered to be a significant issue.

In addition, to the abovementioned tree removal a number of other rainforest trees will require pruning to facilitate construction of the cafe. The existing littoral rainforest may further be impacted given the western boundary of the cafe requires a cut of up to 1.5m and, as such, these works may impact on the roots of the littoral rainforest vegetation proposed to be retained.

However, the more significant long-term issue with the location of the cafe is in the south western corner of the cafe located within the existing EEC. Given the climatic conditions associated with the site, littoral rainforest vegetation will require continual pruning to stop it impacting on the proposed cafe. Further complicating this issue is the fact that the vegetation to be pruned is not located on the same parcel of land occupied by the proposed café.

As previously mentioned, the new cafe will provide a sheltered edge to the rainforest EEC in doing so promote growth of the rainforest back towards the building.

The need to provide adequate separation is best demonstrated by the existing building in which the existing edge of the rainforest has been loped back over time. These lopping works are considered to have contributed to the dieback which has occurred along the eastern edge of the rainforest.

As previously discussed, Council's Environmental Scientist is of the opinion that the present design of the cafe does not provide adequate separation between the proposed development and the existing EEC. Council will need to make a decision as to whether the proposed footprint of the café is acceptable, or whether a redesign to reduce the impact on the EEC is the preferred option.

An existing stormwater pipe located within the canopy of the rainforest EEC also passes under the existing building. Conditions of consent can be applied requiring the existing stormwater pipe to be relocated as part of current development application. It is considered that the relocation of the stormwater pipe will further impact on the rainforest and, as such, should be avoided. It is understood the existing stormwater pipe could be encased in its current location and, as such, this option on environmental grounds is supported.

To offset the loss of the abovementioned vegetation the applicant proposes to rehabilitate part of the Coastal Reserve system. Whilst this aspect of the proposal is supported, the submitted Tree Removal and Regeneration Plan (TRRP) is considered to be inadequate for a range of reasons, including species selection and staging. In addition, the TRRP which is limited to a two year timeframe does not provide any restoration goals for the project. To be successful the rehabilitation program will need to achieve a continuous native vegetation cover. Consequently, given the climatic conditions associated with the site, the revegetation program will need to be undertaken for a minimum of five years.

Furthermore, the TRRP indicates that regeneration in Area B identified on the submitted plans as adjacent to the western and southern boundaries of the subject site, is to be undertaken immediately adjacent to the new building and, as such, is considered to be impractical given that once the vegetation matures it will come into direct conflict with new building. These conflicts will increase given the building will protect the existing littoral rainforest from

windshear and salt laden winds thus promote vegetation growth towards the new building.

Consequently, it is considered that only weed eradication works should be undertaken within Area B. The associated planting area should be relocated to incorporate the bitou bush dominated dune system to the south. The extension of the revegetation program to this area would also help overtime, to screen the roof line of the new cafe. Conditions of Consent will address the above-mentioned issue.

The construction of the cafe will have a direct impact on two Screw Palms (*Pandanus tectorius*) currently growing at the front entrance of the existing cafe. To minimize the impact of the development on the two Screw Palms the applicant proposes to transplant the subject palm trees to a location immediately adjacent to the new cafe. However, survey pegs have confirmed the part of the trunk of one of the Pandanus palms is located within the Crown Reserve and, as such, approval from the landowner will be required.

If this is obtained Council's Open Spaces and Reserves Manager has confirmed due to site constraints the Pandanus palms may require relocation to an adjacent Council reserve located approximately 100m away from their current location.

Site inspections and a subsequent impact assessment from the applicant have also confirmed that a third Pandanus Palm growing within the Crown Reserve will be directly impacted by the proposed development. Whilst the applicant proposes to have an arborist onsite during foundation construction it is considered the subject works (lopping and root destruction) will have a significant impact on the subject species life expectancy.

Consequently, it is considered appropriate that this palm will also require translocation. The applicant will need to obtain the landowner's consent prior to proposing any translocation program. The applicant will therefore be required to prepare to the satisfaction of Council's Open Spaces and Reserves Manager a suitable translocation plan prior to works commencing at the site.

### **Conclusion**

The proposed development is permissible with the consent of Council under the provisions of the Ballina Local Environmental Plan 1987 and is consistent with the applicable environmental planning provisions relevant to the site and proposed development.

This report is seeking the Council's determination of the applicable key assessment issues and its authority to issue a conditional consent to the application once the issue of landowner consent has been resolved.

The ecological impacts on the EEC from the footprint of the café, maintenance of adjacent vegetation, landowner's consent to the proposed development, visual impacts of the development and issues raised in submissions from local residents are the main areas of consideration within this report.

Council has three options in relation to determining the subject application:

1. To grant conditional consent to Development Application 2012/348 with the footprint as proposed on the submitted plans and approval for the maintenance of adjacent vegetation to be undertaken by the applicant, and subject to the applicant first obtaining landowner's consent from the Crown.
2. To grant conditional consent to Development Application 2012/348 subject to conditions of consent requiring the reduction of the footprint of the building to reduce the impact of the building on the EEC and subject to the applicant first obtaining landowner's consent from the Crown.
3. To refuse Development Application 2012/348 as submitted, on the ground that the development proposes unreasonable impacts on the littoral rainforest and EEC, and that no landowner's consent has been obtained from the Crown for the lodgement of the application.

On balance, option one is considered to be the preferred approach.

### **RECOMMENDATIONS**

That Development Application 2012/348 To Undertake the Redevelopment of Shelly Beach Café with a New 120 Seat Café with Upper Storage Level, Removal of Trees, Compensatory Regeneration and Landscaping on Lot 1 DP 1095427 and Lease Area Part Lot 402 DP 755684, Shelly Beach Road, Ballina be **APPROVED** subject to the applicant first obtaining the necessary landowner's consent and the appropriate planning, environmental and engineering conditions.

### **Attachment(s)**

1. DA 2012/348 - Locality Plan
2. DA 2012/348 - Site Plan
3. DA 2012/348 - Floor Plan
4. DA 2012/348 - Elevations
5. DA 2012/348 - Section Plan
6. DA 2012/348 - Existing Site Plan
7. DA 2012/348 - Submissions
8. DA 2012/348 - Tree Removal and Regeneration Plan
9. DA 2012/348 - Building Setbacks Approved as Part of DA 2010/336

### 8.3 Dog Trial at The Serpentine, Ballina

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### 8.3 Dog Trial at The Serpentine, Ballina

**Delivery Program** Environmental & Public Health

**Objective** To review the 12 month trial of The Serpentine Beach as an on-leash dog area, as adopted by Council at the August 2012 Council Meeting.

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#### **Background**

Council at its Ordinary Meeting on the 23 August 2012 considered a report regarding a review of the Companion Animals Management Plan (the Plan). The original Plan was developed and adopted by Council on 23 September 2010, and is required every two years to be reviewed by Council.

Council has recently received letters of concern and questions were raised at the 25 October 2012 Council meeting regarding the 12 month trial of The Serpentine as an on-leash dog area. This report responds to those concerns.

#### **Key Issues**

- Contents of the Plan
- Resource implications
- Community expectations
- Natural Habitat Protection

#### **Information**

It was identified during the recent review of the Plan that a trial of The Serpentine area as an on-leash dog area be undertaken for 12 months. The trial is due to be completed in August 2013 and a report is to be presented to Council after the completion on the outcomes together with associated recommendations.

The excerpt below is from the 23 August 2012 report regarding The Serpentine:

*"The Serpentine*

*The Serpentine is currently a dog prohibited zone identified with on-site signage. Similarly the enforcement of this dog prohibition zone is difficult due to the area's parking restrictions not enabling the Ranger to stop and take action before people and their dogs have left the area.*

*Notwithstanding the enforcement difficulties, The Serpentine is recommended for a twelve month trial as an on-leash area having the aim of testing whether or not this additional exercise area will improve animal management in this locality."*

### **8.3 Dog Trial at The Serpentine, Ballina**

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The Plan outlines Council's approach to fulfilling its responsibilities under the NSW Companion Animals Act and provides Council with the opportunity to set the balance in the relationship between encouragement and support for the social benefits of pet ownership, and establishing and maintaining a strong commitment to protecting public amenity, safety and the environment.

The options and decisions regarding The Serpentine area must give reference and consideration to the overall Plan as The Serpentine is an integral part of the overall management of companion animals in the Shire.

The main concerns raised by local residents are the risk to the nesting area of shore birds including the Pied Oystercatcher, the risk of dog faeces not being removed by owners and properly disposed of and the threat to other members of the public.

A search of Council records over recent years has concluded that minimal complaints and incidents have been reported to and/or observed by Council for this area. This area provides the opportunity for families with dogs to visit an area where dogs can be on-leash and be a part of the family's social activities.

Birds Australia made a submission during the public exhibition period of the original Plan in 2010 and Council considered the points made in their submission. Consequently, Council endorsed the dog prohibition of the Flat Rock Reef area and the roosting area at the north/eastern end of Chickiba Lake as these areas are of significance under the Environment Protection and Biodiversity Act. Please refer to the attachments for additional information on the submission received from Birds Australia dated 16 April 2010.

With respect to the reported current nesting of the Pied Oyster Catchers, the local residents have been referred to the National Parks and Wildlife Service and it is understood that they have made representations to the Service.

Council officers advised the residents that if the Service considered that some action was needed to assist protect the birds the Council would likely want to assist where it could. To date the Service hasn't raised with us any particular concerns nor has it sought assistance with putting in place any particular additional protection mechanisms. Irrespective of this, enquiries will be made of the Service and their advice sought as to any actions they are taking following the residents' submissions and about any recommendations they would make to Council. Such advice will be provided to Councillors separately once it is to hand.

The purpose of the trial is to give the community an opportunity to demonstrate what works and doesn't work in The Serpentine area and for Council to then make an informed decision.

#### **Sustainability Considerations**

- **Environment**

The Plan assists with the protection of the natural and built environment through the introduction of clear guidelines for the management of companion animals.

- **Social**

### **8.3 Dog Trial at The Serpentine, Ballina**

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Companion animal ownership brings both great benefits and significant adverse impacts for people living in the community. The Plan provides a balance for all scenarios; where dogs and their owners are permitted and areas where dogs are not permitted therefore avoiding undesired interactions.

- **Economic**  
Nil

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

There are minimal financial considerations as the only costs are those of installation of signage for the area and subsequent enforcement within the overall ranger patrol rostering.

#### **Consultation**

The original Plan in 2010 was placed on public exhibition and submissions received, reviewed and reported on.

#### **Options**

1. Council endorse the Council resolution of the 23 August 2012, and continue the 12 month trial of The Serpentine as an on-leash dog area.
2. Council may resolve to suspend the 12 month trial of The Serpentine and amend the Companion Animals Management Plan accordingly.
3. Council may resolve to conduct additional patrols of The Serpentine area and determine compliance rate of the area.

Overall the preferred approach is Option one in that the trial will allow the whole community to provide feedback on the changes and enable Council time to monitor the area and determine whether this is a suitable area for an on-leash dog area.

#### **RECOMMENDATIONS**

1. That Council, subject to the receipt of supporting advice from the National Parks and Wildlife Service, continue to support the operation of the 12 month trial of the dog on-leash area at The Serpentine.
2. That Council install additional signage in The Serpentine area indicating a trial is currently underway of the area as an on-leash dog area. Signage is also to include additional information on being a responsible dog owner to help protect beach nesting birds, as produced in brochure 'Dogs on Leashes, Birds and Beaches' produced by Birds Australia and NSW National Parks, as attached.
3. That Council support the additional installation of a "doggy poo" bag dispenser and associated educational signage at The Serpentine.
4. That Council continue to provide information to the community on responsible dog ownership and of the importance of migratory and shore bird protection in the Shire.

### **8.3 Dog Trial at The Serpentine, Ballina**

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#### **Attachment(s)**

1. Companion Animals Management Plan dated August 2012
2. Submission from Birds Australia
3. Brochure - Dogs and Leashes, Birds and Beaches

#### 8.4 Development Applications - Works in Progress - November 2012

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#### 8.4 Development Applications - Works in Progress - November 2012

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The following schedule sets out current development applications that have not yet been dealt with for the reasons cited:

Please note that duplex and dual occupancy applications are not included in this report.

DA No.	Date Rec'd	Applicant	Proposal	Status
2006/242	20/10/2005	Ardill Payne & Partners	Site Filling - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2008/578	6/2/2008	A Koellner	Erection of a Shed for Steel Fabrication - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2011/166	15/04/2011 (Application Amended 8/11/2012)	SJ Connelly CPP Pty Ltd	Construction of a residential flat development comprising 30 x two storey dwellings and associated works, Condon Drive, East Ballina (North Angels Beach)	Application amended to provide for an 8 Lot residential subdivision and 15 unit town house development on Proposed Lot 8 - Amended Application to be Re-exhibited
2011/320	22/07/2011	Ballina Shire Council	To change the method of extraction of an existing Extractive Industry "Ballina Airport Sandpit" from dry (excavation) to wet (dredging) and to change the end use of the pit from a landfill for dry/inert waste to the retention as a flooded pit as part of the rehabilitation	Being Assessed

**8.4 Development Applications - Works in Progress - November 2012**

			works - (Ballina Airport Sandpit) Southern Cross Drive, Ballina	
2011/506	23/11/2011	C Lonergan	Regularise and Expand existing Caravan Park from 55 Sites to 178 Sites and construct new Amenities Block and Recreation Building, 440 South Ballina Beach Road, South Ballina	Awaiting Additional Information
2011/515	30/11/2011	Newton Denny Chapelle	Staged Development - 5 x Lot Subdivision for future cluster housing development and construction of public road, No. 565-589 River Street, West Ballina	Awaiting Additional Information
2011/541	20/12/2011	Ballina Shire Council	Construction of a Surf Club Storage Building, 78 space carpark, bulk earthworks and landscape works; Cedar Crescent, Light House Parade & Compton, Drive East Ballina	Awaiting Additional Information
2012/271	10/07/2012	SJ Connolly CPP Pty Ltd	Two Lot Subdivision to create 1 x 2ha and 1 x 40ha allotments - 142 Martins Lane, Knockrow	Being Assessed
2012/291	23/07/2012	Newton Denny Chapelle	To undertake a staged 47 Lot Community Title residential subdivision with lots ranging in	Referred to Government Departments

**8.4 Development Applications - Works in Progress - November 2012**

			size from 303m <sup>2</sup> to 773m <sup>2</sup> , associated road, earth and infrastructure servicing works, creation of a public road and one 6.4 hectare Torrens Title residue lot - 565-589 River Street, East Ballina	
2012/297	24/07/2012	Ardill Payne & Partners	To enable the occupation of the existing Lennox Head Rural Fire Service Brigade Shed for a period of 10 years - 3 Byron Street, Lennox Head	Determination Pending
2012/325	15/08/2012	SJ Connolly CPP Pty Ltd	To Undertake a Two Lot Boundary Adjustment Subdivision to Create 1 x 1ha allotment (Proposed Lot 1) and 1 x 88.54ha allotment (Proposed Lot 2) - 61 Jorgensens Lane, Brooklet & 145 Brooklet Road, Newrybar	Being Assessed
2012/331	17/08/2012	Newton Denny Chapelle	To Undertake a Two Lot Boundary Adjustment Subdivision to Create 1 x 32.5ha and 1 x 1.15ha allotments - 320-322 Sneaths Road, Alstonvale	Being Assessed

#### 8.4 Development Applications - Works in Progress - November 2012

2012/333	17/08/2012	Newton Denny Chapelle	Change of use from motor showroom to funeral home incorporating chapel, office, showroom, function centre, carparking, landscaping and advertising signage – 338 River Street, Ballina	Being Assessed
2012/346	27/08/2012	Australian Fishing Tournaments Pty Ltd	The erection of a temporary sign for the boat and leisure show - 319-321 River Street, Ballina	Being Reconsidered
2012/351	28/08/2012	Ardill Payne & Partners	The establishment of a 21 lot residential subdivision and residual lot - Unara Parkway, Cumbalum	Being Assessed
2012/357	30/08/2012	Newton Denny Chapelle	The subdivision of 4 Lots into 5 Lots and a Road Reserve - Hutley Drive & Henderson Drive, Lennox Head	Being Assessed
2012/358	30/08/2012	Newton Denny Chapelle	Two Lot Boundary Adjustment Subdivision to create 1 x 35.9 ha and 1 x 8.6 ha allotments - 131 Tuckombil Lane, Tuckombil	Awaiting Additional Information
2012/369	7/09/2012	MJ Hickey & M Harley	Erection of General Store and associated Residence and special purpose subdivision -13 Fig Tree Hill Drive, Lennox	Being Assessed

#### 8.4 Development Applications - Works in Progress - November 2012

			Head	
2012/371	12/09/2012	Michael Hajjar Surveying	Strata Title Subdivision - 81 Tamar Street, Ballina	Being Assessed
2012/389T	21/09/2012	R Joyce	Removal of Native Vegetation ( 1 x Blackbutt) - 17 Palisade Way, Lennox Head	Awaiting Additional Information
2012/392	25/09/2012	Ardill Payne & Partners	Change of Use – Dwelling House to Community Facility - 42 Tamar Street, Ballina	Being Assessed
2012/402	3/10/2012	WM & MM Godfrey	Removal of Camphor Laurel vegetation - 169 Pearces Creek Road, Alstonville	Being Assessed
2012/406	5/10/2012	G E Latta	Removal of a Fig Tree - 174 McLeans Ridges Road, McLeans Ridges	Awaiting Additional Information
2012/410	5/10/2012	GM Project Development & Management	Extension to existing mini storage shed complex - 33 Smith Drive, West Ballina	Being Assessed
2012/414	8/10/2012	Newton Denny Chapelle	Proposed temporary transport terminal – Northcott Crescent, Alstonville	Being Assessed
2012/418	9/10/2012	SJ Connelly CPP Pty Ltd	Change of Use – Shop T16 to Bakery – 44 Bangalow Road, Ballina	Determination Pending
2012/424T	11/10/2012	J McDevitt	Removal and Pruning of Native Vegetation – 49 Greenfield Road, Lennox Head	Awaiting Additional Information

#### 8.4 Development Applications - Works in Progress - November 2012

2012/425	12/10/2012	A Dogan & A Mitchell	Removal of one Tree – 37 Minley Crescent, East Ballina	Being Assessed
2012/429	15/10/2012	C E Simpson	Use of Existing Shed for Worker's Amenities/ Lunchroom – Uralba Road, Uralba	Awaiting Additional Information
2012/430	15/10/2012	Richard Lutze & Associates	To remove one Norfolk Island Pine Tree – 38 Shelly Beach Road, East Ballina	Determination Pending
2012/432	16/10/2012	SJ Connelly CPP Pty Ltd	Two Lot Boundary Adjustment Subdivision to create 1 x 10ha and 1 x 60.4ha allotments – 13 Edward Place & Newrybar Swamp Road, Knockrow	Being Assessed
2012/433	16/10/2012	SJ Connelly CPP Pty Ltd	To undertake the erection of two pylon advertising signs – 565-589 River Street, West Ballina	Being Assessed
2012/445	24/10/2012	C White & M Gallagher	Removal of Six Trees – 5 Sunrise Crescent, Lennox Head	Being Assessed
2012/446	24/10/2012	G & H Joblin	Establishment of a Home Industry – Installation of a Bait Packing Room within Existing Shed – 9 Byron Street, East Wardell	On Exhibition
2012/452	26/10/2012	D Roberts	Erection and Use of a New Building and Existing Dwelling House	On Exhibition

#### 8.4 Development Applications - Works in Progress - November 2012

			for the purposes of a Community Building – 44 Fishery Creek Road, Ballina	
2012/460	31/10/2012	Ji Huang	Change of Use – Commercial Premises (Chinese Medicine Clinic) – 25/60-70 River Street, Ballina	Being Assessed
2012/462T	2/11/2012	J P Higgins	Removal of One Tree – 39 Ballina Street, Lennox Head	Being Assessed

#### Regional Development (Determined by Joint Regional Planning Panel)

DA No.	Date Rec'd	Applicant	Proposal	Status
2012/334	17/08/2012	Ballina Shire Council	The construction of Hutley Drive connection to the Pacific Pines Estate via a round-about, connection to Elevation Estate & Vegetation clearance in SEPP 14 affected area – North Creek Road, Lennox Head	Awaiting Additional Information

#### Major Development (Determined by Minister)

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
MP 07_0026 MOD 4 (DA 2008/510)	01/08/2012	Geolink (on behalf of The Royal Bank of Scotland)	To modify the approved concept plan and project application layout - Hutley Drive, Lennox Head	Council issued a written response to Department of Planning 2/11/2012. Awaiting Minister's Determination
MP 05_0009 MOD 2 (DA 2006/394)	02/08/2012	Glenn Mills (on behalf of Wantana Pty Ltd)	To modify the consent by extending the project approval for 2	Minister granted approval to a five year extension

#### 8.4 Development Applications - Works in Progress - November 2012

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Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
			years - 256-274 River Street, Ballina	contrary to Council's written submission

#### RECOMMENDATIONS

That Council notes the contents of the report on the status of outstanding development applications for November 2012.

#### Attachment(s)

Nil

## 8.5 Development Consent Statistics - October 2012

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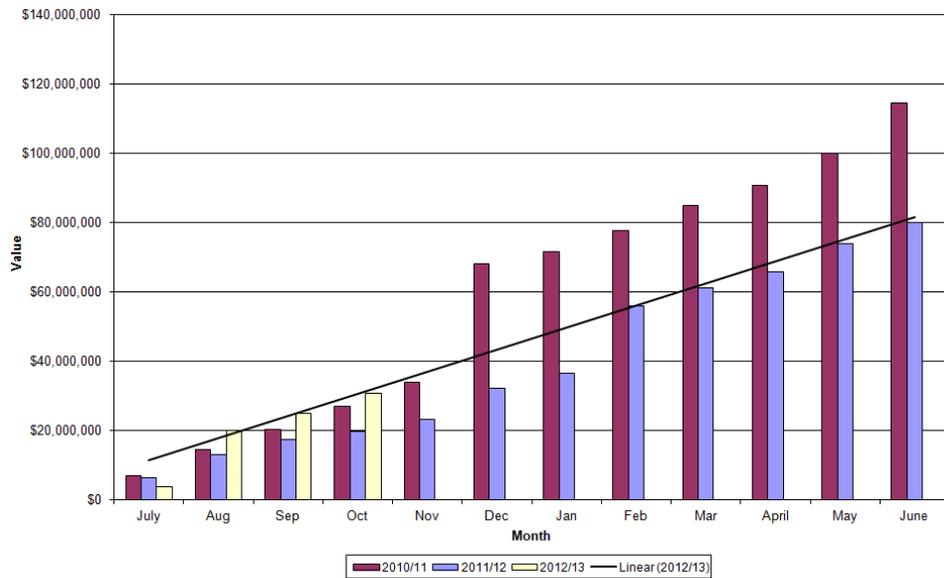
### 8.5 Development Consent Statistics - October 2012

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During the period of 1 October 2012 to 31 October 2012 the Regulatory Services Group issued Development Consents comprising of:

Number of Applications	Value of Work
22 Other Building Related	\$ 1,112,000
13 Dwelling/Duplexes/Residential Flat Buildings	\$ 4,706,000
3 General Developments	\$ 3,000
<b>Total Value</b>	<b>\$ 5,821,000</b>

The following chart details the cumulative consent figures for 2012/13 as compared to 2011/12 and 2010/11. A trend line has also been provided for 2012/13 to assist in the comparison.



### RECOMMENDATION

That Council notes the contents of the report on development consent statistics for 1 October 2012 to 31 October 2012.

### Attachment(s)

Nil

## 9.1 Planning Proposal - 160-190 North Creek Road Lennox Head

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### 9. Strategic & Community Services Group Reports

#### 9.1 Planning Proposal - 160-190 North Creek Road Lennox Head

**Delivery Program** Strategic Planning

**Objective** To determine whether to proceed to finalise the planning proposal to apply an R3 Medium Density Residential zone to land located at 160 - 190 North Creek Road, Lennox Head.

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#### Background

This report relates to the recently exhibited Planning Proposal BSCPP 12/001 (Attachment 1 contains a copy of the planning proposal as exhibited) that proposes the rezoning of land at 160-190 North Creek Road Lennox Head, being Lots 2, 3 & 4 DP 241585 & Lot 6 DP 59817. The subject land has a total area of 3.23 ha (see below).



The subject planning proposal seeks to amend the Draft Ballina LEP 2011 (once made) on the basis that completion of the proposed rezoning, if it proceeds to finalisation, is likely to occur following the completion of Council's new Local Environmental Plan (being the Draft Ballina LEP 2011).

Under this approach, the proposal (as publicly exhibited) involves the rezoning of land from an RU2 – Rural Landscape Zone to an R3 – Medium Density Residential Zone.

## 9.1 Planning Proposal - 160-190 North Creek Road Lennox Head

It is also proposed that a minimum lot size for subdivision of 600m<sup>2</sup> be applied to the subject land and that the land is removed from designation as a potential urban growth area under the LEP upon rezoning. The proposed changes are illustrated in Table 1 below and in the mapping in the planning proposal contained in Attachment 1.

**Table 1: Proposed LEP Amendments**

Planning Provision	Existing BLEP (BLEP 1987)/Draft Ballina LEP 2011	Proposed Amendment	
		Draft Ballina LEP 2011	Ballina LEP 1987
Land use Zone	1(d) – Rural (Urban Investigation)/RU2 Rural Landscape	R3 – Medium Density Residential	2(b) Residential (Village Area)
Minimum Lot Size for Subdivision	Not within BLEP 1987/40ha minimum	600m <sup>2</sup>	N/A
Strategic Urban Growth Area	Not within BLEP 1987/ Nominated as a potential urban growth area	Land removed from designation as a potential urban growth area	N/A

In the event that the Draft Ballina LEP 2011 is not completed within a suitable timeframe, the planning proposal enabling the rezoning of the land may proceed under the Ballina LEP 1987 (which is presently applicable to the land). Under this approach, the proposal (as exhibited) involves the rezoning of the land from a 1(d) Rural (Urban Investigation) Zone to a 2(b) Village Area Zone.

Council resolved to proceed with the subject planning proposal at its meeting held on 26 April 2012 (Minute No: 260412/13);

1. That Council submit the planning proposal relating to properties described as No's. 160-190 North Creek Road, Lennox Head to the NSW Department of Planning for review and gateway determination.
2. That upon an affirmative response being received from the Department, Council staff will carry out the procedural steps associated with the planning proposal.
3. That a further report be submitted to Council in relation to this matter following the mandatory community consultation.

Accordingly, the proposal was forwarded to the Department of Planning & Infrastructure (DP&I) for Gateway determination, with the Gateway enabling the proposal to proceed. The subject application was placed on public exhibition between 27 September 2012 and 12 October 2012. This report seeks Council's direction with respect to the finalisation of the proposed LEP amendment.

### Key Issues

- Environmental impacts
- Urban housing supply
- Implications for neighbouring properties

**Information**

Planning Context

Council has identified the subject land as being suitable for investigation to determine its urban suitability since the introduction of the Ballina LEP 1987. Additionally, future urban zoning of the land has been contemplated in a number of planning policies.

*Ballina LEP 1987*

The subject land is zoned 1(d) Rural (Urban Investigation) under the terms of the Ballina Local Environmental Plan 1987. The 1(d) Zone has been used by Council to identify areas considered to have potential for urban development, subject to more detailed analysis through a rezoning process.

*Ballina Shire Combined Development Control Plan 2006*

The subject land is identified as P1 – Planned Urban Development under the Combined DCP.

*Ballina Growth Management Strategy 2012*

The subject land is located within the Lennox Head Planning Precinct and is identified as a strategic urban growth area having potential for rezoning for urban purposes.

*Lennox Head Structure Plan 2004*

The Lennox Head Structure Plan (LHSP) provides a framework for the development of new urban land release areas within the Lennox Head locality and includes the subject land as a potential urban area (Area L).

*Far North Coast Regional Strategy*

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

Submissions

Copies of the community submissions received through the recent public exhibition process are included in Attachment 2. Five submissions were received from the community members and a submission was received from the NSW Rural Fire Service. The issues raised are summarised and discussed below:

*Application of the R3 – Medium Density zoning*

Issue:

The majority of submissions raised concerns with the application of an R3 Medium Density zone to the site. In particular, several submissions suggest the R3 zone is inconsistent with the low density nature of the surrounding locality. Lot sizes and the types of housing that could arise from the application of an R3 zone have been identified as matters of concern in the submissions.

Discussion:

In considering the zoning for the land in relation to the issues outlined above, it is important to recognise the key differences between the R2 Low Density Residential and R3 Medium Density Residential zones.

Whilst the zone names (derived directly from the State Government's Standard Instrument LEP) refer to low and medium density, the zones have been used by Council in its endorsed Draft Ballina LEP 2011 with a focus on housing types rather than density. Further, the zones themselves will not necessarily result in low or medium density development outcomes, with other factors such as lot size requirements, site characteristics and market demand influencing the nature and form of future development.

In terms of housing types, dwelling houses and secondary dwellings (granny flats) are permitted with development consent in the R2 Low Density zone. These and other housing forms including dual occupancies (duplexes), attached & semi-detached dwellings (town houses) and residential flat buildings are permitted with development consent in the R3 Medium Density zone.

The R3 Medium Density zone is designed to maximise the flexibility in housing outcomes on land identified for residential purposes. Its application does not mean that town houses and flats must be developed, but it does allow for their consideration through the development assessment process. The housing outcomes in such areas could range from single detached dwellings to dual occupancies to flats, or a mixture of a variety of housing forms. Importantly, development in the R3 Zone is subject to various development controls that direct built form outcomes. This zone has been typically applied to areas for residential development to maximise flexibility in housing types unless there is a particular reason to utilise the R2 Zone.

The R2 Low Density zone provides for a very limited range of housing types, being single detached dwellings and secondary dwellings (granny flats). It is important to note that other housing types such as dual occupancies (duplexes) and town houses are not permitted in this zone. This zone has typically been applied in the Draft Ballina LEP 2011 to existing residential areas with low density categorisation under Council's DCP or land that is subject to physical constraints making it more suited to single dwellings.

In terms of the surrounding area, established residential areas to the west, south and east are predominately subject to an R2 Zone under the Draft Ballina LEP 2011. The Pacific Pines estate to the north and north-west is subject to an R3 Zone.

## 9.1 Planning Proposal - 160-190 North Creek Road Lennox Head

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As an indication of the potential development outcomes associated with the land, the proponent incorporated three subdivision layout options in documentation supporting their LEP amendment request. Whilst the proponent is not bound to utilise one of these layouts in the future, they do provide an indication of the type of development that may ultimately be accommodated on the land if it is rezoned for residential purposes. A copy of the layout options is contained in Attachment 3.

Having regard for the above, it is suggested that the R3 Medium Density zone is suitable for the subject land for the following reasons:

- The land is presently identified in Council's planning strategies and by its current 1(d) Rural (Urban Investigation) zoning as a potential urban area;
- The R3 zone provides for flexibility in the provision of housing on the subject land;
- The land is capable of supporting various housing types in terms of its physical characteristics and infrastructure availability; and
- The ultimate subdivision of the land and future housing types and forms are subject to further design considerations under the current planning framework.

Significantly, should the DP&I choose to amend the Ballina LEP 1987, a 2(b) Residential (Village Area) zone is proposed to apply. Under this approach, no forms of residential housing will be prohibited in the applicable zone (similar to the R3 Zone). This is also the case for the alternate 2(a) Living Area zone under the Ballina LEP 1987.

### *Amenity*

Issue:

Under the provisions of the Draft Ballina LEP 2011, a proposed minimum lot size of 600m<sup>2</sup> has been applied to the subject land. It was suggested that the application of a 1,000m<sup>2</sup> minimum lot size would be more appropriate given the size of lots in the surrounding locality.

Some submissions raised concerns with the loss of the rural outlook houses along Fieldcrest Place currently enjoy as a result of future residential development of the subject land.

Other amenity issues noted included noise, congestion, road safety & access onto North Creek Road that may arise in association with medium density housing. In particular, the cumulative impacts that this would potentially have on the existing road network in conjunction with the additional traffic generation associated with the Pacific Pines development was raised.

It was also identified that there would be an overall loss of amenity to the Lennox Head community due to increased development within the locality.

Discussion:

A minimum lot size of 600m<sup>2</sup> has been proposed for the site under the Draft Ballina LEP 2011. This is consistent with the minimum lot size applied to the surrounding locality and to new residential areas under the Draft Ballina LEP 2011. Whilst the R3 – Medium Density zoning does allow for integrated development comprising of smaller lots (of 300m<sup>2</sup> or greater) and associated

## 9.1 Planning Proposal - 160-190 North Creek Road Lennox Head

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housing, this will only be considered appropriate when all potential amenity issues can be satisfactorily addressed through the development application process.

Assessment of amenity issues in relation to noise, congestion and privacy are considered appropriate to address at the subdivision and individual site development stages. Additionally, issues relating to traffic generation will need to be determined in conjunction with an estimated development yield, which can only be determined in association with a subdivision layout. Subsequent intersection design in relation to access onto North Creek Road will also be assessed at the time a development application for a subdivision is assessed.

The subject land has been identified in a number of Council's planning policy documents as being a potential future urban area for an extensive period of time. In particular, the site has been zoned 1(d) Rural (Urban Investigation) under the provisions of the Ballina LEP 1987 which indicates the land may have potential for urban development, subject to further investigation, since 1987. The subject land is already surrounded by established residential areas and therefore future residential development is considered consistent with the surrounding locality.

In relation to this issue, it is suggested that the planning proposal should proceed, as exhibited, on the basis that:

- The application of a 600m<sup>2</sup> minimum lot size to the subject land is considered acceptable given that it is consistent with that applied to the surrounding locality and to new residential areas; and
- Potential amenity issues relating to medium density development outcomes can be suitably addressed through the development assessment process.

### *Capacity of existing infrastructure*

#### Issue:

Concerns were raised in relation to current stormwater issues being experienced in the locality and the potential impact that further development will have on adjoining properties. Additionally, one submission raised concerns in relation to the existing water pressure and the impact additional development may have on this matter.

#### Response:

The applicant has provided a conceptual stormwater design to ensure a future development on the site will not impact on downhill neighbouring land. An initial assessment has been undertaken by Council's Civil Services Group which indicates that stormwater management can be adequately addressed in relation to future development. Further detailed design will be required at the subdivision stage.

In relation to water, there are two existing water mains located within North Creek Road that are capable of servicing future development of the subject land. Water pressure is an infrastructure specific issue rather than a matter relating to whether the land should be available for urban development.

## **9.1 Planning Proposal - 160-190 North Creek Road Lennox Head**

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It is recommended that issues relating to stormwater management should be addressed in association with more detailed stormwater designs at the subdivision application stage.

### *Removal of trees*

Issue:

A majority of the submissions raised concerns in relation to the removal of the Norfolk Island Pine trees, with the primary concern relating to the visual and cultural importance of these trees to the Lennox Head community.

Other issues raised in relation to the removal of both the Norfolk Island Pines and the Fig trees include the potential loss of habitat and wind protection that these trees provide for residents on Fieldcrest Drive.

Response:

The removal of ornamental or landscaping trees previously planted within the properties is an issue that should be considered at the development application stage, and in association with a proposed subdivision layout.

### Bushfire

The planning proposal was forwarded to the NSW Rural Fire Service for comments. Subsequently, no concerns or issues were raised in relation to bush fire.

### Environmental Impacts

Prior to placing the subject planning proposal on exhibition, Council requested additional information in relation to site contamination. A Contaminated Land Assessment report was submitted on behalf of the landowners which demonstrates that the investigation area is considered to be below the acceptable residential guidelines for land contamination and is suitable for the intended purpose of residential land uses.

### **Sustainability Considerations**

- **Environment**

Development of the subject land would have minimal implications for the natural environment of the site and its locality. The proposal provides for “infill” development on a site that is located within an existing residential neighbourhood where three of the four lots already contain dwellings.

- **Social**

The rezoning of land for residential uses is likely to have a positive social impact. In particular, the development of the land for housing will assist in meeting regional dwelling targets. It is noted that the release of the subject land for urban purposes is consistent with both Council’s and Government’s endorsed urban land release strategies.

However, it should be acknowledged that there is a potential (albeit minor) negative social impact for surrounding residents associated with the change to the area that would result from additional residential development.

- **Economic**

The rezoning of the subject land will contribute to the economy of the locality through the development of the land for urban purposes. Additionally, as the rezoning will result in an “infill” development outcome, efficiencies are likely in relation to infrastructure provision.

**Legal / Resource / Financial Implications**

The rezoning investigations have been undertaken at the proponent's cost, in accordance with Council's adopted Fees and Charges schedule. There are no significant legal, resource or financial implications associated with the completion of the proposed LEP amendment.

**Consultation**

Consultation on this matter has been undertaken with the community and key Government agencies through the public exhibition process. These engagements have been undertaken in accordance with the requirements of the DP&I's Gateway determination, the Environmental Planning and Assessment Act and attendant Regulation.

**Options**

1. That Council forward the planning proposal to rezone land located at 160 - 190 North Creek Road, Lennox Head with an R3 – Medium Density zone to the Department of Planning & Infrastructure for review and finalisation; or
2. That Council resolve to forward the planning proposal to rezone land located at 160-190 North Creek Road, Lennox Head with an R2 – Low Density zone to the Department of Planning & Infrastructure for review and finalisation; or
3. That Council cease the rezoning process; or
4. That Council request the modification or deferral of the planning proposal and subsequent reconsideration of the matter.

Option one is the preferred course of action on the basis that it will progress the planning proposal to the next step in the rezoning process which is to allow DP&I to review the planning proposal and take necessary steps in finalising the rezoning of the subject land. Such action is based on the adequacy of the additional information supplied by the proponent and assessment of the submissions received during the formal exhibition process by both the community and the Government agency. As outlined above, the R3 zone is recommended for reasons including that:

- The land is presently identified in Council's planning strategies and by its current 1(d) Rural (Urban Investigation) zoning as a potential urban area;

## **9.1 Planning Proposal - 160-190 North Creek Road Lennox Head**

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- The R3 zone provides for flexibility in the provision of housing on the subject land;
- The land has been assessed as being capable of supporting various housing types in terms of its physical characteristics and infrastructure availability; and
- The ultimate subdivision of the land and future housing types and forms are subject to further design considerations under the current planning framework.

If the rezoning proceeds under the existing Ballina LEP 1987, it is recommended that the 2(b) Village Area zone is applied, consistent with the Pacific Pines residential area.

In considering the above, it should be noted that the DP&I and the Minister for Planning & Infrastructure may or may not accede to the finalisation of the LEP amendment.

Option two, to apply an R2 Low Density Residential zone to the land, will also progress the planning proposal to the next stage of the rezoning process. However, this option is considered less favourable than option one based on the reasons for applying an R3 zone, identified above.

Aside from the zoning of the land, Council may also wish to consider the application of a different minimum lot size for subdivision to the land, whether zoned R2 or R3. Council has utilised 800m<sup>2</sup>, 1000m<sup>2</sup>, and 1200m<sup>2</sup> minimum lot size standards elsewhere in urban parts of the shire and such standards could be applied to the subject land to address the concerns raised in submissions in relation to density and amenity. However, it is recommended that Council apply a 600m<sup>2</sup> minimum lot size for subdivision (as exhibited) as this is consistent with the minimum lot size applied to the surrounding locality and to new residential areas under the Draft Ballina LEP 2011. In this regard, it should be noted that this does not mean that all lots will be 600m<sup>2</sup> as the standard sets the minimum size, with larger lots also enabled.

Options three and four are the least preferred options based on the fact that both options will conclude or delay the progression of the planning proposal. These options are not recommended as it has been demonstrated that the land is relatively unconstrained and is suitable to support future residential land uses.

**RECOMMENDATIONS**

1. The Council proceed to finalise the planning proposal relating to properties described as Nos. 160-190 North Creek Road, Lennox Head.
2. That the planning proposal be submitted to the NSW Department of Planning and Infrastructure on the basis of the application of an R3 Medium Density Residential zone and 600m<sup>2</sup> minimum lot size for subdivision to the subject land under the Standard Instrument LEP.
3. That the planning proposal incorporates the application of a 2(b) Village Area zone in the event that the rezoning is finalised under the existing Ballina LEP 1987.

**Attachment(s)**

1. Planning Proposal as Exhibited
2. Submissions Received
3. Indicative Subdivision Options (Newton Denny Chapelle)

## **9.2 Planning Proposal - No. 6 Burns Point Ferry Road, West Ballina**

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### **9.2 Planning Proposal - No. 6 Burns Point Ferry Road, West Ballina**

**Delivery Program** Strategic Planning

**Objective** To present Council with a planning proposal in relation to land located at Lot 1 DP 522558, No. 6 Burns Point Ferry Road, West Ballina and to seek direction in relation to the further progress of the matter.

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#### **Background**

Council received a request for the rezoning of Lot 1 DP 522558, No. 6 Burns Point Ferry Road, West Ballina, on 22 May 2012 (the former Ferry Boat Motel site). The location of the subject land is shown in Attachment 1. The request, which seeks the application of a residential zone over the entire 4047m<sup>2</sup> allotment, was submitted by Newton Denny Chapelle on behalf of the landowners, CM & JM Elliott and DR & CM Westaway.

Council considered the request at its September 2012 Ordinary Meeting and resolved as follows [270912/12]:

*“That Council initiate a planning proposal for the application of an R3 Medium Density Residential zone (under the Draft Ballina Local Environmental Plan 2011) over Lot 1 DP 522558, No.6 Burns Point Ferry Road, West Ballina.”*

In accordance with Council's resolution, a planning proposal has been prepared (Attachment 2). This report provides an overview of the planning proposal and seeks Council's authorisation for the submission of the proposal to the NSW Department of Planning and Infrastructure (DP&I) for Gateway determination.

Councillors will note the relatively short timeframe between reports associated with this matter. This report and the September 2012 report relate to the first two steps of the planning proposal process, being consideration of an initial concept and then consideration of a planning proposal document for Gateway determination. These steps are carried out in accordance with Council's 'Planning Proposals and Local Environmental Plan Amendments Process Guidelines' consistent with the requirements of the Environmental Planning and Assessment Act 1979.

The reasoning for the two steps is as follows:

- The initial concept or amendment initiation phase provides an opportunity for a proponent to see if Council supports an idea for an LEP amendment (or rezoning) in advance of detailed assessment and reporting on the full suite of relevant issues and site characteristics. It also provides an opportunity for Council to identify key matters for consideration prior to proceeding to the preparation of a planning proposal that documents the proposed amendment for the DP&I. Importantly, a concept must be sufficiently advanced to enable a complete understanding of its objectives and outcomes and so at times, this step can involve detail on particular issues of relevance to assist the Council in reviewing the initial amendment idea.

- The planning proposal phase is the point at which an explanation of a proposed amendment is prepared for the consideration of the DP&I. The details of a proposal amendment are documented in a planning proposal which is reviewed by the DP&I Gateway Panel to determine if a proposal may proceed towards public exhibition and finalisation. This step in the process provides Council with an opportunity to review a proposed LEP amendment in greater detail via the planning proposal document. It is also an opportunity for the consideration of issues where desirable to Council in advance of the DP&I's review of a proposal.

Importantly, the planning proposal documentation is prepared by Council staff and as such, it is important that staff have direction as to whether a concept is supported by the Council and if so, on what grounds. This ensures that planning proposals in relation amendments requested by development proponents are prepared in accordance with Council's view and that staff resources are being utilised effectively and appropriately.

The above process is utilised for external requests for LEP amendments and sometimes the first two steps can be completed in a short timeframe, as is the case in relation to No.6 Burns Point Ferry Road.

It should also be noted that at times, the two step process is collapsed into a single step for amendment matters that are identified by the Council or staff to be in the broad interests of the community to maximise efficiency in processing.

### **Key Issues**

- Progress of the proposed LEP amendment request.

### **Information**

The subject land (Attachment 1) contained the former Ferry Boat Motel prior to its demolition in 2008. The site has an area of 4047m<sup>2</sup> and adjoins existing urban residential areas to its north and east.

Under the *Ballina Local Environmental Plan 1987* (Ballina LEP 1987), the subject land is zoned 1(d) Rural (Urban Investigation) Zone. The Council-endorsed Draft Ballina LEP 2011 (draft LEP) applies the RU2 – Rural Landscape zone to the site. The site is also identified as having potential for urban development in Council's adopted Ballina Shire Growth Management Strategy.

The planning proposal contained in Attachment 2 provides an overview of the subject land and the proposed LEP amendment. In summary, the proposal seeks to provide for the application of an R3 Medium Density Residential zone to the entire area of Lot 1 DP 522558.

Initial assessment of the characteristics of the land indicates that the site is suitable for a residential land use. Further, the proposed residential zone is consistent with the current zoning and strategic planning context associated

## **9.2 Planning Proposal - No. 6 Burns Point Ferry Road, West Ballina**

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with the land. Given this, the subject land appears generally suitable for the application of a residential zone. Therefore, further processing of the LEP amendment request by way of submission of the planning proposal contained in Attachment 2 to the DP&I is considered to be warranted.

### **Sustainability Considerations**

- **Environment**

The rezoning of the subject land is not expected to result in significant environmental impacts. Although the land does not contain vegetation or habitat of ecological significance, it directly adjoins a large parcel of land that is identified as containing endangered ecological communities.

- **Social**

Social benefits can be expected through the provision of additional residential land in close proximity to the existing urban services and facilities of West Ballina.

- **Economic**

The rezoning of the land is likely to result in positive economic benefits through the eventual provision of additional residential housing stock in the locality.

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

There is no significant resourcing or financial implications associated with the further processing of this LEP amendment. Processing of the matter can be accommodated within the existing Strategic and Community Services Group work program.

The processing of the proposal is subject to the application of Council's adopted fees and charges for LEP amendment requests.

### **Consultation**

There has been no consultation undertaken with either the community or government agencies in relation to this LEP amendment request to date. However, should the matter continue to proceed, public exhibition of the proposal will be required prior to completion of any amendment to Council's LEP. Community engagement would occur following the DP&I's consideration of the matter through the Gateway determination process.

### **Options**

1. Proceed with the planning proposal for the application of an R3 Medium Density Residential zone to Lot 1 DP 522558, No. 6 Burns Point Ferry Road, West Ballina.

## **9.2 Planning Proposal - No. 6 Burns Point Ferry Road, West Ballina**

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This approach would authorise the submission of the planning proposal contained in Attachment 2 to the DP&I for Gateway determination. If supported by the DP&I, the proposal will be subject to a public exhibition period prior to further consideration by Council.

This is the recommended approach.

2. Defer or amend the planning proposal.

This approach is not recommended given:

- The initial review of the characteristics of the land has indicated that the site is generally suitable for medium density residential land use; and
- The proposed LEP amendment is consistent with Council's land use planning framework for the locality.

3. Cease further action in relation to the planning proposal.

For the same reasons outlined in relation to option 2, this approach is not recommended.

### **RECOMMENDATIONS**

1. That Council submit the planning proposal relating to Lot 1 DP 522558, No. 6 Burns Point Ferry Road, West Ballina to the NSW Department of Planning & Infrastructure for review and Gateway determination.
2. That upon an affirmative Gateway determination being received from the Department of Planning & Infrastructure, Council staff will carry out the procedural steps associated with the progress of the planning proposal, including public exhibition.
3. That a further report be submitted to Council in relation to this matter following mandatory community consultation.

### **Attachment(s)**

1. Locality Map
2. Planning Proposal

### **9.3 Draft Ballina LEP Amendment No.90 - Stewart Farm**

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### **9.3 Draft Ballina LEP Amendment No.90 - Stewart Farm**

**Delivery Program** Governance

**Objective** To advise Council of the appointment of the Northern Region JRPP to process the amendment and seek direction with respect to Council's appointments to the panel in relation to this matter.

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#### **Background**

Council was advised in mid August by the NSW Department of Planning and Infrastructure (DP&I) that the Minister for Planning and Infrastructure was considering the appointment of an alternate planning authority to process draft Ballina LEP Amendment No.90 - Stewart Farm (Amendment No.90). If made, the rezoning would enable the preparation and lodgement of a development application for the future residential development of the land. The amendment would also recognise, in a zoning sense, some of the significant environmental attributes of the subject land.

In response to this, the Council received a report concerning Amendment No.90 at its August 2012 Ordinary Meeting. At that meeting, the Council resolved as follows [Minute No. 230812/13]:

- "1. That Council notes the contents of this report regarding the processing of draft Ballina Local Environmental Plan Amendment No.90.*
- 2. That Council acknowledges that based on the contents of this report, the maintenance of its present position may result in the Minister for Planning and Infrastructure "calling in" this Amendment."*

Council was advised in correspondence dated 25 September 2012 from the Minister for Planning and Infrastructure that the Northern Region Joint Regional Planning Panel (JRPP) was to be appointed to process Amendment No.90 further. The Minister also advised that all of the land east of The Coast Road has been removed from the planning proposal, meaning that this land cannot be further considered in relation to the proposed amendment. A copy of the Minister's correspondence is contained in Attachment 1.

Staff are aware that the JRPP has now commenced its processes to enable it to consider the proposed Amendment No.90 in accordance with the Minister's appointment. The DP&I is undertaking the technical assessment of the proposed amendment and staff have provided the DP&I with relevant background information.

Given the appointment of the JRPP, this report considers the involvement of Council nominees on the panel in relation to Amendment No.90.

#### **Key Issues**

- Composition of Ballina Shire Council nominees on the JRPP
- Perceived conflicts of interest

**Information**

The JRPP has been established as an independent body that acts as a planning authority in relation to matters deemed to be of regional significance or as determined by the Minister for Planning and Infrastructure. Effectively, the JRPP is a decision making body for certain development proposals and its role can include consideration of proposed LEP amendments.

The JRPP is comprised of three standing Ministerial appointees, with each local council able to nominate two individuals to participate on the panel in relation to matters of relevance to their local government area. Importantly, the council's nominees are not considered to be representatives of the elected council. Rather, they are representatives of the local area. This means that they do not have to be members of the council (Councillors or staff) and they can be any person the elected Council wishes to select for the panel.

Ballina Shire Council's present nominees to the panel are the Mayor, Councillor David Wright and Stephen Barnier, Group Manager Strategic and Community Services. Council's alternate nominees to the panel are the Deputy Mayor, Councillor Sue Meehan and John Truman, Group Manager Civil Services. In summary, one Councillor and one staff member, with no person from outside Council considered.

Given that Council has had carriage of Amendment No.90 as the local planning authority, the elected Council, the Strategic and Community Services Group and the Civil Services Group have been involved in the processing, proponent/landowner and government liaison, and decision making associated with the proposal.

As a result of this, it is possible that each of Council's current and alternate nominees to the JRPP may be unable to participate in the JRPP's consideration of the LEP amendment due to an identified or perceived conflict of interest. This may result in there being no locally nominated members of the JRPP in relation to this LEP amendment.

This report invites the Council to consider the nomination of a temporary alternate to the JRPP, specifically in relation to the panel's consideration of Amendment No.90. In this regard, it is open to Council to identify one or two alternative nominees. Given the Council's role to date in the decision making associated with the LEP amendment, it is suggested that currently elected Councillors or Councillors from the previous Council term not be nominated.

Having regard for the above, and in keeping with Council's existing practice, it is recommended that Council nominate a temporary alternate to the panel drawn from Council's senior staff. Given the involvement of Council in the processing of the LEP amendment to date, the only Group of Council that has been separate from the decision making associated with the proposal is Council's Regulatory Services Group. On this basis, it will be recommended that Council nominate Mr Rod Willis, Regulatory Services Group Manager as an alternate to the JRPP. As stated, this nomination would be temporary and only relate to the panel's consideration of Amendment No.90.

It is suggested that Mr Willis' nomination would be advantageous to the process insofar as he is very familiar with the operation of the panel (having represented the Council in other development matters before the panel). Further, he is very familiar with the importance and operation of codes of conduct, with the JRPP's code being quite similar to that of the Council.

The nomination of other individuals at variance to Council's existing practice is not recommended as the absence of defined criteria and detailed consideration of a suitable selection process may undermine the integrity of appointments to the panel in the longer term. Although a selection process could be employed, it is unlikely that sufficient time will be available in relation to Amendment No.90 as it is understood that the DP&I and JRPP are keen to move quite quickly to enable consideration and determination of the matter.

### **Sustainability Considerations**

- **Environment**  
Environmental, social and economic considerations will form part of the JRPP's assessment of this LEP amendment.
- **Social**  
As above.
- **Economic**  
As above.

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

There are no specific legal, resourcing or financial implications for Council associated with the appointment of an alternate nominee to the JRPP on a temporary basis.

### **Consultation**

Not applicable.

### **Options**

Council has the discretion to select alternate nominees to the JRPP on a temporary basis in relation to Amendment No.90.

Given that it is possible that there will be no local representatives on the panel in the current circumstances, it is recommended that Council utilise its ability to nominate a temporary local member in relation to Amendment No.90. As outlined, it is recommended that Council nominate Mr Rod Willis as its temporary alternate. Mr Willis is a senior member of staff who has not been engaged directly in the processing of Amendment No.90 and this approach would maintain Council's current practice in relation to JRPP appointments.

**RECOMMENDATION**

That Council nominate Mr Rod Willis as an alternate local member to the Northern Region Joint Regional Planning Panel on a temporary basis in relation to the panel's consideration and determination of Draft Ballina Local Environmental Plan 1987 Amendment No.90 – Stewart Farm.

**Attachment(s)**

1. Correspondence from Minister for Planning & Infrastructure - Appointment of JRPP

## **9.4 Plan Making - Delegation of Functions to Councils**

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### **9.4 Plan Making - Delegation of Functions to Councils**

**Delivery Program** Governance

**Objective** To seek the Council's direction with respect to the adoption of delegations associated with the making of local environmental plans.

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#### **Background**

The Department of Planning and Infrastructure (DP&I) recently completed a review of submissions relating to new processes associated with the preparation of local environmental plans in NSW. The outcome of the review is two key changes to the system of plan making, being:

- Provision for delegation of functions for the preparation and making of certain types of local environmental plan amendments to local councils; and
- Provision for independent reviews of decisions made in relation to proposed local environmental plan amendments.

The purpose of this report is to seek the Council's direction in relation to the exercise of a delegation of functions now available to it in relation to the preparation of local environmental plan amendments.

Further information relating to the independent review process will be provided to the Council separately.

#### **Key Issues**

- Application of plan making delegations in Ballina Shire
- Whether Council wishes to accept the Minister's delegation

#### **Information**

The DP&I has advised Council that certain local environmental plan amendments can be processed by councils under delegation from the Minister for Planning and Infrastructure (Attachment 1). In order to enable this to occur, Council must first formally accept the delegation offered. In considering whether to accept the delegation, Council may wish to consider the following:

- The DP&I has indicated that the intent of the delegation is to give local councils responsibility for local environmental plan amendments of local significance and remove duplicated steps in the plan making process.
- The types of local environmental plan amendments that would be routinely delegated include mapping alterations, correction of minor anomalies, reclassifications of land, plans relating to local heritage items and site rezonings where consistent with an endorsed strategy or surrounding zones.
- Local environmental plan amendments of local significance as determined by the DP&I Gateway Panel may also be processed under the delegation.

## 9.4 Plan Making - Delegation of Functions to Councils

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- Where a council intends to process a local environmental plan amendment under the delegation, the matter will still require the approval of the DP&I Gateway Panel and an agreement from the panel that the delegation may be exercised in the particular circumstance.
- Where a local environmental plan amendment is processed under delegation by a council, it is important to note that the newly introduced independent review process will continue to apply. As outlined information regarding this review process will be provided to Council separate to this report.
- Where a council decides to cease further progress on, or decline to complete, a proposed local environmental plan amendment under delegation, the agreement of the Minister for Planning and Infrastructure will still be required.
- Where a council decides to complete a proposed local environmental plan amendment under delegation, Council will engage directly with Parliamentary Counsel in relation to the legal drafting and implementation of the amendment.
- If the delegation offered is accepted by Council, the delegation may be sub-delegated to enable either the General Manager or nominated staff to carry out the delegated plan making functions.

The application of the delegation is considered to be advantageous as it has the potential to result in improved timeframes for the processing of local environmental plan amendments and improved autonomy in decision making for Council, especially where proposed amendments proceed to finalisation.

However, it should be noted that the DP&I is seeking a substantial level of supporting reports for plans progressed under delegation and amendments remain subject to conditions applied by the DP&I Gateway Panel.

Further, the Minister for Planning and Infrastructure must agree if Council resolves to decline a proposal following a Gateway determination and new review processes have been introduced where Council does not support a proposed amendment. Therefore, it is important to note that under the delegation, Council would not receive full processing autonomy and there is unlikely to be any reduction in the level of Council resourcing required to process amendments.

### Sustainability Considerations

- **Environment**  
Environment, social and economic outcomes are typically a consideration in LEP amendments.
- **Social**  
As above
- **Economic**  
As above

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

It is expected that the delegation-based plan making process, in a practical sense, will be similar to the existing process in terms of the resources required to process a local environmental plan amendment. That is, the key processing steps remain the same as at present and Council will still have DP&I information reporting requirements to meet.

Under delegation, the legal process for the making of a local environmental plan amendment will be carried out directly between Council and Parliamentary Counsel, without the involvement of the DP&I. Given Parliamentary Counsel is responsible for the legal validity of planning provisions, it is unlikely that there is substantial risk to Council in this approach. On the contrary, it may be beneficial to liaise directly with those responsible for the legal drafting of provisions in terms of communicating Council's intended outcome.

### **Consultation**

The Minister is consulting with NSW councils on this issue.

### **Options**

#### 1. Accept the Plan Making Delegation Offered

Under this approach, Council would indicate its acceptance of the offered delegation to enable Council to process certain types of local environmental plan amendments with reduced involvement from the DP&I. Importantly, Council would still be required to nominate whether it intends to use the delegation in relation to each proposed local environmental plan amendment on a case by case basis. The decision on the application of the delegation to an amendment will be made by the DP&I Gateway Panel at the time a planning proposal is referred for determination as to whether it may proceed or not.

This option has the potential to result in improved timeframes for the processing of local environmental plan amendments and a slightly greater autonomy in decision making for Council. However, it is important to note that Council remains subject to reporting requirements, conditions associated with the progress of proposed amendments, review processes and Ministerial agreement (where Council resolves to decline a proposed amendment post Gateway determination). Therefore, the DP&I (or Minister for Planning and Infrastructure) retains involvement in key decision making steps and there is unlikely to be any reduction in Council resource requirements for the processing of amendments.

On balance, it is recommended that Council accepts the delegation offered to enable its application where desirable. That is, Council may nominate whether it wishes to exercise its delegation in relation to each planning proposal that is sent to the DP&I Gateway Panel for determination. In circumstances where it is not considered advantageous to Council to utilise the delegation, Council is able to refrain from its application to a local environmental plan amendment process.

## **9.4 Plan Making - Delegation of Functions to Councils**

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In accepting the delegation, it is recommended that the elected Council exercises the delegation rather than sub-delegating the functions to the General Manager or nominated staff. This approach maintains the current approach in relation to Council's involvement in local environmental plan amendments (i.e. Council considers amendments at key points in their processing, including ultimately whether to proceed with an amendment or not). This arrangement could be reviewed once Council has become more familiar with the processing of amendments under the delegation offered if desirable to determine if there is benefit in sub-delegating functions.

### **2. Decline the Plan Making Delegation Offered**

This approach is not recommended as declining the delegations removes the flexibility for Council associated with the use of the delegation in relation to each proposed local environmental plan amendment (as outlined above).

### **RECOMMENDATIONS**

1. That Council advise the Department of Planning and Infrastructure that it accepts the delegation offered in relation to the processing of certain local environmental plan amendments.
2. That the delegation for the processing of certain local environmental plan amendments be extended only to the elected Council at this time.

### **Attachment(s)**

1. Correspondence from Minister for Planning and Infrastructure - Plan Making Delegations

## 9.5 Classification of Land - Tamar Street Ballina

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### 9.5 Classification of Land - Tamar Street Ballina

**Delivery Program** Strategic Planning

**Objective** To determine the classification of two parcels of land recently acquired by Council pursuant to the requirements of the Local Government Act 1993

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#### **Background**

At its Ordinary Meeting held on 26 July 2012, Council resolved to proceed with the acquisition of two properties in the Ballina CBD located at No.74 (Lot 11 DP 238728) and No.78 (Lot 6 DP 600044) Tamar Street. The location of the properties is shown in Attachment 1. The subject properties have been acquired with funds from Council's Car Parking Developer Contributions Reserve which is sourced from contributions levied under section 94 of the *Environmental Planning and Assessment Act 1979*.

The purchase of the subject properties has now been finalised with settlement taking place on 24 October 2012.

The purpose of this report is to determine the classification of the properties under the terms of the *Local Government Act 1993* (LG Act). Part 2 of Chapter 6 of the LG Act regulates the management of public land.

Specifically, sections 26 and 27 of the LG Act require public land to be classified as either "community" or "operational" land in accordance with its intended use.

Given the purpose of the acquisition and the intended use of the land, it is the recommendation of this report that the subject properties be classified as operational land under the provisions of the LG Act.

#### **Key Issues**

- Classification of the land under the terms of the LG Act
- Nature and use of the land

#### **Information**

The acquisition of the subject properties was considered by Council's Commercial Services Committee at its meeting held on 23 July 2012.

The committee endorsed the recommendation to purchase the properties using funds from Council's Section 94 Parking Developer Contributions Reserve.

The recommendation of the Commercial Services Committee to acquire the subject properties was subsequently endorsed by Council at its Ordinary Meeting held on 26 July 2012 [Minute No. 260712/39].

## 9.5 Classification of Land - Tamar Street Ballina

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The land has been purchased with the intention of providing additional car parking in the Ballina town centre area. Following the demolition of the existing buildings on each site, it has been estimated that a total of 80 additional public car parking spaces could be provided over the combined area of the subject properties.

The purchase of the subject properties was undertaken by private treaty with settlement occurring on 24 October 2012. Under the terms of section 31 of the LG Act, any resolution to classify land must be made within three months after it is acquired. Any land acquired that is not classified by Council within three months is taken to have been classified as community land.

Due to the reasons for purchase of the land and the intended future use of the subject sites, it is recommended that Council classify the land as operational land in accordance with the requirements of the LG Act.

Section 34 of the LG Act requires that public notice of a proposed resolution to classify land must be made and that a period of not less than 28 days to receive submissions must be given. Public notice of the proposal to classify the subject land as operational land was provided in the Ballina Shire Advocate on 11 October 2012 in accordance with section 34 of the Act, with submissions invited until 12 November 2012. No submissions were received in response to the notification.

Given that the required public notification and settlement on the purchase of the land have been completed, it is now necessary for Council to confirm whether or not the land is to be classified as operational land under the terms of the LG Act.

### **Sustainability Considerations**

- **Environment**  
The classification of the subject sites is not expected to result in any negative environmental outcomes.
- **Social**  
The classification of the subject sites as operational land will support positive social outcomes having regard for the ongoing management and future use of the subject sites through the provision of increased car parking spaces.
- **Economic**  
The classification of the subject sites as operational land will support positive economic outcomes having regard for the ongoing management and future use of the subject sites. Specifically, an operational classification provides for the greatest flexibility in the use of the land for economic benefit to the community.

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

Classification of Nos. 74 and 78 Tamar Street, Ballina (Lot 11 DP 238728 and Lot 6 DP 600044) as operational land under the *Local Government Act 1993* provides Council with appropriate options for the purpose of construction of public car parking on the sites.

## **9.5 Classification of Land - Tamar Street Ballina**

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This is in accord with the rationale for acquiring the sites utilising funds from Council's Section 94 Parking Reserve. The classification of the land as operational land also gives Council flexibility in the future use and/or redevelopment of the land for additional commercial purposes, should that be determined to be appropriate.

The classification of the land is only a legal mechanism to provide for the future use and management of the land. Any development proposals for the demolition of existing buildings and the subsequent construction of car parking or other improvements will be subject to separate assessment and approval processes.

### **Consultation**

Public notification of the proposal to classify the land as operational land has been made in accordance with the requirements of section 34 of the *Local Government Act* 1993. Public submissions were invited with the closing date being 12 November 2012. No submissions in response to the notification were received.

### **Options**

1. Council may resolve to classify one or both of the properties as operational land.

Under this option, the proposed classification of either or both of the properties as operational would take effect immediately upon the resolution of the Council.

2. Council may resolve to classify one or both of the properties as community land.

Where land is classified as community land, Council would be prevented in the future from disposing of the property (or properties) or developing such land for commercial purposes unless the land is reclassified to operational land. Whilst uses aside from additional car parking are not being contemplated at this time, it is suggested that a community land classification would unreasonably restrain a future Council in terms of the optimum use of the land.

Option one is the recommended approach as the land has been specifically purchased for a use compatible with an operational classification. Classification as operational land allows for the use of the land as a public car park and provides for flexibility in the future use of the sites.

### **RECOMMENDATION**

That Council classify Nos. 74 and 78 Tamar Street, Ballina (Lot 11 DP 238728 and Lot 6 DP 600044) as operational land under the provisions of the *Local Government Act* 1993 and that this classification takes effect immediately.

### **Attachment(s)**

1. Locality Plan

## 9.6 Ballina Naval and Maritime Museum - Timber Vessels

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### 9.6 Ballina Naval and Maritime Museum - Timber Vessels

**Delivery Program** Strategic Planning

**Objective** To report on heritage management options available for Council's timber vessels that are housed at the Ballina Naval and Maritime Museum.

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#### **Background**

This report follows a report to the Council's Finance Committee in February 2011 advising of a number of options available to the Council regarding the future conservation needs, costs and other issues associated with the timber vessels *Florrie* and *Richmond*, owned by Council, and housed at the Ballina Naval and Maritime Museum. The recommendation received and adopted by the Council was, 'that Council notes the contents of this report regarding the on-going need for preservation and expansion of the Ballina Naval Museum and associated timber vessels.'

The conservation needs/options and estimated costs for *Florrie* have previously been reported to the Council based on an assessment provided by a timber vessel expert, Mr Michael Staples (previously distributed to the Council). In addition, this report follows the gathering of further advice concerning the future conservation needs and associated costs regarding the *Richmond* Pilot vessel. Background and recommendations made in this report also relate to a further vessel owned by Council housed at the museum, being the *La Balsa* raft.

As with the previous report on the *Florrie* and *Richmond*, the purpose of this reporting is to ascertain whether Council wishes to provide the significant financial commitment required to retain, and conserve, the vessels into the future and in accordance with best practice heritage management.

A decision on the future of the vessels owned by Council is pertinent to arresting further physical deterioration of these items, as well as to assist in making decisions regarding the overall management of the museum building and its collection.

To assist the Council in its consideration of the future of the vessels, copies of the reports relating to the *Florrie* and *Richmond* have been distributed under separate cover.

#### **Key Issues**

- The *Florrie* and *Richmond* are owned by Council and are listed on Council's Local Environmental Plan as items of Environmental Heritage. In accordance with the significance criteria used in NSW to determine the heritage values of historic items, both vessels are considered to have local heritage significance to the Ballina Shire.
- As owner of the vessels, Council has a responsibility, as well as the discretion, to make decisions about their future conservation.

## 9.6 Ballina Naval and Maritime Museum - Timber Vessels

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- Conservation options available for the future management of Council's timber vessels should be in accordance with best practice guidelines – principally in accordance with the seminal conservation guideline known as *The Burra Charter*.
- The conservation of timber vessels *per se* is complex and costly, requiring a long term and ongoing financial commitment to their heritage management.
- Other heritage management options for the timber vessels, aside from conservation, are available to the Council. These include recording and/or interpreting their heritage value/importance through photographic, laser scanning and static and digital display options at the museum. Subsequently, disposal of items could then be carried out.
- Options canvassed to conserve the timber vessels are related to a number of other issues concerning the museum and the reserve on which it sits – namely the museum's longer term tenure on the reserve and building and collection management issues.
- In the case of conserving the timber vessels, any future change to the museum building to better house the vessels should consider the appropriate provision of an environment conducive to the conservation of historic timber vessels in accordance with best practice heritage management.
- A commitment to the conservation of one or more of the timber vessels assumes a commitment of the Reserve Trust to the Ballina Naval and Maritime Museum remaining on the reserve, given the potential costs associated with this action.
- An assessment of the *La Balsa* in accordance with State significance criteria has concluded that the raft is not considered to have significant *heritage* values (local or otherwise).

### Information

The following provides an overview of the key considerations associated with the future management of the *Florrie*, *Richmond* Pilot vessel and the *La Balsa* raft.

#### ***The Florrie***

The previous report provided to the Council regarding the particular conservation needs and costs of the *Florrie* indicated the following:

- The future conservation and/or heritage management options available for *Florrie* are varied. The conservation approach outlined by Staples' report is estimated to extend to hundreds of thousands of dollars in the medium to long term;
- *Florrie* is in poor physical condition, consequently contributing to the complexities and costs associated with conservation options for this item;

## 9.6 Ballina Naval and Maritime Museum - Timber Vessels

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- The Michael Staples report highlighted that, ideally, retaining and conserving *Florrie* into the future would also involve significantly improving the current environment in which it is housed, to better serve its protection from detrimental environmental elements and to interpret its heritage values.

Further to the above conclusions made in Staples' report, the following points are also highlighted in consideration of the future needs and potential cost of conserving the *Florrie*:

- If improvement to the housing of the vessel cannot be made, conservation is a futile action, as its poor housing would work against costly conservation measures taken. That is, in the absence of improved housing, financial outlays associated with the vessel would not be cost effective or result in any lasting benefit;
- Currently, external funding options for the conservation of *Florrie* are very limited, meaning the Council would have to meet the bulk of the conservation costs. One option to assist managing the cost of the project is to stage conservation works. This option, however, still requires a very significant financial outlay from the Council;
- The option to make an archival recording of *Florrie*, using both photographic and 3D laser scanning methods, and then demolishing the existing structure, is the least costly heritage management option with an estimated cost to complete this work being up to \$15,000. This 'record' could be retained by the museum and other local repositories for future generations. The digital record could also be utilised in the museum as a digital display, should the museum desire this, bringing new exhibition technology to the museum;
- A further heritage management option is to retain part of the *Florrie* for static display and interpretation in the museum. This option is a compromise between options 1 & 2. This approach would retain a key tangible element of the item (ideally a section of the hull) at the museum to interpret the story of the *Florrie*. Part retention of the item 'conserves' an important tangible element of the shire's shipping and history.

### ***The Richmond***

In consideration of the future heritage management options for the *Richmond*, Council recently engaged the services of a specialist maritime archaeologist from RPS Australia to report on its significance and physical condition. Regarding the item's heritage values/significance, this report concluded that the item is of local heritage significance in accordance with the following criteria/values used to assess heritage significance in NSW. (Note the following has been extracted from the RPS report):

#### *Historical Significance (Significance Criteria A)*

The Pilot Vessel, PV *Richmond*, is of local historical significance to the Port of Ballina, as during the past century, sea transport has been of vital importance to growing settlements on coastal rivers of NSW. Vessels traded as far up the Richmond River as the town wharves of Lismore and Ballina; the Pilot at the river's entrance playing a key role in providing safe navigation. The vessel is

also a significant reminder of the development and ultimate decline of shipping in the northern rivers. PV *Richmond* is significant in representing the history and development of the Port of Ballina from colonial times to modern day.

The *Richmond* is also a rare surviving example of a W.L. Holmes vessel and a significant relic of the Richmond River Pilot Service; serving the river after which the vessel was named.

*Associative Significance (Significance Criteria B)*

PV *Richmond* is 'a tangible reminder of the association between the Richmond River (the river after which it was named), the people of Ballina Shire, the Port of Ballina and the New South Wales Pilot Service in which it served for almost 50 years'(MSB 1982: 5).

PV *Richmond* has a strong historical association with W.L. Holmes of McMahons Point in Sydney, who was one of Sydney's most prolific shipwrights, building over 100 vessels between 1901 and 1976 (Flapan 2006: Online).

The vessel is further associated with former Ballina Shire Councillor, Keith Barlow, director of K.F. Barlow Pty Ltd, shipbuilders and repairers (MSB 1982: 5) who had a personal association with PV *Richmond*. Councillor Barlow accepted PV *Richmond* on behalf of the people of the Ballina district when it was handed over by the MSB in 1982. Councillor Barlow said he had started his working career at the slipway and one of his first jobs was to work on the vessel, which he continued to do for the 'whole of that period of his working life' (MSB 1982: 6). PV *Richmond* therefore has a strong association with not only former Councillor Barlow, but his company, K.F. Barlow Pty Ltd.

*Aesthetic/Technical Significance (Significance Criteria C)*

PV *Richmond* has considerable technical/aesthetic significance, not only for its form, detail and timber fabric but is a tangible reminder of historic craftsmanship. This is apart from its engineering and maritime heritage value. The vessel is a high quality example of naval architecture and represents significant technical achievement in the building of a new style of pilot vessel which differs substantially in form to previous open 'whaleboat' design. PV *Richmond* is a fine example of the Australian contribution to sea navigation and pilot boat technology which points to the development of the Port of Ballina as the working 'Port of the North' (Bach 1976: 230).

*Social Significance (Significance Criteria D)*

PV *Richmond* has both social and cultural significance. The Ballina Shire community has strong cultural and historical association with the PV *Richmond* which was integral to the function of the Port of Ballina for almost 50 years. The *Richmond* and its crew were responsible for saving a number of lives of local sailors and fishermen who came into trouble crossing the bar (Anon1932: 7) and was the last Pilot vessel permanently based on the Richmond River. The retirement of the *Richmond* in 1981 ended a 128 year tradition of pilot services on the Richmond River, which started with the first pilot, George R Easton in 1853. (Mercer 1953; anon 1977).

Today the vessel acts as a reminder of the strong maritime history and character of the Ballina Shire and its working-class roots.

*Research Potential (Significance Criteria E)*

The site has the potential to yield scientific and technical information that will further contribute to an understanding of NSW socio-cultural, industrial and maritime history. This research potential is due to the survival of extant remains of the ship structure, which although intact has had its integrity diminished due to the degradation of its physical structure. Despite this, PV *Richmond* is an important reference vessel as it is believed to be one of only a few remaining (despite signs of past modification and repair) W.L. Holmes vessels and the only surviving example of a W.L. Holmes Pilot Boat. Thus, it provides evidence of past maritime and industrial activity on the Port of Ballina that is unavailable elsewhere.

As the vessel is investigated historically and archaeologically it may further provide important insights into the lives of those who lived, worked, defended and protected our seas, and as such, is considered to have high research potential.

*Rarity (Significance Criteria F)*

PV *Richmond* is rare in that it is thought to be one of only a few remaining W. L. Holmes vessels and the only surviving example of a W.L. Holmes Pilot Boat. As such, it provides rare evidence of a particular 20<sup>th</sup> century maritime custom, process and way of life in coastal NSW.

*Representativeness (Significance Criteria G)*

PV *Richmond* is visually and structurally representative of a style and class of pilot vessel built in the first half of the 20<sup>th</sup> century on Sydney Harbour and designed for use on the treacherous Richmond River bar. The vessel is further representative of a particular maritime custom, process and way of life in NSW, of the development of the northern rivers of Australia as a maritime nation. It is further representative of government maritime regulation and support for maritime industry.

With respect to the present condition of the *PV Richmond*, a general assessment has also been made in the attached RPS report.

As with *Florrie*:

- The future conservation and/or heritage management options available for *the Richmond* are varied. The option to conserve the *Richmond* through preservation, restoration, reconstruction and/or adaptation means is a more realistic option (cost wise and compared to *Florrie*) given the greater intactness and condition of the vessel;
- Notwithstanding the intactness of the *Richmond*, it still shows signs of significant deterioration that require immediate attention;
- The option to conserve the *Richmond* (i.e. to retain it and either preserve, restore, reconstruct and/or adapt all or parts of it) also involves a long term commitment from the Council with the costs extending into tens of thousands of dollars;

- Retaining and conserving *the Richmond* into the future would also involve improving the current environment in which it is housed, to better serve its protection from detrimental environmental elements and to interpret its heritage values adequately to develop it as an engaging museum exhibit;
- If improvement to the housing of the vessel cannot be made conservation is a futile action, as its poor housing would work against conservation measures taken. Therefore, in the absence of improved housing, financial outlays associated with the vessel would not be cost effective or result in any lasting benefit;
- Currently, (and like *Florrie*) external funding options for the conservation of *the Richmond* are very limited, meaning Council would have to meet the bulk of the conservation costs. One option to assist managing the cost of conservation is to stage conservation works;
- Conservation of the *Richmond* would require the preparation of a Conservation Management Plan, which would assist Council in staging its conservation;
- The option to make an archival recording using both photographic and laser scanning methods of *Richmond*, and then demolishing the existing structure, is the least costly heritage management option. This option has an estimated cost of up to \$15,000. This option would provide a documentary/digital record for future use in the museum or other research purposes.

#### ***The La Balsa Raft***

The Ballina Naval and Maritime Museum has for the past 34 years, displayed and promoted the story of the *La Balsa* raft. The *La Balsa* 'arrived' in Ballina in 1973 following a failed 'expedition' by the Spanish 'adventurer' Vital Alsar (further details below). Alsar is documented to have 'gifted' two rafts to the 'people of Ballina' in appreciation of support given by community members toward the rescue of the expedition's crew, and consequently the 'arrival' of the rafts in Ballina. (Note: the exhibited *La Balsa* is a composite of these two surviving rafts).

Despite the display of the *La Balsa* being a centre piece in the museum since 1978, the item itself is not considered to have significant heritage values in accordance with the NSW *Assessing Significance* guidelines. The initial impetus for the retention of the raft by the Council arose from interested community members, and following the receipt of a grant from the Department of Labour and Industry (employment scheme) to establish the existing museum building to house the raft. The decision to retain and manage the raft at this time did not involve consideration of the question of whether the item demonstrated historic importance, or heritage value, to the Ballina Shire community.

## 9.6 Ballina Naval and Maritime Museum - Timber Vessels

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Under the NSW *Assessing Significance* guidelines, heritage value is assessed according to 7 criteria – historic, associative, technical/aesthetic, social/cultural, research potential, rarity (in context of other criteria) and representativeness. The history, form and fabric of the *La Balsa* raft is not considered to meet any of these. These criteria, and a statement why the *La Balsa* is does not meet each criteria, is summarised below:

*Criteria A – historic – The item or place is considered important in the course, or pattern of the local area's (or State's) cultural or natural history*

The *La Balsa* raft is not considered to meet this criterion as the vessel does not relate to any of the key historic themes relating the course or pattern of Ballina's history; nor are any of the men associated with the voyage considered important figures in the course or pattern of Ballina Shire's history.

The *La Balsa* 'arrived' in Ballina in November 1973, being one of three rafts that set sail for Mooloolaba in Queensland from 'the open sea off Guayaquil, Ecuador' in May that year. The three rafts that set off on this voyage are known to be the Guayaquil, Mooloolaba and the Aztlan. After being 'swept off course' the rafts eventually arrived in Ballina, with the assistance of the Navy and local trawler fishermen.

The voyage was initiated by the Spanish 'adventurer' Vital Alsar, who had made two previous 'raft expeditions' in 1966 and 1970, also intending to make a voyage from South America across the Pacific. Other crew members included men of Mexican, French, Canadian and American backgrounds. While it is understood that this voyage has been celebrated as a brave sea adventure, and which sought to demonstrate that it was possible 'that the ancient civilizations of America could have traversed the Pacific in large numbers', this 'experiment' was not conducted scientifically, nor did any crew members take such a voyage under the auspice of official scientific research.

The voyage of the *La Balsa* has been likened to the significance of the earlier 1947 voyage by la balsa raft, made by Norwegian researcher Thor Heyerdahl. Heyerdahl's voyage, aboard the *Kon-tiki* 'sailed' from Peru 'to ride the trade winds and the South Equatorial current across the South Pacific to the Polynesian Islands'. Heyerdahl's voyage was part of a recognised research project that aimed to demonstrate that a '... westward migration across the Pacific from the West Coast of South America took place in the pre-Columbian era'. Heyerdahl's raft is conserved (in Norway) and his contribution to scientific research is celebrated, given his lifelong contribution to the discipline of Anthropology.

*Criteria B – historic association - The item or place has strong or special association with the life or works of a person or group of persons of importance in the cultural or natural history in the local area (or State)*

As noted above, the men associated with the *La Balsa* voyage were foreigners who came to Ballina per chance. None of these men are know to have remained in the area following the voyage and/or subsequently made a recognised contribution to the Ballina Shire community and/or beyond the local community. Therefore the *La Balsa* story does not have an important historic association with the life or works of a person or group of persons of importance to the course or pattern of the cultural or natural history of the Ballina Shire, or State of NSW.

*Criteria C – aesthetic or technical significance - The item or place is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in the local area (or State)*

The *La Balsa* raft is a re-construction of 'primitive rafts' 'seen by Spanish sailors far away from the coasts of South America during the 16<sup>th</sup> century' and (re)made in Ecuador in the early 1970s. Thus this raft is not considered to have aesthetic or technical characteristics that are a response to events or people important to the course or pattern of the history of the Ballina Shire or the State of NSW.

*Criteria D – the item or place has strong or special association with a particular community or cultural group in the local area (or State) for social, cultural or spiritual reasons*

As noted above, the *La Balsa* raft's history and technical design relates principally to the history of the peoples of South America. Thus it does not have a strong or special association with a particular community or cultural group in the Ballina Shire or the State of NSW.

*Criteria E – research potential - the item or place has the potential to yield information that will contribute to an understanding of the area's (or State's) cultural or natural history*

As the item does not relate to the course or pattern of the history of the Ballina Shire, or State of NSW; and is a contemporary reconstruction of a past vessel type not relating to the shire's or State's history, the item does not have any potential to yield important information that will make a new contribution to our understanding of the shire's, or State's, history.

*Criteria F – rarity - The item or place possesses, rare or endangered aspects of the area's (or State's) cultural or natural history*

As the item does not relate to the course or pattern of the history of the Ballina Shire, or the State of NSW; and is a contemporary reconstruction of a (past) vessel type, the item is not considered to possess rare or endangered aspects of the shire, or State's natural or cultural history. Moreover, it is understood that other examples of *la balsa* construction rafts, of greater historic significance/importance, are conserved in other museum collections in the world, including Ecuador.

*Criteria G – representative importance - the item is important in demonstrating the principal characteristics of a class or the area's (or State's) cultural or natural places or cultural or natural environments*

As the item does not relate to the course or pattern of the history of the Ballina Shire, or the State of NSW; and is a contemporary reconstruction of a past vessel type not relating to the shire's or State's history, it is not considered to be representative of a type of raft that is significant to the history of the shire, or State of NSW.

In considering the *La Balsa*, it is important to recognise that the key issue associated with it is the cost implications of its retention relative to the management of other aspects of the shire's maritime heritage. In particular, and as outlined in this report, the retention of the *La Balsa* (not assessed as being of local heritage significance) in the current manner has direct implications for the future of the *Richmond* (identified as being of local heritage significance).

***The Ballina Naval and Maritime Museum and its collection***

Since 1978 the Ballina Naval and Maritime Museum has been located in its present position. As noted above, the present museum building was constructed with grant monies received by Council following its decision to retain the *La Balsa* raft in 1975. This building also initially functioned as a 'tourist office', enabling the receipt of grant monies for its construction. Presently, the building is leased to the museum (and the Richmond Tweed Family History Society) by Council as Reserve Trust Manager of the land on which the building is located. The land, however, is Crown Land. Council has an interest in the management of the collection in the museum given its ownership and responsibility for the timber vessels and its role in managing and maintaining the building in which the collection is housed.

In 1982 the *Richmond* Pilot vessel was presented to 'the people of the Ballina Shire' by the NSW Maritime Services Board. Initially the *Richmond* was located on the present site of the Ballina Visitor Information Centre (VIC), along with the 'old Pilot's cottage', also donated to Council by the Maritime Services Board for community use that same year. The donation of these items coinciding with the cessation of Pilot services in Ballina. The cottage was used as a museum space, officially opened in 1983. It exhibited aspects of the shire's maritime history, the Ballina Pilot, Kingsford Smith's 'flyover' of Ballina in 1928, the local sugar industry and Ballina Municipal Council Mayors. Other rooms were retained for use by community groups.

With the construction of the current VIC building, the Pilot's cottage was demolished and museum items moved either to the present building or dispersed to other locations.

*Florrie's* working life on the *Richmond* dates from the 1880s. Up to the 1970s it had various owners/operators. The last owner to operate *Florrie* was the Ballina Slipway. *Florrie* was retired in 1975 and donated to Ballina Shire Council, given its significant history with the *Richmond* River. At this time the craft was lifted from the river and set in a cradle on the river bank adjacent the museum. In 2006 *Florrie* was moved a short distance to its present location at the western end of the museum. No further conservation action has been taken on the *Florrie* since its relocation to the museum with the exception of Michael Staples' *Vessel Management Plan*.

While the museum today is promoted as focusing on Australia's naval history and the history of the 'Port of Ballina', various items in its collection are not considered to relate to this focus. This has resulted from both an *ad hoc* approach to the establishment, and the acquisition of museum items to recent times.

In recent years, however, the Ballina Naval and Maritime Museum executive has sought to 'professionalise' aspects of its museum management practices. In recent months it has also commissioned a significance assessment report to aid the management of its collection in to the future. Among recommendations made in its report are that the museum develop a collections management policy to help guide the focus of its collection. A consequence of this recommendation is the potential de-accessioning (i.e. the disposal) of some items.

It is highlighted that a collections management policy aims to establish parameters for deciding what is most important (based firstly on understanding heritage value/significance), and therefore what will be kept for future generations.

A collections management policy may also require making hard decisions which require a considered acknowledgement that not everything can be kept in a museum, or other repositories. As the *La Balsa* raft does not demonstrate significant heritage values in accordance with the recent recommendation made with respect to managing the museum collection into the future, it may be appropriate to de-accession the item from the museum in order to prioritise the conservation and management of items of known local heritage significance.

***Recent requests by the Ballina Naval and Maritime Museum to extend the current museum building to include an enclosed annex over the Richmond***

Representation has been made to Council, by the museum's executive, requesting a further extension to the building to better house and interpret the *Richmond* Pilot vessel. It has been highlighted that any future 're-housing' of the *Richmond* needs to be undertaken in full consideration of its significance and the particular conservation needs of timber vessels.

Further, from an aesthetic perspective, staff have previously indicated concern that the *ad hoc* approach to making extensions to the museum to date (namely the extension for the *Florrie* and to the south) has not resulted in the best aesthetic outcomes for the building; and/or maximised potential for the site to promote the shire's important maritime history/heritage (given the southern wall 'blocks out' a view to the river). Moreover, in consideration of the potential cost of conservation steps and extending the museum, Council's commitment to the museum remaining on the site should also be taken into account in light of Council's role as Reserve Trust Manager.

It is recognised of course that, from the museum's perspective, the main focus for building extensions has been to maximise space and to promote a secure environment for its displays.

***Reserve management issues***

In the previous report to Council on future management options for the *Florrie* and the *Richmond*, staff advised that the long term management of the reserve on which the museum is located is to be subject to a proposed review/plan of management by the (now) NSW Crown Lands Division. Moreover, it was reported that 'the unknown outcome of this proposal in turn creates uncertainty regarding the future use and management of the reserve

by Council'. The current position is, however, that this action may still be five or more years away.

As Reserve Trust Manager of the land on which the museum is located, Council has the discretion to enable the museum (along with the Richmond Tweed Family History Society) to continue to occupy, and make changes to, the existing building. It is nonetheless important to note that at any time in the future Council may not exercise this same discretion in the case of the land owner (the Crown) making a different decision about how the land is used and/or managed.

***Availability of grant funding for the management of items of local heritage significance***

As noted above, both the *Florrie* and *Richmond* have been assessed as having local heritage values and are listed as items of environmental heritage on Council's Local Environmental Plan 1987. The status of these items as having local heritage values is noted to reduce the potential pool of grant funding available to assist their conservation management, given the assumed responsibility of local government to meet the 'lion's share' of local heritage management costs. Notwithstanding this, currently available grants could contribute to some costs associated with required conservation steps – notably preparing a detailed preservation needs assessment and/or a Conservation Management Plan. The granting of these funds, however, is subject to a successful grant application process.

It is also noted that given the *La Balsa* is not of heritage value/significance it would not qualify for any type of heritage grant funding, as this funding is conditional on an item having heritage values in accordance with the standard significance criteria.

***The option to prioritise conservation management of one of the timber vessels***

As noted above, given the status of both the *Florrie* and the *Richmond* as items of local heritage value, Council has the discretion to execute decisions regarding their management including retention and conservation, or disposal of, these items. One possible means of 'affording' the significant costs associated with the management of both the *Florrie* and the *Richmond* is to stage conservations steps. This option however does not reduce potential costs but rather spreads the cost over a period of years. A commitment to staging the conservation of *Florrie* or *Richmond* still requires significant short term funding to arrest immediate issues of decay/deterioration to enable long term successful conservation.

A further option is to prioritise one vessel over the other for retention and conservation. Based on matters of significance, intactness of historic fabric (the material the vessel is made from), cost and the potential experience generated by conservation measures taken, the *Richmond* is considered to be the priority vessel. In the case of the *Florrie*, aside from the significant costs associated with its conservation, it is considered that unless its is re-housed more appropriately from an environmental, spatial and aesthetic perspective, any conservation measures taken would be compromised, in turn diminishing the end product/museum experience intended.

***Present building maintenance requirements***

In recent months it has been identified that the Ballina Naval and Maritime Museum building is in need of re-roofing. Estimates received by Council's Civil Services Group indicate the cost of undertaking this work could be up to \$200,000. Council's Civil Services staff have also indicated that the unusual shape of a section of the museum's roof, formed to accommodate the sail of the *La Balsa*, adds substantially to this cost.

This point is made here to indicate to the Council an issue that may have an important bearing on options available to it concerning the management of the *Richmond*.

In the context of the option to de-accession the *La Balsa* raft, this action has a potential three-fold positive outcome. Firstly, it would reduce the cost of re-roofing the museum (as the roof form would be converted to a standard gable shape). Secondly, it would 'free-up' space inside the museum. Thirdly, this space has the potential to 're-house' the *Richmond* inside the present building, negating the need to extend the museum at this time.

From a conservation management perspective, this is also preferred as it would become a central feature of the museum, with one of its key foci being Ballina's maritime heritage. This action would also enable a greater space around the item contributing to both a better visual experience of the item, and better interpretation options for the vessel. It would also result in the better conservation of an item that has important local heritage values over an item that has no local (or other) heritage values.

**Sustainability Considerations**

- **Environment**  
Heritage conservation makes an important aesthetic contribution to the shire's built environment. *Florrie* and *Richmond* are important facets of the environmental history/heritage of the Richmond River.
- **Social**  
The conservation of the shire's heritage is considered to contribute to attaining the Council's sustainability visions of a built environment contributing to health and well being, resilient and adaptable communities and diverse and balanced use of our land.
- **Economic**  
Heritage makes important contributions to the local and regional tourism economy. Heritage promotion broadly assists the shire's local heritage/history organisations to generate income to fund their ongoing activities that conserve and promote the shire's heritage.

**Legal / Resource / Financial Implications**

Resource implications are potentially significant and dependent on the nature of action taken with respect to each item.

### **Consultation**

The preparation of this report and associated supporting materials has involved the engagement of expert reports concerning the *Florrie* and *Richmond*, consultation with the Ballina Naval and Maritime Museum executive, Marine Archaeologist Sarah Ward and staff of the NSW Heritage Office.

### **Options**

#### *Timber Vessels*

In light of the issues outlined above, the following is a summary of management options available to the Council with respect to the future heritage management of the *Florrie*, *Richmond* and *La Balsa* raft. It is envisaged that these options will be discussed in greater detail with Councillors if Council endorses the recommendation below to hold a workshop and associated visit to the museum prior to determining an approach to the issues canvassed in this report.

#### ***MV Florrie***

1. Retain and conserve the *MV Florrie*.
2. Prioritise retention and conservation of the *Florrie* (over the *Richmond*).
3. Make an archival record of the *MV Florrie* and then 'dispose' of it, removing it from the museum.
4. Make an archival record of the *MV Florrie* and retain a section if its fabric for interpretation in the museum.

#### ***Richmond***

1. Prioritise retention and conservation of the *Richmond* (over the *Florrie*).
2. Retain and conserve the *Richmond* (in addition to the *Florrie*).
3. Make an archival record of the *Richmond* and then dispose of it, removing it from the museum.
5. Make an archival record of the *Richmond* and retain a section if its fabric for interpretation in the museum.

#### ***La Balsa raft***

1. Retain the *La Balsa* as a curiosity.
2. De-accession of the *La Balsa*.

#### *Workshop and Museum Visit*

Given the range of interrelated issues canvassed in this report, and that decisions associated with the *Florrie*, *Richmond* and *La Balsa* have interconnecting implications and potentially significant costs, it is

## **9.6 Ballina Naval and Maritime Museum - Timber Vessels**

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recommended that Council hold a workshop to discuss key issues in greater depth prior to determining a course of action in relation to each vessel. It is also recommended that such a workshop be supported by a visit to the Ballina Naval and Maritime Museum to view the site and the vessels in their current locations and state.

This approach affords an opportunity for further consideration of the issues raised in this report and additional discussion with key stakeholders, including the Naval and Maritime Museum executive, prior to Council's adoption of a desired approach.

### **RECOMMENDATION**

That Council undertake a site inspection of the Ballina Naval and Maritime Museum and hold an associated workshop to discuss the issues and options outlined in this report in relation to the future management of the *Florrie*, *Richmond* and *La Balsa*, the museum and the reserve on which the museum is located.

### **Attachment(s)**

1. Michael Staples, *Florrie: Inspection and Suggestions*, 2009. (Under separate cover)
2. RPS Australia, *Significance Assessment: Pilot Vessel (PV) Richmond*, 2012. (Under separate cover)

**10.1 Use of Council Seal**

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**10. General Manager's Group Reports**

**10.1 Use of Council Seal**

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**RECOMMENDATION**

That Council affix the Common Seal to the following document.

US12/27	<p>Subdivision Plan and associated documentation for the creation of Proposed Lots 11 and 12 being resubdivision of Lot 1 DP 1154810 and Lot 48 DP 833002.</p> <p>Note: Council acquired a 4.1ha parcel of land adjoining the Skennars Head Sports Field. This land was acquired to increase the area of the sports fields of which 2ha is to be incorporated into the sports fields and the additional land disposed of by way of sale. Council will consider a report on sale options in the near future.</p>
US12/28	<ol style="list-style-type: none"><li>1. Ballina Shire Council to J W Walo, D M Launderers &amp; J L Shoemith lease of 155 River Street, Ballina (Spec Savers).12 month Retail Lease Agreement from 1 January 2013.</li><li>2. Ballina Shire Council to M B Lynch lease of Shop 11 Wigmore Arcade, Ballina (Tobacco Station). 12 month lease from 1 January 2013.</li></ol> <p>Explanation: The lessees of 155 River Street, Ballina and Shop 11 Wigmore Arcade both have franchised businesses. Staff are advised that it is a requirement of the lessees respective franchise agreements that, when occupying leased premises, a lease agreement must be in place. To assist the two lessees honour their respective franchise agreements, staff have instructed Council's solicitor to draft two short-term (12 month) Retail Lease Agreements that will include a relocation or demolition clause.</p>

**Attachment(s)**

Nil

## 10.2 Investment Summary - October 2012

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### 10.2 Investment Summary - October 2012

**Delivery Program** Financial Management

**Objective** To provide Council and the community with details of how Council's surplus funds are invested.

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#### Background

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a council must provide a monthly report (setting out all money Council has invested), to be presented at the ordinary meeting of Council, immediately following the end of the respective month. This report has been prepared for the month of October 2012.

Council's investments are all in accordance with the Act, the Regulations and Council's Investments Policy. The balance of investments as at 31 October was \$81,688,000. This represents a decrease from September of \$4,600,000.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 October 2012, was \$1,558,257.

Council's investments as at 31 October are at an average (weighted) rate of 4.91% which is 1.74% above the 90 Day Bank Bill Index of 3.17%.

The majority of the approximately \$86 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

Reserve Name	Internal/External Restriction	Approx % of Portfolio*
Water Fund (incl developer contributions)	External	14
Wastewater Fund (incl developer contributions)	External	14
Wastewater Fund (unexpended loan)	External	24
Section 94 Developer Contributions	External	9
Bonds and Deposits	External	2
Other External Restrictions	External	6
Land Development	Internal	9
Employee Leave Entitlements	Internal	2
Carry Forward Works	Internal	8
Miscellaneous Internal Reserves	Internal	11
Unrestricted		1
<b>Total</b>		<b>100%</b>

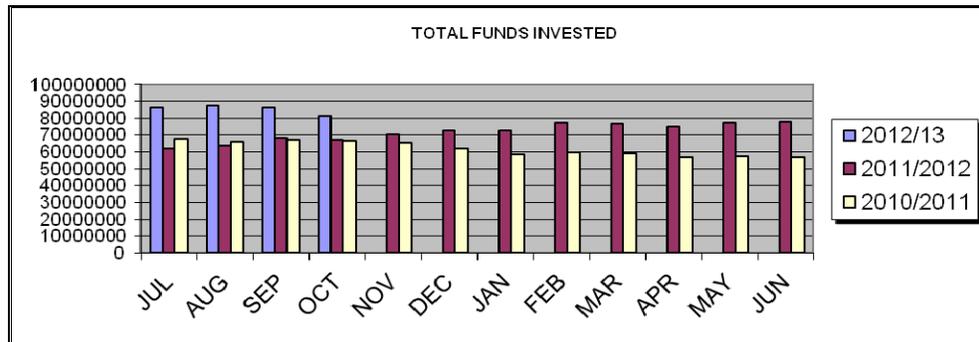
\* Based on reserves held as at 30 June 2012

**A. Summary of investments by institution**

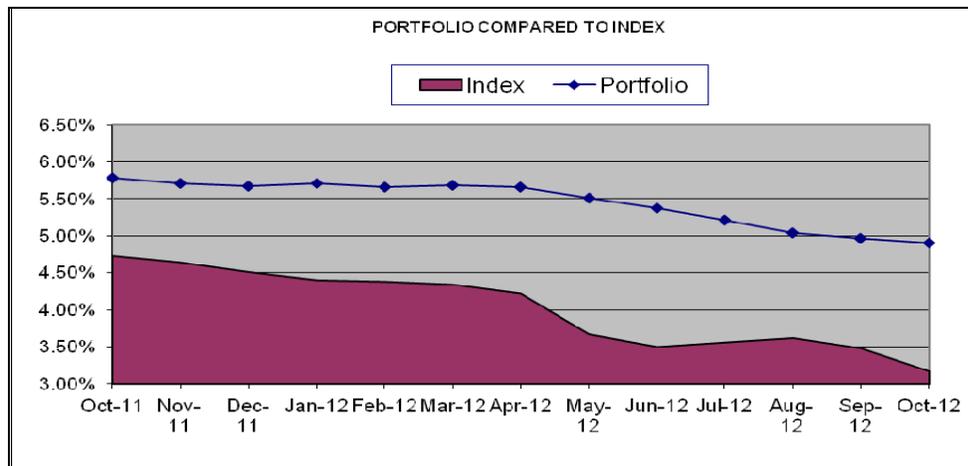
Funds Invested With	ADI Rating	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
<b>Grandfathered Investments</b>						
ANZ Bank	AA-	2,000	0	0	0	
Deutsche Bank	A+	4,000	4,000	0	4.9	
Goldman Sachs	AA-	1,000	1,000	0	1.2	
Heritage Bank	BBB-	1,000	0	0	0	
HSBC Australia	AA-	1,000	1,000	0	1.2	
Longreach Capital Markets 28*	AA+	1,000	1,000	0	1.2	
National Australia Bank	AA-	1,788	1,788	0	2.2	
National Wealth M'ment Holding	A	2,000	2,000	0	2.4	13%
<b>Rated Institutions</b>						
ANZ Bank	AA-	47	29	20	0	
Bank of Queensland	BBB+	8,000	8,000	10	9.8	
Bank of Western Australia	AA-	12,000	12,000	20	14.7	
Commonwealth Bank of Aust	AA-	5,453	3,871	20	4.7	
Illawarra Mutual Bld Soc	BBB	4,000	4,000	10	4.9	
ING Bank Ltd	A	7,000	8,000	20	9.8	
Members Equity Bank	BBB	8,000	8,000	10	9.8	
National Australia Bank	AA-	12,000	12,000	20	14.7	
Newcastle Permanent Bld Soc	BBB+	1,000	0	10	0	
Suncorp Metway Bank	A+	14,000	14,000	20	17.1	
Westpac Banking Corporation	AA-	1,000	1,000	20	1.2	87%
<b>Total</b>		<b>86,288</b>	<b>81,688</b>			<b>100%</b>

\* Rating is on capital only by Citigroup Pty Ltd

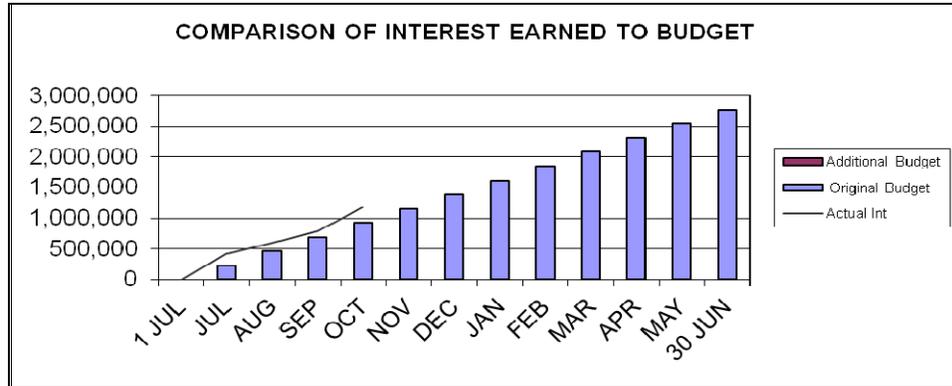
**B. Monthly Comparison of Total Funds Invested**



**C. Comparison of Portfolio Investment Rate to 90 Day BBSW**



**D. Progressive Total of Interest Earned to Budget**



**Comment**

It is anticipated that Council’s investment portfolio will decline as the year progresses due to capital expenditures associated with the capital works program, in particular the Wastewater upgrade.

Interest rates have been in decline which tends to assist Council to exceed the 90 day BBSW index. Actual income is trending marginally above budget which is a good thing as it is expected that this will adjust as the portfolio decreases such that budget and actual become very similar.

In terms of the larger picture the Reserve Bank of Australia left its cash rate unchanged at 3.25% following a meeting of its board on 6 November 2012. Comments from the Reserve Bank were as follows:

Global growth is forecast to be a little below average for a time. Risks to the outlook are still seen to be on the downside, largely as a result of the situation in Europe, where economic activity is still contracting. Risks elsewhere seem more balanced. The United States is recording moderate growth, while recent data from China suggest growth there has stabilised. Around Asia generally, growth has been dampened by the more moderate Chinese expansion and the weakness in Europe.

Financial markets have responded positively over the past few months to signs of progress in addressing Europe's financial problems, but expectations for further progress remain high. Long-term interest rates faced by highly rated sovereigns, including Australia, remain at exceptionally low levels. Capital markets remain open to corporations and well-rated banks, and Australian banks have had no difficulty accessing funding, including on an unsecured basis. Borrowing conditions for large corporations are similarly attractive. Share markets have generally risen over recent months.

In Australia, most indicators available for this meeting suggest that growth has been running close to trend over the past year, led by very large increases in capital spending in the resources sector. Looking ahead, the peak in resource investment is likely to occur next year, at a lower level than expected six months ago. As this peak approaches, the Board will be monitoring the strength of other components of demand.

## 10.2 Investment Summary - October 2012

### E. Investments held as at 31 October 2012

Purchase Date	Issuer	Type	Rate%	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	4.12	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	4.12	23/04/14	2,000
20/09/04	National Australia Bank	FRN	4.90	Perpetual	1,788
12/04/06	Goldman Sachs	FRN	3.71	12/04/16	1,000
16/06/06	National Wealth M'ment Holdings	FRN	4.16	16/06/16	2,000
28/06/07	Longreach Series 28	FND	0.00	27/06/14	1,000
21/09/07	Bendigo Bank	FRN	4.74	21/09/12	1,000
14/03/08	HSBC Australia Ltd	FRN	5.73	14/03/13	1,000
17/12/08	Commonwealth Bank of Australia	FRTD	4.73	17/12/13	1,000
17/12/08	Commonwealth Bank of Australia	TD	5.93	17/12/13	998
03/02/10	Commonwealth Bank of Australia	FND	3.20	At Call	1,873
20/07/11	ANZ Bank	FND	2.50	At call	29
24/01/12	ING Bank Ltd	FRTD	5.08	24/01/17	1,000
06/02/12	Westpac Bank	FRN	5.28	06/02/17	1,000
04/05/12	Bank of Queensland	TD	5.60	05/11/12	2,000
09/05/12	Suncorp-Metway Bank	TD	5.30	09/11/12	2,000
24/07/12	Suncorp-Metway Bank	TD	5.10	21/01/13	4,000
24/07/12	Bank of Queensland	TD	5.20	26/11/12	4,000
24/07/12	BankWest	TD	5.05	06/11/12	2,000
30/07/12	ING Bank Ltd	TD	5.18	30/01/13	1,000
30/07/12	Suncorp-Metway Bank	TD	5.15	27/11/12	2,000
01/08/12	Suncorp-Metway Bank	TD	5.15	29/01/13	2,000
03/08/12	National Australia Bank	TD	5.06	01/11/12	2,000
07/08/12	Illawarra Mutual Bld Society	TD	5.10	05/11/12	2,000
09/08/12	Members Equity Bank	TD	5.10	05/02/13	2,000
09/08/12	BankWest	TD	5.10	22/11/12	3,000
13/08/12	BankWest	TD	5.10	13/02/13	3,000
15/08/12	BankWest	TD	5.10	13/11/12	2,000
16/08/12	Suncorp-Metway Bank	TD	5.00	14/12/12	2,000
20/08/12	ING Bank Ltd	TD	5.06	18/12/12	4,000
20/08/12	Members Equity Bank	TD	5.10	19/11/12	2,000
21/08/12	BankWest	TD	5.10	19/11/12	1,000
27/08/12	Members Equity Bank	TD	5.05	26/11/12	1,000
28/08/12	ING Bank Ltd	TD	5.03	25/01/13	1,000
28/08/12	Bank of Queensland	TD	5.20	28/02/13	1,000
04/09/12	Bank of Queensland	TD	5.10	02/01/13	1,000
04/09/12	Illawarra Mutual Bld Society	TD	4.80	05/11/12	2,000
11/09/12	National Australia Bank	TD	4.96	11/03/13	2,000
03/10/12	Members Equity Bank	TD	4.95	02/04/13	1,000
19/10/12	National Australia Bank	TD	4.55	17/04/13	4,000
19/10/12	National Australia Bank	TD	4.55	17/04/13	1,000
22/10/12	Members Equity Bank	TD	4.85	19/02/13	2,000
23/10/12	ING Bank Ltd	TD	4.62	20/02/13	1,000
29/10/12	National Australia Bank	TD	4.50	29/04/12	3,000
31/10/12	Suncorp-Metway Bank	TD	4.45	29/01/13	2,000
<b>Totals:</b>					<b>81,688</b>
TD=Term Deposit		FRN=Floating Rate Note		FND=Managed Fund	
ELN= Equity Linked Note		FRTD= Floating Rate Term Deposit			

### RECOMMENDATIONS

That Council notes the record of banking and investments for October 2012.

### Attachment(s)

Nil

### **10.3 Ordinary Meeting Date - April 2013**

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#### **10.3 Ordinary Meeting Date - April 2013**

**Delivery Program** Administration

**Objective** To select an alternate date for the April 2013 Ordinary meeting.

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#### **Background**

Council's Ordinary meetings are held on the fourth Thursday of each month, with the December meeting being held on the third Thursday. The April 2013 Ordinary meeting date falls on Anzac Day.

In past years when meeting dates have coincided with a public holiday the meeting has been rescheduled to the Wednesday.

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

There are no legal or financial implications of changing the meeting date.

#### **Consultation**

No consultation has been undertaken to date. Advertising of the changed meeting date will take place.

#### **Options**

The options are to reschedule the meeting to Wednesday 24 April or Friday 26 April 2012. Previously when clashes with the Thursday meeting have occurred the preferred option has been to move the date forward to the Wednesday. Therefore the recommendation is to change the date to the Wednesday.

#### **RECOMMENDATION**

That Council's Ordinary meeting for April 2013 be held on Wednesday 24 April.

#### **Attachment(s)**

Nil

## 10.4 Loan Borrowings - 2012/13

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### 10.4 Loan Borrowings - 2012/13

**Delivery Program** Financial Management

**Objective** To obtain Council approval to take out loan borrowings relating to the 2012/13 financial year.

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#### **Background**

Council approval must be obtained prior to entering into a loan agreement. Financial institutions require a specific resolution and minute number to include as part of the loan agreement.

Typically Council's loan borrowings are taken out towards the end of the financial year once the full extent of the expenditure required to be funded by loans is known. This report deals with two projects that were completed on Council's behalf by the Roads and Maritime Services (RMS) and payment to the RMS is due by the end of December 2012.

#### **Key Issues**

- Approval for loan funding for McLeay Culvert and Cumbalum Interchange
- Background to these works

#### **Information**

Council's 2012/13 Operational Plan includes General Fund loan borrowings of \$15.5 million for the following projects.

<b>Project</b>	<b>Value of Loan \$</b>
Ballina Town Centre	1,800,000
Ballina Heights Drive	1,200,000
Road Rehabilitation	1,000,000
Ballina Airport	7,300,000
McLeay Culvert	1,700,000
Cumbalum Interchange	2,500,000
<b>Total</b>	<b>15,500,000</b>

A total of \$9.6m of these loans is through the NSW State Government's Loan Infrastructure Renewal Scheme (LIRS), with Council receiving a 4% rebate on the interest paid on these loans. The \$9.6 million relates to:

<b>Project</b>	<b>LIRS Loan \$</b>
Ballina Town Centre	1,300,000
Road Rehabilitation	1,000,000
Ballina Airport	7,300,000
<b>Total</b>	<b>9,600,000</b>

Council is in the process of signing agreements with the State Government for these loans and the loan funds are expected to be drawn down in the second half of 2012/13.

## 10.4 Loan Borrowings - 2012/13

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The remaining loans relate to:

- Ballina Town Centre – balance of \$500,000 (\$1.8 m in total with \$1.3m sourced from the LIRS) – This project is virtually complete and the intention is to carry this expenditure as part of our normal operations with the loan to be taken out in June 2013. This minimises the cash flow impacts of any loan repayments during 2012/13.
- Ballina Heights Drive - \$1.2m – This project remains under review as the original tenders were far in excess of budget. The Council budget for this project is \$4 million with the funding sourced from loans (\$1.2 million), section 94 contributions held (\$2 million) and an advance on section 94 contributions from the land owners / developers (\$800,000). Revised tenders are in the process of being called for this work and the report to Council on that tender will also review the funding options available.
- McLeay Culvert and Cumbalum Interchange - \$1.7m and \$2.5m. The details of these two projects are as follows.

In 2008/09 discussions between Council's engineering staff identified that there were significant efficiencies to be gained through the RMS, as part of the Ballina Bypass Alliance, constructing two major projects that formed part of Council's Section 94 forward works plan. The two projects were referred to as the McLeay Culvert, which represents culverts needed for flood mitigation measures, as part of Council's overall flood management plans, and the Cumbalum Interchange, which represents the roundabout needed by Council to ensure access to and from Ballina Heights (i.e. Ballina Heights Drive will connect to this interchange).

By allowing these works to be completed as part of the bypass, Council removed the need to have to retrofit these works at a later date, plus we were in a position to take advantage of the engineering equipment and skills available through the Alliance as part of the bypass works.

Council subsequently resolved to enter an agreement with the RMS for the Ballina Bypass Alliance to provide these works, with Council to then pay for the works at the completion of the bypass. That time has now arrived and the RMS is requiring payment by 31 December 2012.

The agreement with the RMS was based on a maximum Council contribution of the original estimate, plus a contingency of 10%. The original estimates for the works were McLeay Culvert (\$1,584,933) and Cumbalum Interchange \$2,553,797, excluding the 10% contingency. This agreement meant that the RMS carried the risk for any expenditure over the 10% contingency, with Council only required to pay actual costs up to the agreed limit.

The RMS has now advised that the actual costs for the works were:

- McLeay Culvert - \$1,613,615
- Cumbalum Interchange - \$2,575,923

The 2012/13 Council budget includes the following estimates for these works:

- McLeay Culvert – \$1,743,400 – Funded by \$1.7m loan and \$43,400 from revenue
- Cumbalum Interchange – \$2,809,000 – Funded by \$2.5m loan, \$9,000 from developer contributions and \$300,000 from revenue

## **10.4 Loan Borrowings - 2012/13**

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The estimates for this work in the Council budget represent the agreed figure, inclusive of the 10% contingency.

It should be noted that the Cumbalum Interchange work is also included in Council's Section 94 Roads Plan, which means that Council is able to finance 70% of this project from developer contributions, as and when they are collected.

As the total expenditure in Council's budget was \$4,552,400, which included borrowings of \$4,200,000, and the actual expenditure is now \$4,189,538, Council is in a position to reduce the loan borrowings. The difference between actual and estimated costs is \$362,862.

The 2012/13 Council budget did not allow for any interest or principal repayments during the 2012/13 year as it was assumed that these loans would be taken up towards 30 June 2013. As the RMS is now requesting payment by 31 December 2012, it is proposed to take up the loan in January 2013, with six monthly principal and interest repayments, thus avoiding any principal repayments in the 2012/13 budget. However there will be an accrued interest expense of approximately \$110,000 (depending on the interest rate) for the period January to June 2013.

Thus the saving on the actual expense (\$4,552,400 – \$4,189,538) \$362,862 is offset in part by the \$110,000 accrual for loan interest.

As there is an opportunity to reduce the amount of the loan it is recommended that Council reduce the loan funding for these two projects to \$3.85 million, a saving of \$350,000 on the original budget.

This means that the net shortfall between the interest accrual (i.e. \$110,000) and the budget saving for the cost of these works less the reduced loan borrowing (being \$362,862 less \$350,000 = \$12,862), equates to \$97,138, which will need to be funded from another source.

The preferred funding solution for this is Council's Section 94 Roads Contributions. As at 30 June 2012 Council held \$2.852 million in Roads Contributions, with the majority of these funds earmarked for Ballina Heights Drive and obtaining the planning consent for Hutley Drive, Lennox Head.

Even though there are these commitments, as Cumbalum Interchange is able to be funded from developer contributions, the recommendation is to allocate funding of \$97,138 from these contributions to balance out the \$97,138 shortfall in funding for these two projects.

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

The 2012/13 budget assumes loan borrowings to fund these projects. The expense must be paid by December 2012 and it is necessary to take up the loan funds sooner than anticipated, as the amount of the borrowing is significant.

### **Consultation**

The Draft Delivery Program included details of borrowings for these roads projects. This document was advertised for public comment during May 2012. No submissions were received in respect to the borrowing proposal.

## **10.4 Loan Borrowings - 2012/13**

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### **Options**

Council may choose to approve the raising of an external loan to \$3.85m or not. If the borrowing does not take place it will be necessary to locate an alternative funding source. Due to the loan interest accrual it is also necessary to allocate Section 94 roads contributions to assist with balancing the entire budget.

The other option would be to increase the loan borrowing to avoid the need to use Section 94 contributions.

### **RECOMMENDATIONS**

1. The Council authorises the General Manager to select the best rate quoted for the borrowing of \$3.85 million for the financing of the McLeay Culvert and Cumbalum Interchange works.
2. That Council approves a transfer from the Section 94 Roads Contribution Plan to finance any shortfall between the \$3.85 million loan funding and the existing Council budget. This shortfall is currently estimated at \$97,138, with the final amount dependent upon the interest accrual for the \$3.85 million loan as at 30 June 2013.
3. The use of the Council seal is authorised on all loan documentation associated with this report.

### **Attachment(s)**

Nil

## 10.5 Delegations - Review

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### 10.5 Delegations - Review

**Delivery Program** Governance

**Objective** To comply with Section 380 of the Local Government Act and review the Council's delegations within 12 months of an election.

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#### **Background**

As a general principle a council is structured to operate by delegating responsibilities to the General Manager, and possibly other bodies, leaving the elected council to focus on policy related matters. The authority of a council to delegate is governed by Section 377 of the Local Government Act (LGA), which states, in summary, a council may by resolution delegate to the general manager, or any other person or body (not including another employee of council) any of the functions of the council other than those listed. The items excluded from being delegated, are:

- a) the appointment of a general manager
- b) the making of a rate
- c) a determination under section 549 as to the levying of a rate
- d) the making of a charge
- e) the fixing of a fee
- f) the borrowing of money
- g) the voting of money for expenditure on its works, services or operations
- h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (not including the sale of plant or equipment)
- i) the acceptance of tenders which are required under this Act to be invited by the council
- j) the adoption of an operational plan under section 405
- k) the adoption of a financial statement included in an annual financial report
- l) a decision to classify or reclassify public land under Division 1 of Part 2 of Chapter 6
- m) the fixing of an amount or rate for the carrying out by the council of work on private land
- n) the decision to carry out work on private land for an amount that is less than the amount or rate fixed by the council for the carrying out of any such work
- o) the review of a determination made by the council, and not by a delegate of the council, of an application for approval or an application that may be reviewed under section 82A of the Environmental Planning and Assessment Act 1979
- p) the power of the council to authorise the use of reasonable force for the purpose of gaining entry to premises under section 194
- q) a decision under section 356 to contribute money or otherwise grant financial assistance to persons
- r) a decision under section 234 to grant leave of absence to the holder of a civic office
- s) the making of an application, or the giving of a notice, to the Governor or Minister
- t) this power of delegation

## 10.5 Delegations - Review

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- u) any function under this or any other Act that is expressly required to be exercised by resolution of the council.

Once the general manager is provided with certain delegations, the general manager, under Section 378 of the LGA, then has the authority to delegate any of his / her delegations, excluding the power of delegation. These delegations are normally provided on an individual basis to staff members by the general manager, with the level of delegation reflecting the staff member's authority within the organisation.

Delegations are a critical component of the operation of a council as it is essential that staff, or any other bodies that carry out council functions, have the authority to operate with sufficient autonomy to undertake their duties effectively and efficiently.

As delegations are important in the functioning of a council, Section 380 of the LGA then states as follows:

*Each council must review all its delegations during the first 12 months of each term of office.*

The purpose of this report is to comply with Section 380 of the LGA.

### Key Issues

- Level of delegation provided

### Information

There are considered to be currently two delegations in place, as determined by the elected Council; i.e.

#### **1. Delegation to the General Manager**

A copy of the existing delegation is included as the first attachment to this report. The format of the General Manager's delegations is based on the position receiving, essentially total delegation from Council, subject to certain limitations or exclusions. Those limitations are listed in schedule 2 of the delegation. The limitation section is a key part of this delegation in that it identifies the items that Council has not delegated to the General Manager.

Clause 3 of schedule 2 is important in that it confirms that the General Manager can adjust activities or resources within the organisation only below section/ function level. What this means is that the major sections of Council cannot be changed from one group to another group without a resolution of Council. For example the Tourism function cannot be changed from the General Manager's Group to another Group without a resolution. However this delegation does not exclude a service within that section, such as grants management, being potentially transferred by the General Manager, without a Council resolution.

Clause 6 of schedule 2 is also important as it specifies which development applications cannot be determined by the General Manager.

Overall, the delegation is considered to be operating effectively and no change is recommended.

### **2. Delegation to the Reserve Trust Committee**

The current delegation to this committee, as resolved at the September 2012 meeting, is as follows:

*"To determine all matters in respect to items where Ballina Shire Council is the Reserve Trust Manager, excluding those not able to be delegated as per Section 377 of the Local Government Act".*

This delegation was only reviewed recently and no further change is recommended.

### **Other Areas of Interest**

#### *Richmond Tweed Regional Library (RTRL)*

There has been on-going debate as to the level of authority that the RTRL has from the member councils (i.e. Tweed, Byron and Ballina, with Lismore the Administering council). The position of staff at Ballina Shire is that there is a contractual relationship with Lismore City Council to provide library services on our behalf, with Lismore employing all the staff and providing those services, based on an annual contribution paid by Ballina Shire.

However there is no formal agreement in place to support that relationship with the only real agreement being the original agreements that were entered into in the early 1970s, which are now well out of date with respect to current legislative requirements.

The member councils of the RTRL have been examining options to overcome any weaknesses in the existing governance structure with there being no consensus position to date. To overcome the existing uncertainty Ballina Shire Council resolved in June 2012 to enter an interim governance contract with Lismore City Council to at least ensure that, in the interim, there was a formalised contractual arrangement.

That interim agreement has not been advanced, at this stage, primarily as Lismore has been reluctant to commit more resources to reviewing agreements until there is consensus with all member councils. Also there was reluctance to commit more resources to this as the recent elections could well result in a change in position of all member councils.

The first meeting of the new delegates to the RTRL committee was held Friday 9 November 2012 and the key item on that agenda was future governance options. It is understood that the first meeting has recommended continuing to pursue a formalised governance structure and a report on the preferred options should be presented to the member councils in the near future.

## 10.5 Delegations - Review

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From an existing delegation perspective it is considered that Ballina Shire Council has not provided Lismore City Council with any delegations in recent times and any actions taken by Lismore City Council are based on their delegations to their own staff (i.e. being the RTRL staff).

For the purposes of this report, which is not considered to be the right time to review the RTRL agreement, it is recommended that Council confirm that Lismore City Council has no delegated authority from Ballina Shire Council. This also helps to highlight that matters of contention for the RTRL should be reported by Lismore to Ballina so that our Council's position can be determined before Lismore makes any critical decisions relating to resource allocation etc.

### *County Councils*

There have been discussions at times that Council should delegate authority to the county councils, of which we are members (i.e. Rous, Richmond River and Far North Coast Weeds). This is not considered necessary as they are separate legal entities approved by an Act of Parliament. This Act then provides those county councils with their own legislated authority. Council appoints delegates to those county councils who then act as autonomous organisations.

### *Planning Minister*

As per an earlier report in this agenda the actual Council may be delegated certain powers by relevant State Ministers (refer to the earlier report in the Strategic and Community Services Group relating to Plan Making delegations). However the purpose of this report is not to review what has been delegated **to** Council, but rather what has been delegated **by** the Council and there is no need to review those delegations.

### *Other Entities*

Council is involved or has formulated many other groups and organisations (i.e. Ward Committees, Chambers of Commerce etc) and all of that involvement comes without any direct delegated authority from Council. Rather any actions taken are implemented by Council staff within the authorities they have been provided by the General Manager.

This last sentence is important in that the second part of the delegation's review, which does not form part of this report, is that the advice from the Division of Local Government is that all delegations provided by the General Manager should also be reviewed within 12 months of an election. There are in excess of 150 delegations provided (i.e. signing of letters, purchasing, enforcement notices etc) and this comprehensive review will occur over the next few months at an operational level.

## **Sustainability Considerations**

- **Environment**  
Not Applicable
  
- **Social**  
Not Applicable

- **Economic**

The use of delegations is designed to ensure that organisations operate effectively and efficiently.

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

Council is legally obliged to review its delegations within 12 months of an election.

### **Consultation**

This report provides public information on the delegation process.

### **Options**

The options for Council are based around the level of delegations provided. From an operational perspective the current delegations are considered to operate effectively and no change is recommended. If the elected Council is of the opinion that changes are required then those changes should be included in the recommendations that follow.

Finally some councils provide delegations to the Mayor, albeit that the custom and practice of Ballina Council has not been to provide any such delegations.

### **RECOMMENDATIONS**

1. That Council delegates to the position of General Manager the functions and authorities as per attachment one to this report.
2. That Council confirms its delegations to the Reserve Trust Committee; are as follows, and as resolved at the September 2012, Ordinary meeting:

*"To determine all matters in respect to items where Ballina Shire Council is the Reserve Trust Manager, excluding those not able to be delegated as per Section 377 of the Local Government Act".*

3. That Council notes that there are currently no delegations provided to Lismore City Council in respect to the management of the Richmond Tweed Regional Library Service.
4. That Council notes that the General Manager will also be reviewing all delegations provided by the position of General Manager within 12 months of the election to comply with Section 380 of the Local Government Act.

### **Attachment(s)**

1. General Manager's current delegations

## 10.6 Legal Matters - Update

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### 10.6 Legal Matters - Update

**Delivery Program** Governance

**Objective** To provide an update on legal cases involving Council.

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#### Background

As a public authority Council is regularly involved in legal matters. This report provides an update on matters that have been subject to court action or may result in court action and represents the first report for the 2012/13 financial year.

#### Key Issues

- Type and cost of litigation

#### Information

This report provides an opportunity to examine legal matters in which the Council is, or has been, involved, with reference being to the current or previous financial year. The report has been provided in open Council to ensure the information is available to the public.

Solicitor for Council	Parties	Case Description	Original Cost Estimate	Costs Paid to Date
Blake Dawson	Oshlack v Ballina Shire Council & Ors	Land & Environment Court - ref. no. 2010/40570 - Challenge to approval of Marom Creek fluoridation plant - Rous Council and Lismore also joined in this case - Class Four	\$100,000	\$172,000
<b>Comments</b> <p>Mr Oshlack appealed the process followed by Rous, Lismore and Ballina councils in approving fluoridation. Rous Council engaged Blake Dawson Solicitors and Ballina Council agreed for that firm to also represent Ballina Council with costs to be shared. Lismore Council engaged a separate firm to act as their solicitors and only tendered a submitting appearance. The decision of the Court was eventually published on 16 May 2012 with the appeal being dismissed and Rous and Ballina councils being awarded costs. Whether or not Council has any chance of recovering costs will be subject to further advice from our solicitors.</p> <p>The time limitation for appeal of the original decision expired on Thursday 16 August, with Mr Oshlack lodging an appeal. The appeal process has commenced with the appellant and the respondents (Council and Rous Water) appearing in a directions hearing in mid October 2012. The directions hearing determined that the appellant was to file and serve his written submissions by 17 October 2012. As respondents our submission is required by 21 November 2012. The matter is listed for call over, for the purpose of allocating a hearing date, on 4 December 2012.</p> <p>Agreement has been reached with the NSW Department of Health whereby Rous Water and Council are able to fund the costs of the appeal from the interest earned on the project's capital grant. It is expected that it will not be necessary for Ballina Shire Council to allocate any funds towards the appeal process. Tenders will not be called to implement Council's earlier resolutions in respect to the construction of the plant needed to fluoridate Council's water supply until the appeal is determined.</p>				

## 10.6 Legal Matters - Update

### Legal / Resource / Financial Implications

This next section of this report provides an update on the legal costs for 2012/13 along with a comparison to the previous four financial years.

Description	2008/09 Actual	2009/10 Actual	2010/11 Actual	2011/12 Actual	2012/13 Actual
<b>Planning Legals</b>					
Avalon	86,000	0	0	0	0
Bryson and Blake	33,000	57,000	0	0	0
Greenwood Grove	53,000	44,000	7,000	0	0
Lennox Head Apartments	0	26,000	0	0	0
Ramada	0	51,000	364,000	2,000	0
Rich and Rich	0	16,000	1,000	0	0
Simpson	125,000	0	0	0	0
Stockpile - Temporary	0	0	66,000	0	0
Advice - Riverside Suites	95,000	35,000	4,000	7,000	0
Advice - North Angels	0	7,000	4,000	0	0
Advice - Service Centre	0	0	37,000	0	0
Advice – 84 Kerr St	0	0	0	0	11,400
Insurance – Merkat	0	0	0	6,000	6,300
Advice / Insurance - Misc	44,000	43,000	61,000	53,000	10,900
<b>Sub Total</b>	<b>436,000</b>	<b>279,000</b>	<b>544,000</b>	<b>68,000</b>	<b>28,600</b>
<b>Property Legals</b>					
Gunundi	139,000	23,000	3,000	0	0
Homeworld - Sec 96	52,000	0	0	0	0
Homeworld - BLEP	163,000	110,000	4,000	0	0
Lennox Head Comm Ctre	0	0	0	55,000	23,400
<b>Sub Total</b>	<b>354,000</b>	<b>133,000</b>	<b>7,000</b>	<b>55,000</b>	<b>23,400</b>
<b>Water Legals</b>					
Oshlack - Fluoride	0	0	159,000	13,000	0
<b>Total Expenses</b>	<b>790,000</b>	<b>412,000</b>	<b>710,000</b>	<b>136,000</b>	<b>52,000</b>
<b>Expenses Recouped</b>					
Freedden	52,000	0	0	0	0
Jacobson / McMillan	103,000	0	0	0	0
Simpson	6,000	0	0	0	0
Stubberfield	0	29,000	29,000	0	0
Gunundi	0	0	71,000	0	0
Homeworld	0	0	190,000	0	0
Ramada	0	0	8,000	0	0
Greenwood Grove	0	0	15,000	0	0
Stockpile Temporary	0	0	37,000	7,000	0
Miscellaneous	0	0	3,000	1,000	0
<b>Total Income</b>	<b>161,000</b>	<b>0</b>	<b>353,000</b>	<b>8,000</b>	<b>0</b>
<b>Net Cost</b>	<b>629,000</b>	<b>412,000</b>	<b>357,000</b>	<b>128,000</b>	<b>52,000</b>
<b>Fund Summary – Net</b>					
General Fund	629,000	412,000	198,000	115,000	52,000
Water Fund	0	0	159,000	13,000	0

The budget summary for 2012/13 is

Item	Budget	Actual	Balance
Planning Legals	140,000	28,600	111,400
Property Legals - LHCC	32,000	23,400	8,600
<b>Total General Fund</b>	<b>172,000</b>	<b>52,000</b>	<b>120,000</b>
Water	5,000	0	5,000
<b>Total Budget</b>	<b>177,000</b>	<b>52,000</b>	<b>125,000</b>

## **10.6 Legal Matters - Update**

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The major outstanding matters remain the Oshlack case and the Lennox Head Cultural and Community Centre (LHCCC) insurance claim, which is more a matter for arbitration.

In respect to the LHCCC claim mediation sessions have been conducted and it is anticipated that an agreed settlement figure with the architect's insurer will be reached shortly.

### **Consultation**

This report is provided in open council to ensure the community is informed on legal matters involving Council.

### **Options**

This report is provided for information purposes.

### **RECOMMENDATIONS**

That Council notes the contents of this legal update report.

### **Attachment(s)**

Nil

## **10.7 Policy (Review) - Deferral of Developer Contributions Policy**

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### **10.7 Policy (Review) - Deferral of Developer Contributions Policy**

**Delivery Program** Commercial Services

**Objective** To consider a review of Policy No. D10 - Deferral of Developer Contributions.

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#### **Background**

Council considered a report reviewing Policy No. D10 – Deferral of Developer Contributions, at the October Ordinary meeting. As a result of that report Council deferred the matter to a Councillor workshop. The workshop was held on 31 October 2012.

The purpose of this report is now to finalise the review of Policy D10. Reference should be made to the October 2012 report for full details on the history of this policy and the recommended changes.

#### **Key Issues**

- Possible amendments to the policy
- Whether Council wishes to retain the policy.

#### **Information**

It is not the intention of this report to reproduce all the background information as presented to the October 2012 Ordinary meeting. Reference to the original report provides that information.

Briefly the key issues under consideration are:

- Council first adopted the policy on 26 November 2009 in response to an approach by the developers of Ferngrove Estate, Rayshield Pty Ltd.
- The benefit of the policy is that it allows developers the opportunity to sell land thus enabling them to have the cash flow available before they pay their developer contributions.
- The agreement with Rayshield for stage 1 of their land release worked well, however Rayshield ran into financial difficulties in June 2011 due to the downturn in the local residential property market that started in 2008 as a consequence of the GFC.
- This downturn in the residential property market has continued as evidenced by the lack of lot sales and financial demise of developers on projects such as Pacific Pines in Lennox Head.
- Enquiries with local real estate agents indicate that many developers carrying debt are struggling to remain solvent.
- The lack of residential lot sales is also having an adverse effect across the local economy as the building industry, suppliers, retailers, etc. struggle to

## **10.7 Policy (Review) - Deferral of Developer Contributions Policy**

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deal with the downturn in demand for the goods and services they have to offer.

To provide more flexibility in the policy it was recommended that consideration be given to:

- Removing the restriction that only allowed developments of greater than 50 lots to be approved under the policy
- Increase the maximum deferral period from 12 to 36 months
- Change the interest rate charged from the Local Government 7 year interest rate as published in the Financial Review each week to the Reserve Bank Cash Rate plus a margin of 2.00%. The Local Government 7 year interest rate is no longer being published in the Financial Review therefore this rate needs to be amended in the policy, if the policy continues.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
The review was recommended due to the prevailing difficult economic conditions.

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

Where the policy has been implemented to date there has not been any legal issues arising, largely due to the supporting documentation and associated bonds.

### **Consultation**

It is standard Council practice to exhibit policies for public comment.

### **Options**

As reported to the October 2012 meeting the options for Council are to approve the three changes recommended, not approve the changes or alter the proposed changes (i.e. two years instead of three, higher interest rate etc). These three options still remain viable.

Following the workshop, what the current debate has highlighted is that it is difficult to have one policy that covers all the situations that may face a developer. In the case of Rayshield they are now looking at smaller sub sets of land releases to assist with their cash flow and to meet the current market.

In looking at options, on balance, it is now considered that the merits of having this type of policy are debatable in that:

## **10.7 Policy (Review) - Deferral of Developer Contributions Policy**

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- a) It does provide a possible uneven playing field through Council allowing some developers to receive assistance through the policy, while others don't receive that assistance
- b) It may well lead to an increase in requests, although that has not occurred to date
- c) It can result in requests for further or increased assistance above the policy limits, as is occurring with Rayshield.

Council can still determine to amend the existing policy however the preferred option is now considered to be revocation of the policy.

Even without a policy Council can still consider individual requests for assistance with the payment of Council fees and contributions. The difficulty with having the existing policy is that it does create an expectation that Council will provide the level of assistance identified in the policy and as often occurs assistance above that level may then be sought.

The preferred option is to cease to have the policy in place and thus allow all developers to be treated equally, albeit that Council, at any point in time, can consider a request for financial assistance.

### **RECOMMENDATION**

That Council approves the revocation of the "Deferral of Developer Contribution Policy" due to concerns that it may result in Council not treating all developers equally and the existence of such a policy creates an expectation of assistance, and at times, an expectation of assistance above that outlined in the policy.

### **Attachment(s)**

1. Existing Deferral of Developer Contribution Policy

## **10.8 Deferral of Developer Contributions - Ferngrove Estate**

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### **10.8 Deferral of Developer Contributions - Ferngrove Estate**

**Delivery Program** Commercial Services

**Objective** To further consider a request to amend the existing agreement allowing the deferral of the payment of developer contributions for the Ferngrove Estate.

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#### **Background**

Council considered a report on a request by Rayshield Pty Ltd (developers of the Ferngrove Estate, Ballina) to amend a deed of agreement it has with Council allowing the deferral of developer contributions, at the October 2012 Ordinary meeting. As a result of that report Council resolved to defer the matter and hold a workshop to discuss the issues associated with that request and to review the existing policy that allows deferrals (i.e. Policy D10 - Deferral of Developer Contributions).

The workshop was held on Wednesday 31 October 2012 with a number of Councillors in attendance. The workshop did not have any delegated authority to determine matters and primarily provided an opportunity for Councillors and staff to discuss the merits of deferring developer contributions.

The report that now follows revisits the matters raised in the October 2012 report. Reference should be made to the October 2012 report for a more comprehensive summary of the background to this current report. Reference should also be made to the earlier report in this agenda which provides a further review of Policy D10 – Deferral of Developer Contributions.

#### **Key Issues**

- Possible amendment of the current deed of agreement
- Flexibility of the agreement to deal with the prevailing economic conditions

#### **Information**

As reported to the October 2012 Ordinary meeting, Council has a deed of agreement in place with Rayshield that allows for the deferral of developer contributions for Stages 1 and 2 of their development, for a period of up to twelve months per stage. Stage 1 of the Rayshield development comprised 45 lots and by the year ending 30 June 2010, Rayshield settled sales of 32 lots, and were able to pay the Council contributions on those lots in addition to the unsold lots. The bank guarantees, which had been in place as per the agreement, were released by Council accordingly.

The Directors of Rayshield, following a tumultuous financial period, are now asking Council to amend the existing agreement, for Stage 2 of this development. Stage 2 comprises 58 completed and serviced residential lots. The total cost of developer contributions for Stage 2 is currently estimated to be \$1,034,198. Under the provisions of the current agreement and Developer Contribution Policy, Rayshield would need to provide a bank guarantee to Council for \$1,034,198 plus twelve months interest at the agreed rate, to defer the contributions.

## **10.8 Deferral of Developer Contributions - Ferngrove Estate**

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Rayshield advise that in the prevailing difficult economic climate they cannot raise a bank guarantee for such an amount, nor are they confident of selling and settling 58 lots in twelve months. They are therefore seeking:

- a Section 96 Amendment to the current development consent to split Stage 2 into three sub-stages as follows:-
  - Stage 2A 23 lots
  - Stage 2B 14 lots
  - Stage 2C 21 lots

This is a planning matter and is not an issue for consideration in this report.

- An amendment to the deed of agreement that facilitates deferral of developer contributions for Stages 2A, 2B and 2C.
- Amendments to the deed of agreement to extend the deferral period to a maximum of 36 months from the date of registration of the linen plan for each stage.

The rationale in seeking these amendments is that the Policy and agreement in their current form are not reflective of prevailing economic conditions. Take up rates or sale rates for lots are very low and not comparable to conditions experienced prior to 2009. There is a great deal of uncertainty in regards to selling periods.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The proposal is aimed at assisting with the delivery of more residential lots to the market.
- **Economic**  
The current economic conditions are a major driver behind this request.

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

In a legal context, the current deed of agreement performed as required. The proposed amendments can readily be incorporated into the current agreement. Rayshield will be responsible for any legal costs incurred in amending the agreement.

## **10.8 Deferral of Developer Contributions - Ferngrove Estate**

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### **Consultation**

Council staff have met and corresponded with a director of Rayshield Pty Ltd, and also sought advice from Council's solicitor, Clarissa Huegill of CH Law who drafted the original agreement. A workshop has also been held between Councillors and staff.

### **Options**

The options available relate to some extent to the previous report in this agenda and the determination that Council makes in respect to the existing Deferral Policy.

Based on the discussions held at the workshop and on-going consideration of this issue, the preference for the policy, as per the previous report, is to revoke that document. This still allows Council to consider requests on a case by case basis however it sends a signal that Council is not encouraging requests for deferrals by having a policy in place.

Even without a policy in place Council still needs to determine whether it wishes to approve any amendments to the existing agreement with Rayshield.

One important point that Council's Regulatory Services staff have highlighted is that Rayshield has the choice of not registering all the 58 lots identified in stage 2 at the one time. By gradually registering these lots, for example as per the sub stages they are now pursuing, they will face significantly lower bond requirements.

In respect to the term of three years for maximum deferral, as against one year in the current agreement, there have been concerns expressed that this agreement could then extend for many years, as sub-sets of lots are released. This is a legitimate concern and one way to prevent this occurring would be to place a maximum timeframe on the agreement.

For example, any amended agreement could limit the timeframe of the entire agreement to five years. This would mean that any sub-set of land released in three years time, could only have a maximum deferral period of two years (i.e. five years in total).

Council could also consider a deferral period of two years, as some form of middle ground, being an extension to the existing one year and less than the proponent's three year preference.

In respect to the interest rate the original report recommended the Reserve Bank cash rate plus 2.0%. Concerns have been expressed that this does not provide sufficient incentive for the monies to be paid and to some extent means that Council is providing financing to the proponents, by charging a lower interest rate than what would be payable on loan financing.

It is agreed that there should be a reasonable incentive for the proponents to pay the contributions outstanding, as even though Council is receiving interest on the contributions owed, we are not in a position to utilise those contributions on the infrastructure for which they are intended (i.e. roads, water, sewer etc).

## **10.8 Deferral of Developer Contributions - Ferngrove Estate**

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There is no right or wrong interest rate to charge and ultimately it is a matter for Councillors to determine what is fair and reasonable. From a staff perspective an increase to 2.5% above the Reserve Bank cash rate may provide enough incentive for the contributions to be paid sooner than later.

In forming a final recommendation the key considerations are firstly whether precedents are being set by this decision and secondly it is important to remember Rayshield already has an agreement in place.

In respect to precedents if Council resolves to revoke the existing policy, as per the earlier report, then it is considered that the Rayshield agreement can be evaluated as a stand alone matter, with an existing agreement in place.

In looking at options for the existing agreement, it is accepted that these have been difficult financial times for Rayshield. Council has some responsibility to assist in providing affordable land to the market however Council should not act as a financier for developers.

There are reasonable concerns that Council does not want to see the existing agreement drag on for many years, as there will be many other developers in the Shire paying their developer contributions up front and they could well argue that they have not been treated equally by Council. On the other hand it can also be argued that Council should provide some assistance to Rayshield due to the difficult economic climate and to assist them trade out of their current financial difficulties.

Based on these sentiments it is recommended that Council agree to amend the existing agreement to allow the contributions, for stage 2, or any sub set of stage 2, to be deferred for a maximum period of three years, however in approving this change Council also requires the agreement to state that the maximum term for the agreement is five years.

What this proposal does is that:

- a) It accepts the difficulties with the current economic climate and the financial difficulties facing Rayshield
- b) It allows Rayshield initially to defer contributions for a period of three years for any sub-set of stage 2. Rayshield is in a position to determine its own sub-sets of stage 2, based on the level of bonding they can afford.
- c) It limits any deferrals for future sub-sets released of stage 2, to the remaining period of the five year agreement, with the five years commencing from the date of signing of the agreement. For example if a sub-set is released after four years, the maximum deferral period is one year.
- d) It allows a period of five years for Rayshield to trade its way out of difficulties.
- e) It ensures there is a finite life for this agreement.
- f) It still allows Rayshield to come back in five years and ask Council for an extension, albeit that the Council at that time, will not be required to provide that extension.

## **10.8 Deferral of Developer Contributions - Ferngrove Estate**

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In respect to the interest rate, the Reserve Bank cash rate, plus 2.5% is considered to be a reasonable compromise.

In summary this is only one of many options for Councillors to consider, and on balance this option attempts to meet Council's requirements by setting limits on future deferrals, and it allows Rayshield a reasonable period of time to trade out of their current troubles.

If Councillors are not satisfied with this option the key issues to consider are;

- a) Whether any amendment is to be approved to the existing agreement;
- b) If yes, the key conditions to be determined are the deferral period and the interest rate.

The recommendations that follow support the preferred option outlined, albeit that it is accepted that Council may well wish to vary this proposal significantly.

### **RECOMMENDATIONS**

1. That in respect to the existing agreement for the deferral of developer contributions with Rayshield Pty. Ltd. Council approves the following amendments to that agreement:
  - a) Increase in the maximum deferral period to three years for any sub-set of the stage 2 approval, subject to part c) below.
  - b) Amendment to the interest rate paid to the Reserve Bank cash rate plus 2.5%
  - c) Limitation on the maximum term of the amended agreement to five years from the date of commencement of the amended agreement. This maximum term is to ensure that the life of the agreement is limited to five years, which means, for example, that any deferrals after year two of the agreement must be limited to the time remaining till expiry of the agreement (i.e. less than three years).

### **Attachment(s)**

Nil

## **10.9 BBRC Program - Purchaser and Developer Agreements**

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### **10.9 BBRC Program - Purchaser and Developer Agreements**

**Delivery Program** Commercial Services

**Objective** To confirm the principles that will support the proposed purchaser and developer agreements for the Building Better Regional Cities program.

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#### **Background**

At the 26 July 2012 Ordinary meeting Council received a comprehensive report on the conditions attached to a \$4.5 million Federal grant Council had been awarded under the Building Better Regional Cities (BBRC) Program. In summary that report confirmed the following key conditions of the grant.

- Council had received approval for a \$4.5 million Federal grant for the construction of the new Wollongbar Sports Fields.
- The objectives of the BBRC program are to invest in local infrastructure projects that support an increase in the number of homes for sale and / or rent that are affordable for working families on ordinary incomes, in communities that are experiencing positive jobs and population growth that need more homes to be built.
- The two main groups targeted as part of this program are working families on ordinary incomes (low to moderate income earners) living in regional centres who are suffering from cost of living pressures and new residents who want to move into the area for jobs, who need homes.
- Applications from councils had to demonstrate how low to moderate income earners would benefit as a result of the upfront development costs being borne by the Australian Government and what mechanism(s) will be used to deliver more affordable homes for sale or rent (the affordability mechanism(s)), such as rebates provided at the point of sale of lots, the value of the benefits per lot/dwelling; the anticipated number of lots / dwellings to which the benefit will be applied; and the anticipated timeframe for delivering these benefits and who will be eligible to purchase the affordable land or housing.
- In order to meet the criteria the application submitted by Council was based on eligible purchasers, being low to moderate income earners, receiving a rebate or initial waiver of development contributions (both section 94 and section 64), up to a maximum of \$30,000, on the price of the land. For example if land was on the market for \$200,000 the value of the selling price, to an eligible purchaser(s), would be \$170,000 once the \$30,000 rebate was applied.
- As a condition of the grant Council is required to provide a total of \$2.4 million in rebates (i.e. 80 lots). Initially Council's application asked for approval to waive only 60 lots at \$30,000 (\$1.8 million) however the Federal Government required a higher return on their investment and Council's application was subsequently amended to 80 lots.

## 10.9 BBRC Program - Purchaser and Developer Agreements

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- One option for management of these rebates is for Council to hold a bond for the developer contributions over the land that equated to \$30,000 per lot, and if the land owner / developer sold the land to an eligible purchaser(s), at the reduced price, the \$30,000 bond would be released to the land owner.
- The second option is for subdivisions where the landowner / developer have already paid Council's development contributions. If the owner can demonstrate a sale at the reduced price to an eligible purchaser(s), Council would refund development contributions paid to the landowner up to the value of \$30,000.
- The targeted timelines for the waivers are 20 by September 2013, another 20 by June 2014, a further 20 by June 2015 and the final 20 by June 2016. These agreed timelines are indicative and the advice from the Federal Government is that if Council does not meet the timelines the time available will be extended until the commitment of 80 allotments is met.
- The Wollongbar Sports Fields project incorporates: one x AFL field and sports lighting; two x rugby grounds and lighting; one x cricket oval (summer use of rugby grounds); six x tennis courts and lighting; four x netball courts; clubhouse facilities; vehicular and pedestrian access; car and bus parking; and vegetated buffers.
- The preliminary estimate for the construction of the works, that supported Council's application, is as follows:

<b>Item</b>	<b>Estimate (\$)</b>
Road Works and Civil Works	3,045,000
Stormwater Drainage	516,000
Sewerage Reticulation	100,000
Water Reticulation	77,000
Central Clubhouse / Amenities	500,000
Tennis Courts	240,000
Netball Courts	120,000
Lighting	450,000
Electrical Supply	300,000
Landscaping	200,000
Miscellaneous Fees and Charges	72,000
<b>Sub Total</b>	<b>5,620,000</b>
Contingency (10%)	560,000
<b>Total</b>	<b>6,180,000</b>

- Council has to fund the shortfall between the grant funds and the total project cost, which is approximately \$1.7 million. Our shortfall is being funded from Council's commercial property reserves.
- The Wollongbar Sports Fields is only one component of a much larger picture for the Wollongbar Urban Expansion Area (WUEA), as Council owns land in this precinct, and part of our goal will be to develop and release this land for sale, possibly to eligible purchasers as part of the BBRC program. Council's total land holding in the WUEA is approximately eight hectares with five hectares being zoned for residential purposes, as part of the new shire wide LEP.

## **10.9 BBRC Program - Purchaser and Developer Agreements**

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- The development of the WUEA should also assist in creating demand for future land releases at the Russellton Industrial Estate.
- From an urban planning perspective this project will further promote Wollongbar as a desirable location to live, due to the excellent sports fields, easy access to the industrial estate for employment opportunities, close proximity to Alstonville for localised shopping and well situated halfway between the major population centres of Lismore and Ballina.
- A major positive of the BBRC proposal is the benefits gained from Council's land development activities. Council has been fortunate enough through these activities to:
  - have its own land at the WUEA to assist in this land release
  - to have property reserves to finance the initial acquisition of the sports field land, which cost approximately \$1.8 million
  - to have further property reserves to help develop the land
  - to be in a position to further develop industrial land in close proximity to the site
  - to be in a position to benefit from the improved infrastructure in this locality potentially reflecting in improved yields and demand for the Council owned residential and industrial land.
- This entire project highlighted the benefits that can be gained by Council having a long term focus to invest in land holdings for the community's benefit.

As a result of the July report Council resolved to accept the grant, provide in principle support as to how the developer contributions were to be waived, write to Rous Water to determine whether they would assist with the waiver of their developer contributions, confirm the funding source for Council's contribution and to seek a further report confirming the definition of eligible property purchasers, along with the eligibility criteria and guidelines surrounding each purchase (resolution 260712/27).

Council has recently let the tender for the commencement of the construction of the sports fields and the purpose of this report is to confirm the arrangements to be put in place in respect to the eligible property purchasers and the management of the \$30,000 development contribution waiver.

### **Key Issues**

- Confirmation of the definition of an eligible property purchaser
- Confirmation of the type of development contributions to be waived
- Clarification of the arrangements to be established with the property developers / landowners

### **Information**

As per the key issues there are three key components in respect to the purchase and sale of land to meet the objectives of the BBRC program; i.e. a) confirming who is eligible; b) clarifying which Council contributions are waived; and c) confirming how the agreements with the developer / landowners are to be structured.

## 10.9 BBRC Program - Purchaser and Developer Agreements

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### a) *Eligible Purchaser(s)*

Following extensive discussions with the Federal Government the agreed definition of low to moderate income earners for the purpose of this grant is to be based on the National Rental Affordability Scheme (NRAS).

The benchmark income levels for this scheme are as follows:

<b>Household Type</b>	<b>Maximum Income (\$)</b>
One adult	56,870
Two adults	78,624
Sole parent with 1 child	78,679
Sole parent with 2 children	97,542
Sole parent with 3 children	116,404
Couple with 1 child	97,487
Couple with 2 children	116,349
Couple with 3 children	135,212
<b>Additional Person Type</b>	<b>Income level (\$)</b>
<i>Extra child</i>	15,090

*NB: For NRAS purposes, a household is considered to be all persons ordinarily residing in the dwelling. This definition requires all persons who ordinarily reside in an approved rental dwelling to have their income included as a member of the one household, in accordance with the income limits.*

The income figures are essentially the benchmark for any eligible purchaser to meet. To be eligible the purchaser would need to provide Council with taxation returns for the most recent financial year that confirmed the personal income levels for that year, for all persons who will reside in the dwelling, once built, were below the maximum thresholds.

As Council will be providing the \$30,000 rebate at time of the land purchase it may be difficult to predict exactly who will be residing in the future premises, once built. However the final agreement, once drafted, will be a legal agreement, that will include statutory declaration components, to ensure as best as Council can, that the person(s) purchasing the property are eligible.

Another recommendation will be to only provide discounts to persons and not to corporate entities such as family trusts or companies, to ensure the system is kept as transparent and as accountable as possible.

It has also been discussed that there is a risk a person(s) can purchase the land, with the discount, and then place it back on the market at the market price, without the \$30,000 rebate applied, thereby defeating the purpose of the scheme. There is a risk in this, however stamp duty and other transaction costs, do help to reduce that risk.

Also, this may be a far riskier exercise for someone who is a low to moderate income earner as they may not have the financial resources to cover the cash flow requirements of such a strategy.

Legal advice is being sought as to whether or not some form of bond, or security can be held, perhaps for a period of 12 months, to try and avoid this situation occurring. If such a clause can be included in the agreement, and that clause is considered to provide a practical outcome without reducing the effectiveness of the scheme, this option will be pursued.

## 10.9 BBRC Program - Purchaser and Developer Agreements

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In summary, the definition of the eligible purchaser can be managed through the NRAS maximum income levels and a legal agreement that confirms their eligibility. The first recommendation for this report confirms this approach and discussions with the Federal Government confirm they are satisfied with this approach.

### ***b) Council Contributions to be Waived***

In respect to development contributions the current contributions payable for land releases in the WUEA are as follows:

<b>Ballina Section 94 Plan</b>	<b>Amount (\$)</b>
Open Space	5,160
Community Facilities	5,004
Roads	9,836
<b>Sub Total (Section 94)</b>	<b>20,000</b>
<b>Ballina Section 64 Plan</b>	
Sewer (Wastewater)	10,138
Water	1,735
<b>Total Council Charges</b>	<b>31,873</b>
<b>Rous Water Section 64 Plan</b>	
Water	8,645
<b>Total Developer Contributions</b>	<b>40,518</b>

The resolution from July 2012 asked Council to write to Rous Water to determine whether or not they would consider waiving their fees (\$8,645) as part of this program. Rous has now written back advising that they do not consider it to be their role to provide this type of support and they will not provide a waiver or part waiver of their contributions.

This means that Council will need to fund the entire contribution waiver.

The July 2012 report highlighted that as Council's water and wastewater operations are far stronger financially, due to their ability to set their own charges, than Council's general fund operations, such as roads, community facilities etc which are limited by rate pegging.

This being the case, the July 2012 report recommended that the preferred approach, from a whole of Council perspective, was for the water and wastewater contributions to be deferred in full with the balance of the \$30,000 waiver then apportioned across the remaining contributions.

This remains the preferred option as there are significant constraints on our funding for areas such as roads, community facilities and open spaces, whereas for water and wastewater, income levels can be adjusted as and when required.

Based on this philosophy the distribution of the apportionments across the Council section 94 and 64 plans, on a per lot basis, and for the total 80 lots, equates to the following.

## 10.9 BBRC Program - Purchaser and Developer Agreements

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**Table One - Section 94 / Section 64 Contribution Apportionments**

<b>Plan</b>	<b>Contribution</b>	<b>Lot Waiver</b>	<b>Total Waiver</b>
Open Space	5,160	4,677	374,000
Community Facilities	5,004	4,535	363,000
Roads	9,836	8,915	713,000
<b>Sub Total (Section 94)</b>	<b>20,000</b>	<b>18,127</b>	<b>1,450,000</b>
Sewer (Wastewater)	10,138	10,138	811,000
Water	1,735	1,735	139,000
<b>Total Council Charges</b>	<b>31,873</b>	<b>30,000</b>	<b>2,400,000</b>
Rous Water	8,645	0	0
<b>Total Developer Contributions</b>	<b>40,518</b>	<b>30,000</b>	<b>2,400,000</b>

This is the preferred approach and the recommendations that follow will support the principle that Council waive the entire water and wastewater contributions, with the balance of the waiver then spread across the section 94 contributions.

### ***c) Developer Agreement***

Developers typically pay the contributions for land releases prior to release of the linen plan, which then allows the separate land titles to be registered and sold.

Where contributions have been paid by the developer and the land is then sold to an eligible purchaser Council will be in a position to refund \$30,000 worth of contributions. The key issue with this is that it must be the eligible purchaser that benefits. To ensure this occurs the options appear to be:

- 1) The developer and eligible purchaser provide adequate documentation to Council that the land has been sold at a \$30,000 discount to the listed price and once all the necessary paperwork has been completed and signed, Council provides a refund of \$30,000 to the developer. This ensures the purchaser has paid \$30,000 less than the market price and the developer is not out of pocket due to this reduction in selling price.
- 2) Another alternative could be for the purchaser to pay the full market price to the developer and then be reimbursed the \$30,000 difference by Council.

Option two is not preferred as the objective is to ensure the eligible purchaser pays a reduced price for the land and by recording the sale at full price it means that all transaction costs are based on that full price. Also the reimbursement of contributions is being paid to the purchaser, when in fact it was the developer who paid these contributions. The person who paid the monies should receive the refund.

This means option one is preferred and the only other major concern is to ensure that developers do not inflate their prices to offset the benefit of the \$30,000. Again there is some risk with this, however there will likely be more than one developer involved in this program, with Council also being a landowner, and on that basis Council should be in a position to monitor the market to avoid any fixing of prices.

## **10.9 BBRC Program - Purchaser and Developer Agreements**

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The other scenario possible from a developer / landowner perspective in respect to this entire proposal is that Council could potentially not require the developer to pay \$30,000 worth of contributions prior to the signing of the linen plan, maybe guaranteed through a bond, and then that bond could be either released or drawn down dependent on whether or not the sale was to an eligible purchaser.

This option has the benefit of improving the developer's cash flow by not having to pay all the contributions up front. However, as per Council's recent debate on the Ferngrove proposal it is far simpler and overall less risky for Council to initially collect the contributions and then reimburse them when a sale is made to an eligible purchaser.

This also provides an incentive to the landowner / developer in that they know that if they can sell the land, at a more attractive price (i.e. \$30,000 less) to an eligible purchaser, they will receive an immediate \$30,000 reimbursement from Council. Ideally it will not only be Council promoting this program, but the developers as well due to this incentive.

In summary in respect to the developer contributions the recommendation is that the developer(s) pays the contributions in full as per normal processes, with the developer(s) then eligible for a \$30,000 rebate based on a sale to a low to moderate income earner.

### **Sustainability Considerations**

- **Environment**  
The construction of the sports fields will be based on the latest environmental standards.
- **Social**  
The Wollongbar sports fields will provide significant social benefits to the local community, while the land discount will provide a more affordable supply of land to eligible purchasers.
- **Economic**  
The overall scale of this project and the possible stimulus from the discounted land supply will generate significant economic benefits.

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

The arrangements proposed in this report will be drawn up by a member of Council's legal panel. The BBRC program is operating in a number of other council areas and consultation has and will continue to occur with those councils to ensure that adequate checks and balances are implemented.

### **Consultation**

The entire Wollongbar Urban Expansion Area has been subject to significant consultation and planning over many years. The development application for the sports fields was also subject to community consultation.

The next step in this process will be to meet with all landowners to outline the scheme and to ensure that it is actively promoted in the marketplace.

## **10.9 BBRC Program - Purchaser and Developer Agreements**

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### **Options**

This report is focused on the proposed purchaser and developer agreements. In respect to the options available:

- a) The definition of low to moderate income earners is based on advice from the Federal Government which leaves little avenue for change.
- b) The developer contributions waiver can be apportioned across Council's contributions in a number of ways, however the recommendation is to ensure that the total water and wastewater charges are waived, with the balance then apportioned, as water and wastewater are the areas of Council's operations in the strongest financial position to fund this waiver.
- c) The refund or non payment of the Council contributions by the developer can be before or after they have paid their contributions to Council. The preference is for developers to continue to pay their contributions prior to the release of the linen plan, as this is consistent with standard practices, it ensures that Council has the funds collected and we do not need to pursue the developer for payment, and it also helps to provide an incentive to the developer to sell land, below market price to an eligible purchaser, with the knowledge they will receive the \$30,000 reimbursement from Council.

The recommendations that follow support these principles.

### **RECOMMENDATIONS**

1. That in respect to the Building Better Regional Cities (BBRC) program Council notes and confirms that an eligible purchaser(s) must have income levels consistent with the National Rental Affordability Scheme guidelines. This eligibility will be based on the most recent income tax returns and any other documentation deemed necessary by Council. Council also confirms that an eligible purchaser(s) will be a person or persons and not any form of other entity (e.g. corporation, trust etc).
2. That Council confirms that the developer contributions refunded under the BBRC program will be based on 100% of the Council Section 64 water and wastewater contributions, with the balance of the reimbursement to be apportioned evenly across the Council Section 94 contributions.
3. That Council confirms that the agreements with landowners / developers responsible for the sale of land in the Wollongbar Urban Expansion Area (WUEA), who wish to partake in the BBRC program, will require the landowner / developer to pay the Council developer contributions in full prior to the release of the linen plan for the land, with the \$30,000 reimbursement to be paid upon sale of their land to any eligible purchaser(s).
4. That Council authorises the General Manager to write to all eligible landowners / developers in the WUEA advising them of the BBRC program seeking their involvement and assistance in promoting the benefits available to low and moderate income earners.

## **10.9 BBRC Program - Purchaser and Developer Agreements**

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5. That Council authorises the Council seal to be attached to any agreements deemed necessary to ensure that all participating parties meet their obligations in respect to the BBRC program.

### **Attachment(s)**

Nil

## **10.10 Financial Reports 2012**

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### **10.10 Financial Reports 2012**

**Delivery Program** Financial Management

**Objective** Section 419 of the Local Government Act requires that the audited financial statements be formally presented to the public. The report that follows looks to satisfy this requirement.

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#### **Background**

Council considered the annual financial reports for the financial year ended 30 June 2012 at the October ordinary meeting. The principal auditor, Mr Kevin Franey of Thomas Noble and Russell, also addressed Council at that meeting.

The audit opinion was that Council's accounting records had been kept in accordance with the requirements of the Local Government Act and Australian accounting standards. The records fairly presented the Council's financial position and the results of operations. The audit was unqualified. Council subsequently endorsed the reports.

In accordance with Section 418 of the Local Government Act the Council must then formally present the financial reports to the public. This public presentation must be advertised. The advertising process has now been completed and this report complies with that section of the Local Government Act.

#### **Key Issues**

- Compliance with the Local Government Act
- Content of the financial reports
- Submissions to the advertised reports

#### **Information**

In accordance with the Local Government Act and Council's resolution the reports were advertised for public comment. No submissions were received.

Councillors may wish to bring their copy of the annual financial reports, as distributed at the October meeting, in case there is any further discussion on the matter.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
Not Applicable

## **10.10 Financial Reports 2012**

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

The annual financial reports state the financial position of Council as at 30 June 2012 and the financial performance of Council over the twelve months

### **Consultation**

Notice of the reports was advertised in the local paper, on council's website and at community access points. The community was invited to make submissions.

### **Options**

Council may adopt the annual financial reports for presentation to the public or choose not to adopt the reports. The recommendation is to adopt the reports.

### **RECOMMENDATIONS**

That the annual financial reports and auditor's reports for the financial year ended 30 June 2012, as publicly advertised, be adopted and presented to the public.

### **Attachment(s)**

Nil

## **10.11 Delivery Program and Operational Plan - 30 September Review**

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### **10.11 Delivery Program and Operational Plan - 30 September Review**

**Delivery Program** Governance

**Objective** To provide an update on the implementation of the Delivery Program and the 2012/13 Operational Plan

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#### **Background**

Under the Integrated Planning and Reporting requirements Section 404 (5) of the Local Government Act states as follows:

#### ***Delivery Program***

*"The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months".*

Even though Council is only required to receive six monthly progress reports the preferred practice has been to receive more timely quarterly reports. This report represents the first review of the 2012/13 - 2015/16 Delivery Program and the 2012/13 Operational Plan, with the information contained in the report based on work undertaken up to 30 September 2012.

The review information is included as a separate attachment to this report and the attachment provides an overview of all the programs included in the Delivery Program and Operational Plan, with comments provided by the relevant group and section manager.

In reviewing this information it is important to recognise that many of the benchmarks are based on the full 12 months, whereas the information included is only for three months of the year. Therefore a program can still be on track even though on a pro-rata basis it may appear behind, as a large part of the actions or work may be undertaken during the remainder of the year.

For reference purposes copies of the current Delivery Program and Operational Plan are available on Council's web site and also accessible by Councillors on their ipads.

#### **Key Issues**

- Compare actual results against the adopted goals and priorities

## 10.11 Delivery Program and Operational Plan - 30 September Review

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### Information

The Delivery Program and Operational Plan are the two key corporate documents that establish Council's goals and priorities for the term of the Council and the current financial year. The attachment to this report provides a comprehensive overview of the actions being progressed, with the information also being linked to Council's Community Strategic Plan (CSP) Objectives.

The attachment has two main sections being:

- Program Actions - This section provides a comment on the status of all the major actions in the Operational Plan
- Service Delivery Targets - This section provides details on the key indicators within the Operational Plan.

Generally many of the actions are on track and the report highlights the wide range of activities undertaken by Council.

In respect to the Operational Plan there are a total of 71 major actions listed in the Plan and the following two tables provide an overview of the status of those actions on a number and percentage basis.

#### Program Actions Overview - By Number of Tasks

Group / Status	GM	Regulatory	Civil	Strategic	Total
Green	24	4	22	14	64
Amber	2	1	2	0	5
Red	0	0	1	1	2
<b>Total</b>	<b>26</b>	<b>5</b>	<b>25</b>	<b>15</b>	<b>71</b>

#### Program Actions Overview - By Percentage

Group / Status	GM	Regulatory	Civil	Strategic	Total
Green	92	80	88	93	90
Amber	8	20	8	0	7
Red	0	0	4	7	3
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

The only item that is now not achievable for these actions is the preparation of a master plan for the Clarke Street areas, which is an action for Strategic Services (refer to page three of the attachment). This work will require a consultant and the estimated cost is \$40,000. Following the budget review there is not sufficient funding to allow this project to proceed and the recommendation is to defer this project until 2013/14.

In respect to the Service Delivery Targets there are a total of 77 targets identified in the Operational Plan and the following two tables provide an overview of how Council is performing against those targets, again on a number and percentage basis.

#### Service Delivery Targets Overview - By Number of Activities

Group / Status	GM	Regulatory	Civil	Strategic	Total
Green	21	17	24	3	65
Amber	3	3	1	0	7
Red	2	0	2	1	5
<b>Total Tasks</b>	<b>26</b>	<b>20</b>	<b>27</b>	<b>4</b>	<b>77</b>

## 10.11 Delivery Program and Operational Plan - 30 September Review

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### Service Delivery Targets Overview - By Percentage

Group / Status	GM	Regulatory	Civil	Strategic	Total
Green	81	85	89	75	84
Amber	12	15	4	0	9
Red	8	0	7	25	6
<b>Percentage Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

In respect to these services most are on track as per the agreed targets with the only variances of note being:

- Asset Management – Percentage of DA referrals completed within 21 days – 45% (target > 70%) (page 1 of second section of attachment) – This is the Development Engineering assessment section of Council and it remains a key area where improvements need to be made either in processes or the addition of extra resources to meet the agreed benchmark.
- Tourism – Revenue generated from visitor services - \$1,020 (target >\$24,000) (page 6 of second section of attachment) – As per the comment there is a general trend with accommodation bookings through visitor centres decreasing. Nevertheless it is pleasing to see that almost \$60,000 in co-operating advertising was generated for the visitor guide.

In summary this is only a brief snapshot of Council's performance and it is early in the year and therefore subject to further change.

It is also acknowledged that the priorities and projects listed in the Operational Plan reflect the priorities as determined by the previous Council. The newly elected Council over the next few months will begin formulating the priorities and goals for this term of Council, with those priorities to flow through into the 2013/14 Delivery Program onwards.

The Council can elect to change the goals and the priorities in the current Delivery Program and Operational Plan if there are areas where it is considered items do not reflect the goals of this Council. However as many of the projects and priorities are already underway those changes should only be implemented where there is a clear inconsistency with the new Council's goals. Similarly new projects should be considered as part of the formulation of the 2013/14 plan, rather than changing priorities mid way through the current financial year.

### Sustainability Considerations

- **Environment**  
There is a range of environmental, social and economic outcomes identified in the Delivery Program and Operational Plan.
- **Social**  
As above.
- **Economic**  
As above.

## **10.11 Delivery Program and Operational Plan - 30 September Review**

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

The Delivery Program and Operational Plan identifies the allocation of Council's resources and finances.

### **Consultation**

The purpose of this report is to provide the community with information on how Council is performing in respect to the Delivery Program and Operational Plan.

### **Options**

This report provides an overview of the performance of Council to the end of September 2012. It is still relatively early in the financial year and no major issues have been identified to date.

### **RECOMMENDATION**

1. That Council notes the contents of the 30 September 2012 review of the Delivery Program and Operational Plan.
2. That Council approves the removal of the preparation of the Clarke Street Master Plan from the staff works program as there is insufficient funding to allow this project to be completed during 2012/13.

### **Attachment(s)**

1. Delivery Program Report as at 30 September 2012 (Under separate cover)

## **10.12 Financial Review - Quarter Ended 30 September 2012**

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### **10.12 Financial Review - Quarter Ended 30 September 2012**

**Delivery Program** Financial Management

**Objective** To review the Council budget for the three months ending 30 September 2012.

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#### **Background**

In accordance with the Local Government Act the responsible accounting officer of a council must, not later than two months after the end of each quarter, prepare and submit to the council a budget review statement that shows a revised estimate of the income and expenditure for that year.

The report that follows provides this review for the first quarter of 2012/13.

#### **Key Issues**

- Variations to the budget
- Financial performance of council

#### **Information**

The purpose of this report is to provide information on known budget variances as at 30 September 2012. The format of the report complies with the Quarterly Budget Review Statement Guidelines set down by the Division of Local Government (DLG).

To comply with these guidelines an Operating Statement, Capital Budget, Cash and Investment Statement, Key Performance Indicators, Contractors, Consultants, Legal Information and certification by the Responsible Accounting Officer are required.

Commentary on the variations recommended is then provided after the tables which form a major part of this report.

A brief overview of the information provided in the report is as follows:

#### **Operating Income and Expense**

These tables provide the operating revenues and expenses for the Funds (General, Water and Wastewater). The information is useful in determining whether a Fund is operating at a surplus or deficit (before and after depreciation).

The operating performance for each major activity within the General Fund is also able to be monitored by matching income and expenses.

**Capital Budget**

These tables outline the capital expenditure budgets and how that expenditure is being funded.

**Table Three - Cash and Investment Statement**

These tables provide details on the projected movements in reserve balances in each of the funds.

**Key Performance Indicators**

This information shows the calculated position as at 30 June 2011, 2012 and the estimated position at 30 June 2013. The ratios provide an indication of the financial health of the organisation. In forecasting ratios there are many variables and assumptions in the calculations that mean the forecast is very much a best guess scenario.

**Contractors/Consultants/Legal Expenses**

This information provides details of specific expenses incurred and contracts entered as required by the DLG.

**Certification**

This is a Statement by the Responsible Accounting Officer as to whether the current year's estimated financial performance is or is not satisfactory.

For the tables, the ORIGINAL budget plus / minus changes previously approved by Council equals the REVISED Budget figure. REVISED Budget plus / minus recommended changes for this quarter equals the PROJECTED Year End Budget figure for the year.

Actual figures to 30 September are also included in the final column as a comparison to the PROJECTED Budget.

**General Fund**

This next section of the report deals with Council's General Fund operations. Tables for income and expense follow, including recommended variations to budget.

Following the tables are comments in respect to proposed budget variations that are considered to be material.

**10.12 Financial Review - Quarter Ended 30 September 2012**

**General Fund – Operating Revenues and Expenses**

<b>Operating Revenues</b>	<b>Original Budget 000's</b>	<b>Approved Changes 000's</b>	<b>Revised Budget 000's</b>	<b>Changes Approval 000's</b>	<b>September Budget 000's</b>	<b>Actual to September 000's</b>
<b>Strategic Services</b>						
Strategic Planning	383	0	383	23	406	23
Community Services	195	0	195	35	230	101
Community Gallery	59	0	59	0	59	24
<b>Sub Total</b>	<b>637</b>	<b>0</b>	<b>637</b>	<b>58</b>	<b>695</b>	<b>148</b>
<b>Regulatory Services</b>						
Development Services	312	0	312	10	322	94
Building Services	670	0	670	0	670	147
Public and Env Health	191	0	191	0	191	152
Admin and Public Order	78	0	78	9	87	35
<b>Sub Total</b>	<b>1,251</b>	<b>0</b>	<b>1,251</b>		<b>1,270</b>	<b>428</b>
<b>Civil Services</b>						
Asset Management	163	0	163	37	200	83
Stormwater and Env Prot	290	0	290	3	293	284
Roads and Bridges	0	0	0	1,534	1,534	1,534
Ancillary Transport Serv	713	0	713	16	729	146
Roads & Maritime	1,050	0	1,050	(40)	1,010	100
Open Space & Reserves	762	0	762	7	769	337
Fleet Mgmt and Workshop	4,022	0	4,022	0	4,022	947
Rural Fire Service	263	0	263	0	263	0
Quarries and Sandpit	324	0	324	0	324	61
Swimming Pools	291	0	291	0	291	58
Waste - Landfill Mgmt	6,927	0	6,927	(250)	6,677	1,445
Waste-Domestic	6,925	0	6,925	60	6,985	6,510
<b>Sub Total</b>	<b>21,730</b>	<b>0</b>	<b>21,730</b>	<b>1,367</b>	<b>23,097</b>	<b>11,505</b>
<b>General Manager's Gp</b>						
Administrative Services	33	0	33	0	33	6
Financial Services	20,658	(1,757)	18,901	(87)	18,814	16,974
Regional Library	95	0	95	20	115	0
Information Services	4	0	4	0	4	1
Human Resources / Risk	104	0	104	32	136	114
Tourism	36	0	36	56	92	69
Property Management	2,743	0	2,743	(88)	2,655	804
Ballina Byron Airport	3,786	474	4,260	0	4,260	671
<b>Sub Total</b>	<b>27,459</b>	<b>(1,283)</b>	<b>26,176</b>	<b>(67)</b>	<b>26,109</b>	<b>18,639</b>
<b>Total Operating Revenue</b>	<b>51,077</b>	<b>(1,283)</b>	<b>49,794</b>	<b>1,377</b>	<b>51,171</b>	<b>30,720</b>

**10.12 Financial Review - Quarter Ended 30 September 2012**

**General Fund – Operating Income and Expenses (cont'd)**

<b>Operating Expenses (excluding depreciation)</b>	<b>Original Budget 000's</b>	<b>Approved Changes 000's</b>	<b>Revised Budget 000's</b>	<b>Changes Approval 000's</b>	<b>September Budget 000's</b>	<b>Actual to September 000's</b>
<b>Strategic Services</b>						
Strategic Planning	966	283	1,249	0	1,249	209
Community Services	712	45	757	4	761	227
Community Gallery	174	2	176	(4)	172	47
<b>Sub Total</b>	<b>1,852</b>	<b>330</b>	<b>2,182</b>	<b>0</b>	<b>2,182</b>	<b>483</b>
<b>Regulatory Services</b>						
Development Services	1,313	0	1,313	(10)	1,303	291
Building Services	780	0	780	0	780	185
Public and Env Health	701	0	701	6	707	143
Admin and Public Order	1,053	35	1,088	(20)	1,068	220
<b>Sub Total</b>	<b>3,847</b>	<b>35</b>	<b>3,882</b>	<b>(24)</b>	<b>3,858</b>	<b>839</b>
<b>Civil Services</b>						
Asset Management	2,922	17	2,939	246	3,185	785
Stormwater and Env Prot	655	266	921	(14)	907	131
Roads and Bridges	4,915	0	4,915	(1,013)	3,902	901
Ancillary Transport Serv	1,572	0	1,572	164	1,736	368
Roads & Maritime	1,050	37	1,087	0	1,087	265
Open Space & Reserves	3,652	280	3,932	41	3,973	795
Fleet Mgmt and Workshop	2,863	0	2,863	(104)	2,759	651
Rural Fire Service	413	31	444	16	460	71
Quarries and Sandpit	55	49	104	0	104	9
Swimming Pools	696	0	696	(10)	686	113
Waste – Landfill Mgmt	5,633	0	5,633	(235)	5,398	1,138
Waste – Domestic	6,399	0	6,399	(190)	6,209	1,190
<b>Sub Total</b>	<b>30,825</b>	<b>680</b>	<b>31,505</b>	<b>(1,099)</b>	<b>30,406</b>	<b>6,417</b>
<b>General Manager's Gp</b>						
Governance	1,198	16	1,214	0	1,214	306
Administrative Services	785	0	785	(22)	763	142
Financial Services	(3,105)	0	(3,105)	10	(3,095)	(812)
Regional Library	1,324	63	1,387	21	1,408	336
Information Services	1,356	0	1,356	(10)	1,346	653
Human Resources / Risk	1,684	8	1,692	31	1,723	551
Tourism	650	0	650	53	703	165
Property Management	1,747	18	1,765	34	1,799	553
Ballina Byron Airport	2,741	230	2,971	0	2,971	681
<b>Sub Total</b>	<b>8,380</b>	<b>335</b>	<b>8,715</b>	<b>117</b>	<b>8,832</b>	<b>2,575</b>
<b>Total Operating Exps</b>	<b>44,904</b>	<b>1,380</b>	<b>46,284</b>	<b>(1,006)</b>	<b>45,278</b>	<b>10,314</b>
<b>Net Result Before Dep</b>						
	<b>6,173</b>	<b>(2,663)</b>	<b>3,510</b>	<b>2,383</b>	<b>5,893</b>	<b>20,406</b>
Depreciation Expense	15,092	0	15,092	0	15,092	0
<b>Net Operating Result</b>	<b>(8,919)</b>	<b>(2,663)</b>	<b>(11,582)</b>	<b>2,383</b>	<b>(9,199)</b>	<b>20,406</b>

## 10.12 Financial Review - Quarter Ended 30 September 2012

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### General Fund Working Capital Forecast

Item	Original Budget	Approved Changes	Revised Budget	Changes for Approval	September Budget
Working Capital	(106)	0	(106)	6	(100)

#### Comments - General Fund

The **forecast operating surplus** (before depreciation) has reduced from \$6.1 million to \$5.8 million. Inclusive of depreciation a loss of \$9.1 million is now forecast. This movement includes numerous positive and negative changes and the material changes are discussed below. The bigger influences include:

- Projects and works carried forward from 2011/12 such as plans and studies. This change increases operating expenses and the funding source is from reserves, which is not part of the operating result.
- The original budget included income of \$3.5 million for the Financial Assistance Grant (FAG). Council was paid \$1.7 million of this forecast late in the 2011/12 financial year. So in 2012/13 forecast income has been reduced by \$1.7 million and it is replaced by a transfer from reserve (not included in the operating result) of the same value.
- The downward adjustment for the FAG grant has been largely offset by a payment of \$1.5 million from Roads and Maritime Services. The payment is associated with the hand over to Council of maintenance responsibility for road segments that were formerly the Bruxner Highway at Alstonville. These funds are transferred to reserve as they will need to be used on future maintenance works for this section of road.

The estimated **unrestricted working capital** movement has improved from a forecast deficit of \$106,000 to a deficit of \$100,000. Again there has been numerous adjustments that make up this small improvement however where possible negative adjustments have been offset by positives in the same area.

Importantly the budget has been negatively impacted by a reduction to the actual amount of the FAG grant by \$102,000. This is because the Grants Commission made a calculation error in the previous financial year associated with the consumer price index, with this error occurring across the State. This now means that income from the FAG will be less in 2012/13 than it was in 2011/12.

Also less income will be received from two rental properties than was forecast due to property vacancies. In respect to Wigmore Arcade the downward adjustment is \$40,000 and this adjustment directly impacts the bottom line of General Fund; i.e. the surplus from this property it is not transferred to reserve as occurs with most other rental income. Council is aware that tenants are choosing to vacate their premises at Wigmore Arcade as leases expire. The net income from this property has traditionally supported the General Fund 'bottom line' and the loss of this income will have a negative impact on the General Fund finances going forward.

To offset the reduced revenue forecasts of approximately \$140,000, operating expense budgets across the organisation have been adjusted down. These adjustments may make it difficult to meet the revised budget in some areas.

**General Fund - Operating Revenues**

***Strategic and Community Services Group***

Rezoning Planning Fees: Income of \$23,000 has been received to progress rezoning applications. Expense budgets have been increased by the same amount.

Community Services: Forecast income has increased by \$30,000 due to receipt of a heritage grant and revenue of \$5,000 has been received for vacation play services at the Lennox Head Cultural and Community centre.

***Civil Services Group***

***Asset Management***

An insurance reimbursement was received for building repairs associated with storm damage. The income has been allocated to various parts of the ledger and Asset Management received \$5,000. Also grant income to \$32,000 was received with \$10,000 related to road safety and \$22,000 for flood study third party modelling.

***Roads and Bridges***

Alstonville Bypass Handover: The Roads and Maritime Services paid Council a one off contribution of \$1.5 million to maintain road segments that were, prior to the new bypass, State Highway.

***Landfill and Resource Management (LRM)***

There is a net reduction to income of \$250,000. Whilst most budgets are on track, forecast income from mixed waste gate fees paid by Domestic Waste Management (DWM) is trending well below forecast. This is due to a combination of a drop in tonnages being deposited by DWM, although quite small, and an overly optimistic forecast. Refer to the comment in 'Other Matters' in regard to Waste Management.

***Domestic Waste Management***

Revenue from annual rates is exceeding forecast due to growth in assessments and \$35,000 has been added to this budget. Council also received \$25,000 from the sale of old plant that was not forecast.

***General Manager's Group***

***Financial Services***

The FAG Grant is \$102,000 less than forecast and estimated income from interest on overdue rates is trending quite well and a further \$15,000 has been added to this income budget.

*Libraries*

Special Local Projects: Grant income for local projects will exceed forecast by \$26,000, whilst grant income for Library subsidy will be \$6,000 less than forecast. In respect to grants received from the State Library for local projects (\$26,000), expense budgets have been increased by the same amount.

*Human Resources and Risk Management*

Grant received from Statecover for plant ergonomics to \$9,000. Also the NOROC workforce project, contributed to by all NOROC councils and State Government, received total income of \$22,000. Equal expenditure budgets have been raised in respect to this income.

*Tourism*

Grant income of \$4,000 received from NSW Tourism and contributions of \$50,000 received for the local visitor guide. Equal expense budgets have been raised in respect to this income

*Property Management*

Forecast income from Fawcett street café has been reduced by \$54,000 whilst Wigmore Arcade has come down by \$40,000. In both instances the reduced income forecast is due to vacant premises.

**General Fund - Operating Expenses**

***Strategic and Community Services***

Strategic Services rezoning: Operating expense has been increased by \$23,000 as income was received to progress rezoning applications.

Strategic Services Professional services: Budget reduced by \$25,000 to partially offset lost income from the FAG grant and Wigmore Arcade rental.

Community Services Grant: Expense was increased by \$30,000 following the receipt of a heritage grant.

Community Services Aboriginal Liaison Officer: Salaries were reduced by \$35,000 as this role is to be replaced with a trainee Aboriginal ranger, located in Regulatory Services. The remaining \$8,000 from the original budget will stay in Community Services for Aboriginal related projects.

***Civil Services***

*Asset Management*

Budgets for depot operating expenses are trending high and have been increased by \$13,000, the Emergency Services levy in respect to the SES is \$6,000 more than anticipated, and new budgets of \$32,000 have been raised to acquit grant revenue received.

## **10.12 Financial Review - Quarter Ended 30 September 2012**

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Also the original budget included a building maintenance budget of \$192,000 in capital expense. During the quarter this was relocated from capital to operating expense in the Asset Management as the works are more maintenance in nature.

### *Roads and Bridges*

Road Reseal: Council is proposing to borrow \$1 million to use on road reseals in an effort to reduce the infrastructure backlog and take advantage of a loan interest rebate being offered by the State Government. The original budget showed this \$1 million expenditure as operating expense and during the quarter it was relocated to capital expenditure.

### *Ancillary Transport*

Street Lighting: Budget increased by \$143,000 to \$443,000. Energy efficient lighting is in the process of being installed. It was anticipated that this would result in reduced electricity bills with the saving being used to repay property reserves as they provided funding for the project. The estimated saving was \$143,000 and this amount was to be transferred to property reserve.

The project is primarily but not totally complete and at this stage forecast savings do not look likely this year. This is due to the fact that not all savings have flowed through as yet and also a price rise has occurred.

School Zone Signs: New budget raised to expend a grant of \$16,000 from the Roads and Maritime Services.

### *Open Space and Reserves*

OSR Operations: New budgets raised of \$42,000 for works on tree root barriers at Ballina Tennis Courts and Bentinck/Tamar streets. The majority of this expense is funded from a reserve that was created at the end of last financial year for this purpose. This allocation was directed by a Council resolution.

### *Fleet Management*

Loans: it was proposed to take out a loan in 2011/12 for plant purchases, so the 2012/13 budget made provision for repayments. Ultimately the loan was not taken up so the repayments are not required.

### *Rural Fire Services*

Fire Services: Contributions to Fire Brigade and the Bush Fire Service are greater than forecast and a further \$16,000 is required to be added to the budget.

### *Landfill and Resource Management (LRM)*

Forecast income has been reduced by \$250,000. Expenditure budgets have been scrutinised in an effort to counter this decrease and two adjustments are recommended in respect to the State imposed levy and baling/disposal costs.

## **10.12 Financial Review - Quarter Ended 30 September 2012**

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Whilst these adjustments do reflect current trends, they are risky given the variables that can occur with this business and further adjustments may be required before the year expires.

Levy: Expense to date for the Department of Environment and Climate Change levy is trending below the forecast of \$1,016,000. Based on the latest estimates the budget has been reduced by \$150,000.

Bale, Placement, Cover: Expenses for this budget are trending below forecast and it has been reduced by \$100,000 to \$790,000.

Old Depot Site: A new budget has been raised to \$15,000 to investigate the old depot site and the former canal tip site. This investigation will assess the land for contamination and possible remediation options.

### *Domestic Waste Management (DWM)*

Adjustments to DWM expense amount to a reduction of \$190,000. Movements to forecast expense are as follows:

- Reduction to gate fee expense of \$250,000. Refer to the comment in the LRM income section.
- Increase to administration salaries of \$20,000 which is because additional staff have been required to cover for the absence of the team leader who was injured at work.
- Increase to green waste collection expenses which are trending high.

Refer to comment in 'Other Matters' section of this report regarding the interaction of DWM and LRM.

### **General Manager's Group**

#### *Administrative Services*

Administrative Expenses: Budgets for printing, postage and phones reduced by a total of \$22,000.

#### *Property Management*

Southern Cross Estate: The budget for rates at Southern Cross Estate has been increased by \$24,000 funded from reserve based on works currently underway for the Southern Cross Masterplan project.

### **Water Operations**

This next section of the report deals with Council's water operations.

## 10.12 Financial Review - Quarter Ended 30 September 2012

### Water - Statement of Operating Income and Expenses (\$'000)

Item	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes Approval 000's	September Budget 000's	Actual to September 000's
Operating Revenues	8,572	0	8,572	120	8,692	2,414
Operating Exps (excl dep)	8,563	0	8,563	61	8,624	2,070
<b>Result Before Dep</b>	<b>9</b>	<b>0</b>	<b>9</b>	<b>59</b>	<b>68</b>	<b>344</b>
Depreciation Expense	2,266	0	2,266	0	2,266	0
<b>Net Operating Result</b>	<b>(2,257)</b>	<b>0</b>	<b>(2,257)</b>	<b>59</b>	<b>(2,198)</b>	<b>344</b>

Operating revenues have increased by \$120,000 whilst expense has increased by \$61,000, improving the forecast by \$59,000.

Increases to income budgets relate to:

- residential access charges budget increased by \$40,000
- water tapping fees increased by \$50,000 reflecting new services connected to properties
- plant hire income has been increased by \$30,000 suggesting fleet utilisation is greater than estimated.

Increases to expense budgets relate to water meter connections and plant operational costs.

The forecast **operating result** remains poor, being a small cash surplus of \$68,000 and a loss of \$2.2 million once depreciation is included.

### Wastewater Operations

This next section of the report deals with Council's Wastewater operations.

### Wastewater- Statement of Operating Income and Expenses (\$'000)

Item	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes Approval 000's	September Budget 000's	Actual to September 000's
Operating Revenues	12,823	0	12,823	0	12,823	9,601
Operating Exps (excl dep)	11,257	27	11,284	233	11,517	2,638
<b>Result Before Dep</b>	<b>1,566</b>	<b>(27)</b>	<b>1,539</b>	<b>(233)</b>	<b>1,306</b>	<b>6,963</b>
Depreciation Expense	4,343	0	4,343	0	4,343	0
<b>Net Operating Result</b>	<b>(2,777)</b>	<b>(27)</b>	<b>(2,804)</b>	<b>(233)</b>	<b>(3,037)</b>	<b>6,963</b>

Forecast revenues have not altered whilst expense has increased by \$233,000.

The main changes to forecast wastewater expense are:

- a new budget has been raised to \$120,000 for water quality data management. This increase has been partially offset by a reduction to effluent testing to \$50,000.

## 10.12 Financial Review - Quarter Ended 30 September 2012

- a recalculation of loan interest applicable has resulted in an increase to the forecast of \$185,000.

The forecast **operating result** is a surplus of \$1.3 million excluding depreciation. As from 2013/14 the true impact of the \$63 million loan will take effect and both loan interest and capital will rise.

### Capital Expenditure

This next section of the report looks at capital expenditure and examines proposed changes to the program.

#### General Fund - Capital Budget - Source and Application of Funds (\$'000)

General Fund Capital Expenditure	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes Approval 000's	September Budget 000's	Actual to September 000's
<b>General Fund Capital Funding</b>						
General Revenue	3,269	0	3,268	(72)	3,197	N/A
Reserves	9,124	1,330	10,454	1,076	12,530	N/A
Loans	7,200	4,381	11,581	1,000	11,581	N/A
Section 94 contributions	194	2,010	2,204	145	2,349	N/A
Grants and contributions	11,950	0	11,950	426	12,376	N/A
<b>Total Funding</b>	<b>31,737</b>	<b>7,721</b>	<b>39,458</b>	<b>2,575</b>	<b>42,033</b>	<b>N/A</b>
<b>General Fund Capital Expenditure</b>						
<u>Strategic and Community Services</u>						
Community Gallery	0	12	12	0	12	0
<u>General Manager's Group</u>						
Information Services	25		25	0	25	9
Property Management (Commercial)	710	164	874	0	874	45
Property Management (Community)	7,508	2,479	9,987	465	10,452	358
Camping Ground	0	10	10	0	10	0
Ballina Airport	3,752	1,973	5,725	0	5,725	508
<u>Regulatory services</u>						
Animal Shelter	340	276	616	0	616	8
<u>Civil Services</u>						
Asset Management	342	113	455	(5)	450	43
Stormwater	665	34	699	(4)	695	108
Roads and Bridges	9,066	928	9,994	1,870	11,864	1,655
Ancillary Transport Services	915	361	1,276	25	1,301	159
Town Beautification	2,300	1,142	3,442	50	3,492	1,186
Water Transport and Wharves	0	11	11	151	162	139
Open space - Parks and reserves	279	69	348	0	348	29
Open Space - Sporting Fields	310	21	331	0	331	5
Cemeteries	0	7	7	23	30	18
Fleet and Plant	900		900	0	900	130
Waste Management	4,625	121	4,746	0	4,746	11
<b>Total Capital Expenditure</b>	<b>31,737</b>	<b>7,721</b>	<b>39,458</b>	<b>2,575</b>	<b>42,033</b>	<b>4,400</b>

**General Fund - Capital Budget**

The majority of the increased funding relates to works carried forward from the previous year, as per the approved changes column.

General Manager's Group

Property Management (Community): Forecast expense is proposed to increase by \$465,000 which is primarily due to the inclusion of a budget of \$400,000 to investigate the upgrade/replacement of the Lennox Head surf club.

Civil Services

Roads and Bridges: The additional reseal program of \$1 million, financed from loans, was originally shown as operating expense and it has been shifted to capital (refer to matching reduction to the roads operating expense budget). There have also been increases to budgets for Gibson's Bridge (\$300,000), Yellow Creek Bridge (\$270,000) and a new budget for Tuckombil road (\$305,000) funded from anticipated grant income. The budgets for the bridges were reported to Council earlier this year with the funding sourced from grant monies and reserves.

Town Beautification: It has been discussed earlier in this report that Council received \$1.5 million from the Roads and Maritime Services relating to the hand over of maintenance responsibilities for road segments that were previously State highway at Alstonville. It is proposed that \$50,000 of this payment be applied to the Alstonville Town centre upgrade for road related improvements.

Water Transport and Wharves: Budget increased for Emigrant Creek Boat Ramp by \$151,000 funded from grant funds.

**10.12 Financial Review - Quarter Ended 30 September 2012**

**Water - Capital Budget - Source and Application of Funds (\$'000)**

Capital Expenditure	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes Approval 000's	September Budget 000's	Actual to September 000's
<b>Water Capital Funding</b>						
Reserves	450	50	500	0	500	N/A
Section 64 contributions	7,170	57	7,227	0	7,227	N/A
Grants and Contributions	0	0	0	0	0	N/A
<b>Total Funding</b>	<b>7,620</b>	<b>107</b>	<b>7,727</b>	<b>0</b>	<b>7,727</b>	<b>N/A</b>
<b>Water Capital Expenditure</b>						
Water Storage	3,500	0	3,500	0	3,500	0
Pump Stations	360	0	360	0	360	0
Trunk Mains	3,310	57	3,367	0	3,367	0
Other	450	50	500	0	500	98
<b>Total Capital Expenditure</b>	<b>7,620</b>	<b>107</b>	<b>7,727</b>	<b>0</b>	<b>7,727</b>	<b>98</b>

There are no adjustments to capital programs this quarter however the entire program is currently being reviewed.

**Wastewater - Capital Budget - Source and Application of Funds (\$'000)**

Capital Expenditure	Original Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes Approval 000's	September Budget 000's	Actual to September 000's
<b>Wastewater Capital Funding</b>						
Reserves	15,626	6,196	21,822	0	21,822	N/A
Section 64 contributions	0	0	0	0	0	N/A
Loans	17,800	0	17,800	0	17,800	N/A
<b>Total Funding</b>	<b>33,426</b>	<b>6,196</b>	<b>39,622</b>	<b>0</b>	<b>39,622</b>	<b>N/A</b>
<b>Wastewater Capital Expenditure</b>						
Treatment Plants	21,971	2,869	24,840	0	24,840	5,248
Recycled Irrigation	2,900	694	3,594	0	3,594	33
Pump Stations	2,156	308	2,464	0	2,464	183
Trunk Mains	3,007	1,343	4,350	0	4,350	216
Other	3,392	982	4,374	0	4,374	397
<b>Total Capital Expenditure</b>	<b>33,426</b>	<b>6,196</b>	<b>39,622</b>	<b>0</b>	<b>39,622</b>	<b>6,077</b>

There are no adjustments to capital programs this quarter however the entire program is currently being reviewed.

**Investments**

The next table shows details of the projected cash and investments.

Quarter ended 30 September 2012 Cash & Investments	Original Budget \$'000	Changes Approval \$'000	Revised Budget \$'000
<b>Unrestricted</b>	<b>1,097</b>	<b>(100)</b>	<b>997</b>
<b>Externally Restricted</b>			
- Section 94	7,503	(2,220)	5,283
- Domestic Waste M'ment	395	586	981
- Unexpended Grants/loans	(505)	7,198	6,693
- Other	150	39	189
- Section 64 Water	1,537	153	1,690

## 10.12 Financial Review - Quarter Ended 30 September 2012

- Water	1,407	548	1,955
- Section 64 Wastewater	5,820	120	5,940
- Wastewater	10,520	(4,495)	6,025
<b>Total Externally Restricted</b>	<b>26,827</b>	<b>1,929</b>	<b>28,756</b>
<b>Internally Restricted</b>			
- Employee Leave Entitlements	1,463	252	1,715
- Plant Replacement	925	267	1,192
- Quarries	1,534	15	1,549
- Properties activities	4,397	(669)	3,728
- Properties Refurbishment	1,582	(428)	1,154
- Management Plans & Studies	471	87	558
- Cemeteries	59	61	120
-Landfill Management	1,961	(130)	1,831
- Civil Works	1,259	1,892	3,151
- Other	110	45	155
<b>Total Internally Restricted</b>	<b>13,761</b>	<b>1,392</b>	<b>15,153</b>
<b>Total Restricted</b>	<b>40,588</b>	<b>3,321</b>	<b>43,909</b>
<b>Total Cash and Investments</b>	<b>41,685</b>	<b>3,221</b>	<b>44,906</b>

The unrestricted cash figure is not inclusive of transactions that would normally be included when calculating working capital; i.e. it is exclusive of movements in items such as debtors and creditors. The available cash figure is taken from note six of the financial statements as at 30 June 2012. Council does not track movements in available cash on a quarterly basis.

### Statements

1. Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
2. As per the investments summary for September 2012, funds invested amounted to \$86,288,000. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 30 September 2012 to the amount of \$1,649,574.
4. Actual year to date cash and investments amount to \$87,938,000 as at 30 September 2012. This amount includes cash at bank of \$1,649,574 and funds invested of \$86,288,000 which has been reconciled to bank statements and investment reports.

### **Bank Reconciliation Summary as at 30 September 2012**

<b>Balance as per Bank Statement</b>	<b>1,594,786</b>
Less Unpresented Cheques	48,404
Sub Total	1,546,382
Plus Outstanding not Credited	132,249
Sub Total	1,678,631
Less Amounts Deposited at end of month not in ledger	29,057
<b>Balance as per ledger</b>	<b>1,649,574</b>

**Comment on Cash and Investment Position**

The forecast reserves position has increased from \$41.7 million to \$64.1 million. It is important to note that the original budget was prepared prior to the finalisation of end year actual results being known. Hence there have been changes between the estimated start position of the original estimates and the actual year end position. Plus there have been changes in the first quarter of this financial year.

Details of the major changes are summarised below.

Section 94 Reserves

Forecast section 94 reserves have decreased by approximately \$2.2 million. The majority of this change relates to the purchase of two properties in central Ballina from the car parking fund for \$2.1 million. There is also a new transfer from reserve of approximately \$100,000 for Hutley drive.

Domestic Waste Management (DWM)

The forecast is that DWM will generate a substantial operating surplus which will be transferred to reserve.

Unexpended Grants / Loans

The original budget predicted a negative balance which was associated with Wollongbar sports fields and an assumed pre expenditure of grant monies. The revised forecast includes Wollongbar sports fields with a positive balance of \$1.1 million and airport loan of \$5.5 million.

Water Fund Reserves

In comparison to the original forecast net reserves are predicted to rise by \$701,000 which is primarily due the fact that the actual position at June 30 2012 was much better than the forecast position assumed by the original 2012/13 budget.

The forecast position formed the start point in the original budget forecast for 2012/13 (note: the actual position was not confirmed until some weeks after the budget was adopted). In the final quarter of 2011/12 there were savings as compared to budget of over \$470,000 in operating expense and also income exceeded forecast by approximately \$340,000. In the September quarter 2012/13 the forecast transfer from reserve has been increased by \$120,000.

Wastewater Fund Reserves

The revised forecast is for a net decrease to reserves of \$4.4 million which is due to a combination of factors. The end year actual position differed from the forecast position at June 30 2012 and the works from the 2011/12 capital program that were carried forward. In this process the capital program has increased by \$4.4 million over the two years. The capital program is in the process of being reviewed, which will no doubt result in further changes to the reserves forecast given the scale of works and their interaction with loan funding.

### Employee Leave Entitlements

The forecast is that the reserve will be \$252,000 more than was originally estimated. This is because at the end of 2011/12 funds were transferred to the reserve which was not anticipated.

### Plant Fund

The reserve is forecast to increase to \$1.2 million which is an improvement of \$267,000. The majority of this is due to a September adjustment increasing the transfer to reserve by \$194,000. As mentioned elsewhere in this report this is because it was assumed that a loan would be taken up in 2011/12 and this did not occur, so anticipated loan repayments will not eventuate. The remainder of the increase is because the end year position in 2011/12 was better than forecast.

### Property Activities

The forecast reserve balance has decreased by \$669,000 which is due to a combination of movements including reserves (community Infrastructure, Land Development, Commercial Opportunities) year end actual balances being different to the original budget opening reserve balance forecast plus some adjustments this quarter for reduced rental income and increased expenses. Also contained within the property portfolio is the airport reserve and this reserve ended the year in a larger deficit than was anticipated.

### Properties Refurbishment Reserve

The variation in forecast primarily relates to the Lennox Surf Club. Proceeds from the sale of land at Ross Street have been reduced by \$400,000 to enable investigation and design works.

### Landfill Resource Management

Adjustments essentially relate to the reduced cash surplus forecast for the 2012/13 financial year. Refer to income and expense section of this report for details.

### Civil Works

Council was paid \$1.5 million by the Roads and Maritime Services for future maintenance of road segments that were previously state highway. The other main adjustment relates to the Single Invitation Contract reserve which ended 2011/12 with a balance of \$240,000 which was not envisaged in the original forecast.

### **Key Performance Indicators**

The next section of the report takes selected financial benchmarks that have been adopted by Council and compares the June 30 2011 and 2012 ratios with the forecast at September to June 30 2013. The performance indicators that have been selected have a short term focus which suits the quarterly review which also tends to focus on the short term.

## 10.12 Financial Review - Quarter Ended 30 September 2012

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The actual and forecast performance indicators measured against the benchmark provide an important insight into the financial well-being of the organisation. The indicators should be used to assist financial policy and strategy.

### Key Performance Indicators - General Fund

1. Unrestricted Current Ratio - Unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >2:1 (The benchmark of 2:1 is taken from the Local Government Financial Professionals Health Check. It could be argued that this is a conservative benchmark. It is noted that the auditors report uses a benchmark of 1.5:1)

2010/11	2011/12	2012/13
Actual	Actual	Estimate
2.75	2.9	1.6
Pass	Pass	Fail

#### Comment

This ratio has traditionally been very strong as Council has held solid cash reserves and limited borrowings. The 2012/13 budget looks to continue the program of converting cash into infrastructure with reserves to be expended on projects such as the Ballina Surf Club, Animal Shelter and Cycleways. Also loans are proposed for roads, Ballina Town Centre and the airport amounting to \$15.5 million.

The ratio forecast is that it will go beneath the 2:1 benchmark as cash is converted into fixed assets and borrowings are taken up. Obviously this forecast will vary depending on the timing of loan take up and capital works however it does seem quite likely that the benchmark will not be achieved.

Assuming the ratio does fall below the benchmark, going forward it will be important to minimise borrowings and endeavour to increase cash reserves.

2. Debt Service Ratio – Loan principal and interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions (as per note 13). The purpose of this measure is to test whether Council has excessive debt servicing costs relative to revenue.

Benchmark: <12%

2010/11	2011/12	2012/13
Actual	Actual	Estimate
6.70	6.0	9.0
Pass	Pass	Pass

Comment

The ratio is forecast to rise as borrowings, described in the ratio above, begin to take effect. It has been assumed that some of the 2012/13 loans will not affect the ratio this financial year as no repayments will occur. By 2013/14 it is estimated that the ratio will verge on the 12% benchmark as the full effect of the 2012/13 loans come into play.

The indicator is suggesting the current borrowing program will result in 11% to 12% of revenue being tied up to repay debt and that it is not desirable to take out further borrowings. Future discretionary funds will be limited as they are committed to repaying debt.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is to measure whether the Council is sustainable in terms of its operating result.

Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Actual	Actual	Estimated
(4)	(12)	(16)
Pass	Fail	Fail

Comment

The forecast is for a loss that exceeds the negative 10% maximum which is not satisfactory. The trend has been for a deterioration of the ratio and the forecast is that this will continue.

Certainly depreciation, which has been increasing as assets are revalued, has had a negative impact on this ratio and Council is currently reviewing all depreciation estimates to make sure they are as accurate as possible. However based on the latest figures Council has over \$1 billion in assets (all funds) under its control and there is a heavy renewal burden associated with such a large asset base. Also in being negative 10%, the benchmark ratio is providing some tolerance for an operating loss.

It is important to point out that the General Fund operating result, exclusive of non cash items such as depreciation, has been improving over the last few years. This is partially due to progressive increases to the ordinary rate above the rate pegging limit and close attention to recurrent expenses.

## 10.12 Financial Review - Quarter Ended 30 September 2012

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Also the forecast can be distorted by numerous issues and forecasting this ratio is filled with assumptions. For example the forecast operating result does not include approximately 50% of income from the Federal Assistance Grant (FAG). This is because we actually received the money last financial year as a prepayment. It may be that we will receive a similar pre payment this financial year which would change the forecast ratio to a loss of 12% as opposed to 16%.

The ratio does highlight that the operating result is a matter for concern, particularly when the forecast is that this will continue for some years in to the future. Continuing losses of this magnitude are indicating that operations are not sustainable at this same level over the long term. It is suggesting that the current generation is creating liabilities for future generations.

Corrective action may take the form of increasing operating revenue, decreasing operating expense or a combination of the two.

4. Available Working Funds (General Fund Only) - Total of cash, investments, receivables and inventory assets less total payables, liabilities, externally restricted receivables, internally and externally restricted investments and real estate inventory. The benchmark is set at \$3 million which is based on percentages of income and expenses. The purpose of this measure is to show Council's short term ability to cover short term financial shocks whether they be reductions in anticipated revenues or unplanned additional expenditure.

Benchmark: \$3,000,000

2010/11	2011/12	2012/13
Actual	Actual	Estimate
\$2.8m	\$3.5m	\$3.4m
Fail	Pass	Pass

### Comment

The available working funds benchmark has been achieved and based on current forecasts the position will be similar to the start of the year.

Funds were set aside at the end of last year to increase working funds and this has assisted the result for June 30 2012. .

### **Benchmark Indicators - Water**

1. Unrestricted current ratio - Unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >2:1 (The benchmark of 2:1 is taken from the Local Government Financial Professionals Health Check. It could be argued that this is a conservative benchmark. It is noted that the auditors report uses a benchmark of 1.5:1)

## 10.12 Financial Review - Quarter Ended 30 September 2012

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<b>2011/12</b>	<b>2012/13</b>
Actual	Estimate
34	23
Pass	Pass

### Comments

The Fund is in a very strong position from the balance sheet perspective with almost no debt. Going forward it is predicted that cash will fall as it is converted into infrastructure and current liabilities will remain similar.

2. Debt Service Ratio - Loan principal and interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions (as per Note 13). The purpose of this percentage is to measure whether Council has excessive debt servicing costs, relative to operating revenue.

Benchmark: < 12

<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Actual	Actual	Estimate
0.05	0.00	0.00
Pass	Pass	Pass

### Comments

The Fund is virtually debt free so passes this benchmark with ease.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage measures whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

<b>2010/11</b>	<b>2011/12</b>	<b>2013/13</b>
Actual	Actual	Estimate
(24.26)	(22)	(26)
Fail	Fail	Fail

### Comments

The operating position of Water Fund is not good. A loss of \$2.2 million is forecast which is consistent with recent years. Again long term sustainability must be questioned. The strategy must be to improve the operating performance of this Fund to achieve a surplus.

**Benchmark Indicators - Wastewater**

1. Unrestricted current ratio - Unrestricted current assets divided by unrestricted current liabilities. The purpose of this ratio is to measure Council's ability to meet its short term liabilities with its short term assets.

Benchmark: >2:1 (The benchmark of 2:1 is taken from the Local Government Financial Professionals Health Check. It could be argued that this is a conservative benchmark. It is noted that the auditors report uses a benchmark of 1.5:1)

<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Actual	Actual	Estimate
9.7	8.2	4.0
Pass	Pass	Pass

Comments

The ratio is predicted to fall as cash reserves are expended on the upgrade program. There will be a further decline to the ratio once the current portion of the loan facility is recognised.

2. Debt Service Ratio - Loan principal and interest payments divided by revenue from continuing operations excluding capital items and specific purpose grants and contributions. (as per Note 13). The purpose of this percentage is a measure of whether Council has excessive debt servicing costs, relative to operating revenue.

Benchmark: <12

<b>2010/11</b>	<b>2011/12</b>	<b>2012/13</b>
Actual	Actual	Estimate
9.40	21	34
Pass	Fail	Fail

Comments

The ratio is indicating that the amount of recurrent income tied up repaying debt is excessive. However whilst the ratio is very poor the financial plan takes the debt and associated repayments into account.

The real strength of wastewater fund is the guaranteed income source from annual charges and the fact that the charging structure is at council's discretion. This means that major capital works can be financed with a high level of confidence.

3. Operating Balance Ratio - Net operating result from continuing operations (excluding capital items) as a percentage of operating revenue (excluding capital items). The purpose of this percentage is whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenues.

Benchmark: < (10)

## 10.12 Financial Review - Quarter Ended 30 September 2012

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2010/11	2011/12	2012/13
Actual	Actual	Estimate
(11)	(22)	(24)
Fail	Fail	Fail

### Comments

An operating loss of \$3.4 million is forecast. This is lagging behind where we would like to be placed given the impending loan repayments. It may be necessary to increase the annual charge by a reasonable margin in 2013/14 depending on final outcomes for the current year.

### **Contractors**

There were no new contracts entered into during the quarter that meet the criteria.

### **Consultants**

The table below summarises the expense incurred to date on consultants. The definition of consultants includes a person or organisation engaged under contract on a temporary basis to provide recommendations or high level specialist advice or professional advice to assist decision making by management.

Item	Expenditure YTD	Included in Budget Y/N?
Consultancies	6,000	Y

### **Legal Expenses**

The table below summarises the expense incurred to the end of September on legal fees. For the purposes of the report legal fees have been included where there is a dispute situation. This includes for example recovery of rates not paid but excludes processing of infringement notices (no dispute at this point) and amounts paid to legal firms that may be related to the creation of a lease or sale of land.

	Expenditure YTD	Included in Budget Y/N?
Legal Fees	67,000	Y

### **Other Matters**

#### *Waste Management*

The Operating Revenues and Expenses section of this report identifies that the forecast gate fees paid by Domestic Waste Management (DWM) to Landfill and Resource Management (LRM) are trending below forecast and adjustments of \$250,000 are recommended. This means less income for LRM and less expense for DWM.

## 10.12 Financial Review - Quarter Ended 30 September 2012

There is a very close relationship between DWM and LRM. Indeed the primary reason to have a landfill is to accommodate the needs of DWM. Council uses the gate fees paid by DWM to control the financial performance of the two businesses and it is proposed that the gate fee paid by DWM for mixed waste be increased as from 1 October 2012.

The tables below show the original and revised September forecasts for both businesses. It will be noted that the revised September forecast includes provision for a price increase to the mixed waste gate fee paid by DWM of \$25 per tonne. It is important to note that this fee affects DWM only and does impact upon private users of the landfill.

It is also pointed out that in 2011/12 Council dropped the gate fee for DWM to assist that business to purchase four new collection trucks.

### Landfill and Resource Management Budget Forecast

Item	Original Budget 000's	Proposed September 000's
Operating Income	6,622	6,372
Operating Expense	5,633	5,398
<b>Operating Result excluding Depn/DECC levy</b>	<b>989</b>	<b>974</b>
Loan Principal	982	982
<b>Cash Surplus / (Loss)</b>	<b>7</b>	<b>(8)</b>

The forecast for LRM is marginal at best with income approximating expense exclusive of depreciation and inclusive of loan capital. It is important that the profitability of the business is improved as it must provide for remediation of the tip site post closure plus look to the future in respect to new tip sites or alternate disposal methods of waste.

### Domestic Waste Management Budget Forecast

Item	Original Budget 000's	Proposed September 000's
Operating Income	6,925	6,985
Operating Expense	6,399	6,209
<b>Net Operating Result excl Depreciation</b>	<b>526</b>	<b>776</b>
Loan Principal	134	134
<b>Cash Surplus / (Loss)</b>	<b>392</b>	<b>642</b>

The forecast cash surplus of \$642,000 is very strong. The business needs to provide for the acquisition of approximately one new collection vehicle annually of around \$300,000 to \$350,000. So it can be seen that even with the projected price increase DWM is forecasting a surplus that is sufficient for two year's operations.

## 10.12 Financial Review - Quarter Ended 30 September 2012

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This means that there is scope to improve the financial performance of LRM, even beyond the recommended price increase, given the strength of DWM. However the proposed fee increase is substantial and it is proposed to monitor both businesses going forward and reassess the situation at the next review.

The table below shows the current and proposed gate fees. It also shows the fee charged to self haul users of the landfill as a comparison.

### Gate Price Per Tonne

Item	2012/13 Current	2012/13 Proposed
DWM Mixed Waste and Green	\$220/ tonne	\$245/tonne
Self Haul Mixed Waste	\$190/tonne	\$190/tonne
Self Haul Green Waste	\$ 90/tonne	\$ 90/tonne

\*In respect to DWM, mixed waste and green waste are the same price.

It can be seen that there is a substantial price differential between the price for DWM and self haul. This is not desirable however prices at the gate have been increased dramatically for several years due to the costs associated with providing new waste cells and their associated loans. This process has continued with costs being driven by the DECC levy and in 2012/13 the self haul mixed waste price was increased by 9%. There has been some reluctance to continue rising prices beyond the 9% to 10% for self haul given consumer resistance.

Importantly this change only relates to Council's internal charging for DWM, so there is no impact on residents or other users of the landfill.

### Statement

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 30/9/2012 indicates that Council's projected financial position at 30 June 2012 will be satisfactory\* at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

\* The satisfactory position is based on the short term (twelve month) outlook. Council is forecasting operating losses, inclusive of depreciation and exclusive of capital grants, on both a consolidated and fund basis into the foreseeable future.

From a long term perspective Council needs to work towards an operating surplus.

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Signed Peter Morgan, Responsible Accounting Officer

**Sustainability Considerations**

- **Environment**

This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.

- **Social**

As above

- **Economic**

As above

**Legal / Resource / Financial Implications**

This report informs Council of actual financial results to date in comparison to budget. Where legal ramifications are envisaged they are detailed within the information section of this report.

**Consultation**

This report has been prepared to inform the community of budget variations.

**Options**

Council may approve the budget amendments proposed, make changes or not approve any changes. It is considered that the proposed changes reflect either Council policy or necessary adjustments that reflect the trending of actual incomes and expenses.

**RECOMMENDATIONS**

1. That Council notes the contents of the September 2012 Quarterly Budget Review and approves the changes identified within this report.
2. That Council approves an increase of \$25 per tonne to the internal gate fee charged by Council's Landfill Operations to the Domestic Waste Management Service for mixed and green waste as from 1 October 2012.

**Attachment(s)**

Nil

## **10.13 Capital Expenditure - Quarterly Update**

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### **10.13 Capital Expenditure - Quarterly Update**

**Delivery Program** Governance

**Objective** To provide a status report on the progress of the capital works program included in Council's 2012/13 Operational Plan.

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#### **Background**

Council has a major capital expenditure program included in the annual Operational Plan and due to the scale and magnitude of the program it is important that updates are provided on a regular basis. The current practice being followed is to provide a comprehensive quarterly status report on all the major capital works included in the plan. This status report provides details on key milestone dates, along with a comparison between budget and actual expenditure.

This report is to 31 October 2012 and represents the first report for the 2012/13 financial year.

#### **Key Issues**

- Status of works

#### **Information**

To assist in understanding the likely delivery timeframes for the capital works the attachments to this report provide information on the following items:

- Original Budget - represents the budget as per Council's adopted Operational Plan
- Carry Forward - represents budgets carried forward from the previous financial year that were approved by Council at the August 2012 Ordinary meeting
- Approved Variations - Variations previously approved by Council resolution either through a Quarterly Budget Review or a separate report on a particular project. As the September budget review is included elsewhere in this agenda items recommended in that review have been included in this column.
- New Variations – Represents further changes recommended on top of the September quarterly review.
- Latest Estimate - Sum of the original budget plus budget changes
- Expenditure to Date - Expenditure to date of report
- % Expended - Percentage of budget expended to date
- Milestone Dates - Represents target dates for completion of the major milestones.
- Status - Allows additional comments to be provided, where necessary

The attachments are also split into the main functional sections within the Council undertaking the works: i.e. Open Spaces, Engineering Works, Operations Support, Commercial Services, Water, Wastewater and Waste.

## **10.13 Capital Expenditure - Quarterly Update**

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Points of note in respect to the information outlined in the attachments are as follows.

### ***Open Spaces***

The major works to be completed this year relate to Pat Morton Headland Toilets, Missingham Park Shade Structure, Saunders Oval extension and improved lighting for Kingsford Smith Oval.

These works have either commenced or the planning is well advanced therefore all projects should be completed this financial year.

### ***Engineering Works***

#### *Drainage*

The Coogee Street, Tresise Place and Grant Street works are on hold due to possible failures in other locations that may result in a change in priorities.

#### *Urban and Rural Roads*

The recent good weather has allowed many of these projects to be well advanced or completed and it is interesting to note that once the two RMS projects are included for McLeay Culvert and Cumbalum Interchange, which are actually finalised, the percentage of works completed for the year increases to approximately 60% of the roads and bridges budget.

#### *Shared Paths and Footpaths*

A number of segments of the Coastal Shared Path have been completed with planning approvals still being sought for the balance. The current time frame for the Aboriginal community consultation phase of the planning process to be finalised is November 2012, with the planning assessment phase to commence after that. At best, planning consents will be available by March 2013.

### ***Operations Support***

The plant replacement program is behind schedule typically due to long lead times that follow the placement of an order. Council did not need to obtain loan funding in 2011/12, which had been approved for an expansion of the fleet, due to delays in purchasing. Decisions on loan funding will need to be considered at some point during the 2012/13 financial year.

### ***Commercial Services***

The majority of the projects in this program are underway with the Ballina Surf Club (total project cost of \$5.8m) and the Airport Apron Extension (total of \$5.5m) being the larger projects.

A budget saving of \$110,000 is recommended for the Southern Cross Industrial Estate as funding for works is not required due to Council currently preparing detailed estimates for the masterplan for this locality.

## **10.13 Capital Expenditure - Quarterly Update**

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### **Water, Wastewater and Waste**

The September Quarterly review did not provide a revised capital works program for the Water and Wastewater programs, primarily due to time constraints. This report now includes recommendations of revisions for those programs, based on the latest available information.

For Water the attachment highlights savings of \$4.547 million in the current budget, with works such as the Ballina Heights Reservoir likely to be spread over two financial years, and the majority of the trunk main works deferred due to revised estimates of demand.

The actual Water expenditure will significantly increase during the first half of 2013 with Council letting the tender for the construction of the Ballina Heights Reservoir elsewhere in this agenda.

For Wastewater the attachment highlights savings of \$4.882 million again due to works either being spread over two financial years, or demand being less than anticipated.

Expenditure continues to be significant for Wastewater and the tender for recycled water, included elsewhere in this agenda, will result in the level of expenditure increasing even further this year.

The revised budgets for Water and Wastewater for 2012/13 now reflect the latest information in regard to what is expected to be expended during this year.

In respect to Waste, the current budget includes \$4.3 million for the Biochar project. As reported elsewhere in this agenda, the likely expenditure this year is estimated to be in the order of \$500,000. Therefore it is recommended that this budget be adjusted accordingly.

### **Sustainability Considerations**

- **Environment**  
Many of the works listed have positive environmental outcomes
- **Social**  
Certain items provide significant social benefits (i.e. surf club)
- **Economic**  
Improved infrastructure can benefit the local economy.

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

The report provides financial information on the capital works program.

## 10.13 Capital Expenditure - Quarterly Update

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### Consultation

This report is presented for public information.

### Options

As per the following table there is once again an extremely high level of capital expenditure forecast for 2011/13 with the Ballina Surf Club, Airport Apron Extension, River Street Upgrade and Wastewater Treatment Plant Upgrades continuing or commencing.

#### Capital Works Summary – 31 October 2012 (\$'000)

Section	Budget (%)	Expended (%)	Percentage
Open Spaces	708,200	60,200	9
Engineering Works	17,514,200	4,525,600	26
Operations Support	1,966,000	568,800	29
Commercial Services	16,953,000	3,409,400	20
Water	3,180,000	115,900	4
Wastewater	34,354,600	7,845,700	23
Waste	945,800	11,000	1
<b>Total</b>	<b>75,621,800</b>	<b>16,536,500</b>	<b>22</b>

The purpose of this report is to provide Councillors with a more detailed review of all the capital expenditure planned for 2012/13.

However there budget changes identified in this report, for the Southern Cross Estate (\$110,000 saving), and significant variations for the Water, Wastewater and Waste Operations. Therefore the recommendation is to note the contents of the report and approve the budget changes as per the attachments to this report.

### RECOMMENDATION

1. That Council notes the contents of the Capital Expenditure - Quarterly Update report for the period ended 31 October 2012.
2. That Council approves the budget changes to the Southern Cross Industrial Estate (\$110,000 saving) and to the Water, Wastewater and Waste operations, as per the column titled "New Variations" in the attachments to this report.

### Attachment(s)

1. Capital Expenditure - General Fund - Open Spaces (one page - A3 attachment)
2. Capital Expenditure - General Fund - Engineering Works (two pages - A3 attachment)
3. Capital Expenditure - General Fund - Operations Support (one page - A3 attachment)
4. Capital Expenditure - General Fund - Commercial Services (one page - A3 attachment)
5. Capital Expenditure - Water and Waste Operations (one page - A3 attachment)
6. Capital Expenditure - Wastewater Operations (two pages - A3 attachment)

## **11.1 Ballina Biochar and Waste-to-Energy Facility - Funding Agreement**

### **11. Civil Services Group Reports**

#### **11.1 Ballina Biochar and Waste-to-Energy Facility - Funding Agreement**

**Delivery Program**      Waste Services

**Objective**                      To seek Council's authority to accept a funding agreement offer from the Federal Government.

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#### **Background**

The introduction of legislation requiring Council to divert 66% of Municipal Solid Waste (MSW) from landfill by 2014 has provided the impetus for the removal of the organic fraction from the waste stream. Council is already working towards this target through the introduction of its kerbside organics collection service in July 2011.

Council has also been working for the past five years on developing the means to process organic waste and biosolids, converting them into value-added products. In June 2012 Council was awarded \$4.25 million in Commonwealth funding from the Regional Development Australia Fund (RDAF) for the construction of a Biochar and Waste-to-Energy Facility at its Waste Management Centre, Southern Cross Drive, Ballina. This sum represents 50% of the estimated \$8.5 million build cost.

The purpose of this report is to seek Council's authority to execute the funding agreement.

#### **Key Issues**

- Meet State Government target to divert 66% of MSW from landfill by 2014.
- Proceed with construction of Ballina Biochar and Waste-to-Energy Facility.
- Endorse RDAF agreement and budget allocation.

#### **Information**

##### RDAF funding agreement:

The RDAF is a national program to support Australia's regions and enhance the economic development and social well-being of their communities. Council's submitted a funding proposal to the RDAF for the construction of a biochar production facility to convert organic waste into biochar and electricity.

The facility uses an innovative Australian-developed slow-pyrolysis technology which, unlike many other waste processing technologies, has been designed, and is financially viable, for small to medium scale landfills.

Biochar's carbon sequestration and soil improvement abilities will benefit local agriculture and is a sustainable waste management solution for the region's

## **11.1 Ballina Biochar and Waste-to-Energy Facility - Funding Agreement**

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growing population, while contributing to local renewable energy and greenhouse gas reduction targets.

This will be the first commercial-scale plant of its kind and hence is of national significance.

Payment milestones have been proposed in the funding agreement in line with the project schedule, as follows:

- Milestone 1 – RDAF agreement finalised – \$250,000
- Milestone 2 – statutory approvals finalised – \$1M
- Milestone 3 – ground-works complete – \$1M
- Milestone 4 – structural works complete – \$1M
- Milestone 5 – fit-out complete – \$500,000 and
- Milestone 6 – fully operational facility – \$500,000.

As discussed below, the project still requires a number of decisions of the Council before a final commitment is made. However to advance the project it is necessary to enter the agreement with the Federal Government now.

Council staff have reviewed the funding agreement. The major portion of the agreement is standard conditions that are non negotiable. The agreement also reflects Council's submission for the funds and where necessary final terms have been successfully negotiated.

The funding agreement is not attached to this report, however a copy can be provided to Councillors upon request.

Also, for the newly elected Councillors, a briefing can be arranged to provide further details on the background of this project.

### Budget Allocation:

No funds are allocated in the current budget for the delivery of this project. An initial budget of \$250,000 is proposed, matching the "milestone 1" payment. This budget is required to facilitate the requisite planning approvals, including the preparation of an Environmental Impact Statement and Development Application, statutory licences, and the finalisation of design, process and product specifications.

### **Sustainability Considerations**

- **Environment**

The facility will ensure the continued diversion of organic waste from landfill, converting organic waste into value-added agricultural product (biochar) and renewable energy, with a commensurate reduction in greenhouse gas emissions, while also sequestering carbon, offsetting fossil fuel use, contributing to renewable energy targets and benefiting agricultural production.

## **11.1 Ballina Biochar and Waste-to-Energy Facility - Funding Agreement**

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- **Social**

The project will provide long-term community benefits to the region, significantly contributing to the protection and enhancement of agriculture land and the development of the region's renewable energy industry, while providing capacity building in the service and construction industries and ongoing employment opportunities.

- **Economic**

Operation of the facility will contribute to sustainable economic growth in the region by adding value to Council's existing organics waste management practices through the provision of a high-value agricultural product and locally-generated renewable energy. Other economic outputs include the extension of existing landfill life and the creation of significant employment gains during both construction and operation of the facility.

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

The RDAF grant represents 50% of the construction cost of the facility. Completion is scheduled for June 2015.

Inherent risks are associated with any innovative technology, largely due to a lack of reliance on previous experiences. To pre-empt these risks, Council prepared a risk management document which was included as part of the RDAF submission. Outcomes of this risk assessment have since been incorporated into both the funding agreement and the project schedule and will be subject to ongoing scrutiny.

Council has been collaborating through a memorandum of understanding with technology partner Pacific Pyrolysis to prepare technical specifications to enable plant procurement and installation, and the drafting of project-related service contracts and product off-take agreements. This process will provide Council with an updated version of the business plan to further refine the budget and risks. Negotiations are continuing in respect of a business agreement with Pacific Pyrolysis. This agreement will be the subject of a future report to Council for its consideration and determination.

As well as a new business plan and partnership agreement, the Council will also receive future reports, and be required to endorse or take decisions, on a procurement plan, risk management plan, and tender evaluation. This project is also one where it is recommended that independent financial feasibility and cost reviews are undertaken.

In respect to the \$250,000 this will need to be funded from the Waste Reserve, which had a balance of approximately \$1.5 million as at 30 June 2012. The major pressing issue for Council is to develop the financial plan that will identify how the balance of Council's contribution over the next two to three years is to be funded.

There are currently a lot of variables at play in respect to waste management, with key issues being the remaining life of the existing landfill, the possibility of a regional landfill and the tenders that are currently being advertised to transport waste to Queensland. The outcomes from these issues can result in major variances in the overall position of the waste operations.

## **11.1 Ballina Biochar and Waste-to-Energy Facility - Funding Agreement**

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Unfortunately Council is not yet in a position to financially plan with a high level of confidence in respect to future cash flows. This means that the best Council can do, if it wishes to accept this grant, is to ensure that a significant amount of time and resources is expended on modelling financial options for the waste program over the next few months, to ensure that Councillors and staff have a thorough understanding of the possible upsides and down sides of this project.

### **Consultation**

Negotiations have been undertaken with the RDA funding body to determine funding arrangements and payment milestones. The project also forms part of Council's Integrated Waste Management Strategy which was finalised following public exhibition. Furthermore there has been substantial media interest in the project which has generated inquiries and comments to the Council.

The Council has also consulted the Federal Member for Page, Janelle Saffin MP who has assisted with the project. Likewise the project is endorsed by the Regional Development Australia Northern Rivers board.

Consultation has also been undertaken with the region's councils, including inviting them to be project partners or provide feedstock. Currently negotiations are continuing to develop with Lismore City Council who are interested in providing feedstock and becoming a partner in the project. These arrangements assist to improve the project's viability by taking advantages of economies of scale and the resource sharing reduces the Council's exposure to risk.

Liaison is also ongoing with NSW Government agencies interested in the project.

Finally, staff are currently establishing an advisory group to assist with the development of the project.

### **Options**

1. Not to endorse the RDAF funding agreement and budget allocation.

This option will substantially increase Council's financial exposure to the extent that the project is unlikely to proceed unless alternative funding is secured.

2. Endorse RDAF agreement and allocation of the \$250,000 budget.

This is the preferred option as it will secure the necessary funds to ensure that the development and construction of the facility can continue as planned.

**RECOMMENDATIONS**

1. Council authorises the Mayor and General Manager to execute the Regional Development Australia Fund funding agreement for the Ballina Biochar and Waste-to-Energy Facility.
2. Council establish a \$250,000 allocation in the Waste Management program to enable preconstruction activities for the above project to continue, with this funding sourced from existing waste reserves.
3. That Council workshop the financial scenarios that may result from this project and other waste activities currently underway to assist in ensuring that Councillors and staff are fully appreciative of the possible financial benefits and financial risks associated with this project.

**Attachment(s)**

Nil

## 11.2 Policy (Draft ) - Street Light Shielding

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### 11.2 Policy (Draft ) - Street Light Shielding

**Delivery Program** Asset Management

**Objective** To provide Council with a draft Street Light Shielding Policy for consideration.

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#### **Background**

Public street lighting is primarily provided to assist in the safe movement at night of motor vehicles and pedestrians, while further providing the benefits of discouraging illegal and anti-social behaviour. While a majority of street lights installed in residential areas are accepted for their purpose, at times Council has received complaints about obtrusive light shining into residential properties from the street light fitting back spilling light.

There are a range of reasons for new obtrusive lighting complaints, including but not limited to, the change of ownership of the property, modifications to the residence, replacement of the light fitting and the construction of a new home or units on the site.

Council's response to these complaints has been in accordance with a Council resolution made in November 2001 which stated in reference to street lighting; *"where lighting has been installed to Australian Standards no shading will be put in place to bring the brightness of that light below the Australian Standard"*. Council's 2001 resolution was based primarily on the risk associated with reducing road lighting levels below the requirements of the Australian Standards.

Recently Council has been implementing an energy efficient retrofit of the Shire's street lighting. With the installation of the new fittings, lighting levels have improved in some areas, primarily because the lamps are new and the light level has not yet degraded as it does with usage over time. The outcome of the upgrade has seen an increase in obtrusive lighting complaints and of those received many were due to previously existing shields being removed during the retrofit and not being replaced based on the 2001 resolution.

A review has been undertaken and it is suggested that a broader policy approach will achieve better outcomes in response to this increase in street lighting complaints. A policy will provide clear direction to both members of the community and Council staff when dealing with an obtrusive lighting issue and can provide a range of options to respond to the different circumstances when compared to the current resolved position of Council.

The attached draft street light shielding policy provides a process to determine applications for shielding through a risk assessment methodology appropriate to the circumstances.

## 11.2 Policy (Draft ) - Street Light Shielding

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### Key Issues

- Australian Standard Compliance
- Obtrusive Lighting and Shielding
- Application and Approval Process

### Information

Ballina Shire's street lighting has been undergoing an energy efficient retrofit. What this has meant to most residential areas is that the 80 watt mercury vapour light fitting has been changed over to a new 42 watt compact fluorescent street light fitting. These new fittings are efficient and brighter, however like most lamps the light level degrades with usage. The installation of the new fittings has seen an increase in bright light complaints.

The current and previous bright or obtrusive light complaints have been difficult for staff to manage, as the options for remediation have been limited. The limitation has primarily been caused by a Council resolution passed in November 2001, which has been interpreted by staff as to prevent the installation of light shields. The resolution states, "*Where lighting has been installed to Australian Standards no shading will be put in place to bring the brightness of that light below the Australian Standard*".

### **Australian Standard Compliance**

Public street lighting provides motorists and pedestrians safe movement at night on our road networks and also assists in discouraging illegal and anti-social behaviour. The Australian Standard AS 1158 provides the information required to design the public lighting specific to the purpose, which is primarily dependant on the following road categories.

Light Category	Typical Application
V4 or V5	Sub-Arterial Roads
B1, V5 or V4	Distributor and Major Collector Roads
B2	Local Street, Collector Road, Loop, Cul-de-sac, Laneway, Bikeway, Access Street
C	Local Street in Park and Rural Areas

Council is committed to ensuring that all new lighting is designed and installed in compliance with the Australian Standard.

### **Obtrusive Lighting**

Occasionally spill lighting from the back of the street lights can impact on the properties directly behind and adjacent the street light pole. In a majority of cases the residents enjoy the additional security provided by the light, however on occasion the light entering the residence can be obtrusive and disruptive to the resident's lifestyle. The obtrusive light can occur for a number of reasons including:

- Movement of the existing light pole and/or arm
- Damage to the light fitting and/or pole
- The light fitting has been replaced or upgraded
- An existing light shield has been removed or damaged

## 11.2 Policy (Draft ) - Street Light Shielding

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- Change of resident or ownership of the property
- New residence or units constructed on the site
- A new additional light has been installed by Council
- The road classification has changed, causing a change to the lighting category

As with the cause of the obtrusive light, there may be various remedies available to reduce the lights impact, depending on the location of the street light. These may include:

- Adjustments to the light fitting mounting
- Relocation of the light
- Replacement of the light fitting with an alternate type (limited)
- Heavier curtains in the residence
- Removal and relocation of the light

### ***Shielding***

A further alternative in an attempt to reduce the obtrusive light may be to shield the light fitting. In this case a purpose built shield is placed at the rear of the light fitting. This prevents or reduces the light spilling backward over the boundary of the residential property.

This report presents Council with a street light shielding policy that provides a process to determine applications for shielding through a risk assessment methodology, appropriate to the circumstances. The assessment process addresses the following elements with a view of maintaining compliance with Australian Standards while addressing social responsibilities.

### **Assessment Elements**

- Category of road
- Vehicle and pedestrian usage of the road
- Location of the street light on the road segment
- Proximity of the street light to the residence in question
- Existence of previous complaints about the light
- Consideration of the neighbouring properties
- Ability to shield the fitting to cut off spill light at the property boundary or just beyond without impacting on the road lighting.

### **The Shield**

If a shield is approved, the shield will be manufactured out of suitable non-corrosive material, stainless steel or aluminium sheet and stainless steel fixtures. The shield will be mounted on the street light arm or light fitting if applicable. The shield will be installed so as not to impede the light forward of the applicants boundary, i.e. the public footpath or roadway.

The Council needs to take care when reducing street lighting. In the event of a public liability claim, the decision to reduce the available street lighting will be examined in respect of Council's potential negligence.

## 11.2 Policy (Draft ) - Street Light Shielding

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### ***Application and Approval Process***

The policy sets out the shield application and approval process based on the above assessment elements. This process provides Council officers with clear direction and the ability to provide an applicant with a result based on a risk eliminating approach. The applicant will be notified of Council's decision to approve or not approve the shield installation.

### **Shield Installation and Cost Allocation**

Council needs to ensure consistency with shield types and installations. Therefore, if an application has been approved, Council will arrange for the supply and installation of the light shield. This gives rise to the question of costs.

Whilst the street lighting service is provided by Council, there is an argument that if the Council meets the costs of the shields then this will encourage an increase in the number of requests and decreases the interest of a property owner to make adjustments on the neighbouring property which may well be a more efficient outcome and maintain the full integrity of the light. Therefore the policy has been drafted on the basis that the applicant will meet the costs to install the shield.

The policy does however provide some circumstances where the Council may be responsible for the costs. These include when:

- Council has changed the light fitting since the applicant has taken up residence at the affected address, which has now caused obtrusive lighting
- A previously installed shield has been removed or damaged, which has now caused obtrusive lighting
- Council has installed a new light fitting on an existing or new pole where previously there has been no street light, which has now caused obtrusive lighting.

If an application is unsuccessful, the policy gives the applicant the option to further investigate, through a lighting engineer, a shield design compliant with the Australian Standard. The policy is not intended to make light shielding an easy option. It is intended to ensure that genuine cases are assessed under a risk assessment approach.

### **Sustainability Considerations**

- **Environment**  
The policy assists Council's objective to install energy efficient lighting.
- **Social**  
The policy provides some options to respond to concerns that arise regarding obtrusive light spilling from street lights.
- **Economic**  
Not applicable.

## **11.2 Policy (Draft ) - Street Light Shielding**

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

The intention of the policy is for Council to maintain the requirements of the Australian Standards for public lighting on the road network, when dealing with obtrusive lighting complaints.

As noted above, the Council needs to take care when reducing street lighting. In the event of a public liability claim, the decision to reduce the available street lighting will be examined in respect of Council's potential negligence. In respect of financial implications, as discussed above, in most circumstances it will be the responsibility of the applicant to meet the costs to install a shield. The costs to install a shield are estimated to be \$500-\$700.

The Council is most likely to incur costs when it is installing a new light and the budget allocation for each project will accommodate the cost of the shield. The occasions where Council elects to install a shield are not expected to be frequent and the general streetlight operations and maintenance allocations will be able to fund those needs.

### **Consultation**

The recommendation to this report is to publically exhibit the draft policy.

### **Options**

The options are to endorse the Draft Policy for exhibition as presented, amend, or take no further action.

Overall it is considered important for Council to have a policy and it is recommended that the draft be exhibited for public comment. It is also recommended that if no submissions are received from the exhibition process, the policy be adopted with no further actions required.

### **RECOMMENDATIONS**

That Council approves the exhibition of the draft policy titled "Street Light Shielding Policy", as attached to this report, for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required and the policy is considered to be adopted.

### **Attachment(s)**

1. Draft Street Light Shielding Policy

### **11.3 Coastal Protection Laws - Sea Level Rise Benchmarks**

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#### **11.3 Coastal Protection Laws - Sea Level Rise Benchmarks**

**Delivery Program** Strategic Planning

**Objective** To determine the Council's response to amendments to the Coastal Protection Act 1979.

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#### **Background**

The NSW Government has recently announced reforms to the Coastal Protection Act (*hereafter the Act*).

In 2009 the NSW State Government published its Sea Level Rise Policy Statement. A key part of that document was the setting of sea level rise benchmarks of 0.4 m by 2050 and 0.9 m by 2100. Subsequently in 2010, the Government amended the Act. The amendments established a process that enabled property owners, in certain circumstances, to implement temporary coastal protection works. Councils were also required to submit to government for approval a coastal hazard zone management plan. A workshop has been scheduled to review Council's draft plan. The reform announcements indicate that the Minister will be deferring certifying these plans however it is considered prudent and useful to still finalise the existing project.

The current reform process will deal with the 2010 amendments and the Sea Level Rise Policy Statement. This report only discusses the Sea Level Rise Policy Statement. In respect of the other amendments, whilst they are applicable to the Ballina local government area, they are not significant as the area does not have many private property holdings with improvements within the coastal zone not protected by public infrastructure. At this stage, there is also some uncertainty around the extent of the changes. However, the changes regarding the Sea Level Rise Policy Statement are significant. This report is therefore focussed on that issue and staff will continue to monitor the reform process for the other amendments and report or inform the Council as appropriate.

#### **Key Issues**

- Sea Level Rise, Liability, Strategic Planning

#### **Information**

The Government's 2009 Sea Level Rise Policy established sea level rise benchmarks to be used by councils for planning purposes. Council's Floodplain Management Study and draft Coastal Hazard Management Plan are examples where modelling has been undertaken which incorporate the benchmarks as the predicted sea level rise.

### 11.3 Coastal Protection Laws - Sea Level Rise Benchmarks

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Whilst it is the case that individuals may hold different views about the levels chosen for the benchmarks, the advantage of the policy was that it established a consistent approach to the issue by councils. Furthermore, the policy, when used by councils in effect provided legal protection to council as they could be said to have acted in good faith by adopting the recognised standard of the benchmark levels.

The new State Government however has formed a view that due to the uncertainty in projections it is not appropriate to recommend specific state-wide projections for councils and therefore the benchmarks are no longer NSW Government policy. The Government suggests councils need the ability to consider local conditions when determining local future hazards. The Government has announced that it will not be releasing a new sea level rise policy statement. In forming this position, the Government asked the Chief Scientist to review the adequacy of the science behind the 2009 benchmarks. The Chief Scientist's report in response to this request identified

- the science behind the benchmarks was adequate
- there has been historical sea level rises since the early 1880s
- there is variability in sea level rise projections
- science is continually evolving/improving.

The report also recommended that the Government investigate the feasibility of establishing a technical advice centre for councils. The Office of Environment and Heritage is investigating this recommendation.

The Council has invested a significant amount of money to assess and manage the impacts of potential sea level rise using the former benchmarks. Furthermore, as there is no other reliable source for local data, substantial resources would be required to establish them. The variability within the projections at a state-wide level indicates how problematic it would be at this point in time to establish meaningful and accepted local levels.

Therefore, for the reasons above, in response to this decision by the Government most coastal councils are continuing to use the former benchmarks. The same approach is recommended for this Council. The options section of this report discusses how that recommendation may best be managed.

#### **Sustainability Considerations**

- **Environment**  
Council's strategic plans need to take into account sea level rise to determine the most appropriate outcomes to protect or enhance the natural environment.
- **Social**  
Council's strategic plans need to take into account sea level rise to ensure private property interests are appropriately managed and public lands and infrastructure are adequately protected.
- **Economic**  
Property values and amenity, as well as building and developed costs can be influenced by Council policies.

### **11.3 Coastal Protection Laws - Sea Level Rise Benchmarks**

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

The Council needs to be able to show that it has made its decisions in good faith. This can be achieved by ensuring the Council has documented an appropriate process about its response to the risks associated with sea level rise.

#### **Consultation**

No consultation has been undertaken in preparing this report. Council officers have attended a briefing provided by the Office of Environment and Heritage.

#### **Options**

It is recommended that Council continue to use the 2009 policy statement as the basis for its planning work for sea level rise. This position can be reviewed as more information from international and domestic agencies becomes available in the future.

It is also an option for Council to adopt different, or no, local sea level rise benchmarks. This is not recommended as changing these benchmarks without reliable studies would present a significant risk to Council and potentially void its exemption from liability when acting in good faith.

The recommended position can be incorporated into a policy document of the Council. Alternatively it can simply be recorded as a resolution. Either option represents a sufficiently clear and recorded decision of the Council. As the reform process is continuing, at this point in time it is recommended that Council make the following resolution now and the need for a policy statement of the Council can be reviewed once the final reform package is more fully understood.

#### **RECOMMENDATION**

That Council confirms, that until local sea level rise benchmarks are determined, Council continue to apply the benchmarks established by the former NSW Government 2009 Sea Level Rise Policy Statement (0.4m by 2050 and 0.9 by 2100) in its plans and strategies.

#### **Attachment(s)**

Nil

## 11.4 Tender - Recycled Water Distribution and Storage

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### 11.4 Tender - Recycled Water Distribution and Storage

**Delivery Program** Wastewater

**Objective** To report to Council on the Tender to construct the Recycled Water Distribution and Storage Scheme to serve Ballina and Lennox Head.

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#### **Background**

In 2000, Council commenced a process to develop the Ballina Shire Urban Water Management Strategy (UWMS). The purpose of the Strategy was to establish the long-term direction for policies and infrastructure related to integrated urban water cycle planning for Ballina Shire. Council endorsed the UWMS in September 2003.

Following this the Ballina / Lennox Head Recycled Water Master Plan was adopted by Council in September 2007. The Master Plan includes a commitment to provide urban dual reticulation (UDR) to all new major subdivisions in Ballina and Lennox Head. The Master Plan targets 80% dry weather re-use of treated wastewater from the Ballina and Lennox Head Waste Water Treatment Plants by the year 2026. One of the methods used to achieve this target is by providing UDR to an estimated 7,242 new lots. The recycled water will be used for garden watering, toilet flushing, car washing and the cold tap of washing machines.

In addition to the Urban Dual Reticulation (UDR), Urban Open Space (UOS) irrigation will be expanded to some 173 ha including playing fields, parks/gardens and the Ballina Golf Club and Ballina Race Course. The master plan also proposes a further 160 hectares of Vegetation Regeneration (VR) to be provided in order to meet the 80% reuse target however the Council has not taken any steps to implement this part of the plan. The reasons for this are cashflow related and importantly the reuse benefits are considered marginal.

Therefore it has been recommended that this part of the Master Plan be reviewed later when the performance of the UDR and UOS have been further assessed alongside of community aspirations, government policy and technology relevant at that time.

Earlier this year Council prepared a review of the UWMS. In summary, that review confirmed that the strategy still represented best practice in water cycle management and that it still met contemporary guidelines and government policy.

The 2026 dry season water balance in the Master Plan is as follows:

Urban Dual Reticulation (UDR)	24%
Urban Open Space (UOS)	29%
Vegetation Regeneration (VR)	27%
Discharge to ocean	9%
Discharge to estuary	11%

## **11.4 Tender - Recycled Water Distribution and Storage**

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UDR re-use is considered to have the highest value of the three streams nominated in the Master Plan, as it directly replaces drinking water use and thereby supplements the Rous County Council bulk water supply.

The delivery of the recycled water scheme was split into two main capital works contracts:

1. Design and Construction of the Recycled Water Treatment Plants (RWTP) for Ballina and Lennox Head and
2. Construction of the recycled water distribution and storage infrastructure to serve the users of UDR and UOS.

In relation to item one, following Council approval at the January Ordinary 2011 meeting, Haslin Construction Pty Ltd was awarded the contract to design and construct the Ballina and Lennox Head RWTPs. Construction commenced at Ballina in August 2011 and at Lennox Head in February 2012.

As reported to the last meeting of Council, the Ballina RWTP will be commissioned for environmental release in January 2013 which will then enable the existing sewage treatment plant to be decommissioned and demolished. The remaining elements of the recycled water treatment process will then be constructed with full commissioning programmed for August 2013.

The Lennox Head RWTP is almost complete with commissioning programmed for February 2013. The Lennox Head RWTP will continue to supply recycled water to urban open space customers and the golf course but not to UDR properties in Lennox Head until the completion of the recycled water distribution and storage network and the requisite Office of Water approvals are in place.

Council approved the award of the design contract for the Distribution and Storage Scheme to NSW Water Solutions at the February 2011 Council meeting.

Following completion of the design by NSW Water Solutions, public tenders for the Recycled Water Distribution and Storage Contract were called on 15 September 2012.

The report that now follows details the outcomes from the tender process.

### **Key Issues**

- Award the tender in accordance with the Local Government (General) Regulations (2005)
- Engage suitably qualified and experienced contractors that having regard to the circumstances provides the most advantageous tender.

### **Information**

Public tenders were called on 15 September 2012 closing on 23 October 2012. The following information is a summary of the tender assessment process.

## 11.4 Tender - Recycled Water Distribution and Storage

### Tenders Received

Seven tenders were received as follows (inclusive of GST):

Tenderer	A.B.N.	Tender Amount <sup>3</sup>	Assessed Tender Amount <sup>1</sup>	Recommended Tender Amount <sup>2</sup>
Murphy McCarthy & Associates P/L	23086673136	\$11,053,113	\$11,053,113	\$11,053,113
Ledonne Constructions P/L	68003117717	\$11,865,786	\$11,865,786	
Eire Contractors P/L	42099338888	\$11,877,000	\$11,877,000	
CCB Envico P/L	73106515066	\$13,918,532	(Late by electronic tendering: received 10:18 am, 23/10/1012)	
Diona P/L	48001904258	\$14,243,026.18	*Minimum \$14,243,026.18	
Lahey Constructions P/L	36002314810	\$14,641,904	\$14,641,904	
Haslin Constructions P/L	85051102124	\$15,463,554	*Minimum \$15,463,554	

Notes:

1. The 'Assessed Tender Amount' is the Tender Amount plus (or minus) the Assessed Values of qualifications and departures (anomalies) in the tender and any loadings that apply
2. The 'Recommended Tender Amount' is the Tender Amount plus (or minus) adjustments offered by the Preferred Tenderer to withdraw qualifications and departures
3. Tender Amount excludes Mandatory Alternative Tender Amounts.

### Examination of the Tenders

#### Pre-Evaluation Actions and Background

The tendering process was required to comply with the Local Government (General) Regulation 2005 (the Regulation).

Council decided to call tenders using the open tendering method, in accordance with clause 167 of the Regulation.

Tenderers were required to submit two Mandatory Alternative Tenders as follows:

No.	Mandatory Alternative Tender	Tender Evaluation Methodology
1	Alternative tender of RW Rising Main to follow existing cycleway, instead of following the alignment of an existing sewer pipeline along an existing easement.	Tenderer to show an amount which is (+/-) to the Contract Price shown on the Tender Form.
2	Instead of two separate under-boring sections, with trenching in between ~ under-bore the entire section from CH 570m to CH 960m for the RW rising main and the two sewer pipelines.	Tenderer to show an amount which is (+/-) to the Contract Price shown on the Tender Form.

The assessment of the Mandatory Alternative Tender Amounts is discussed below.

A Tender Evaluation Plan consistent with the Regulation and the Conditions of Tendering in the RFT documents was prepared and endorsed by the Tender Evaluation Committee prior to close of tenders.

## **11.4 Tender - Recycled Water Distribution and Storage**

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Two addenda were issued during the tender period. The addendums were mostly to provide clarity to the Tenderers based on questions raised either during the non-mandatory pre-tender meeting (3 October 2012), or received via email. There was no significant change of scope presented in the addendums, so there was no change to the contract pre-tender estimate.

### Initial Evaluation

The tender from CCB Envico P/L was received at 10:18 am (NSW Local Time) on 23 October 2012. The tenderer was unable to demonstrate that the tender was posted or lodged with a recognised delivery agency before the deadline for close of tenders and, in accordance with clause 177 of the Regulation, the tender was not considered further.

All tenders acknowledged the two addenda that were issued.

Except for the qualifications and departures dealt with in Evaluation of Price, all tenders met the requirements of the RFT documents.

### Evaluation of Price

#### *Examination of Tendered Rates*

An error was noted with the Schedule of Prices tendered by Murphy McCarthy & Associates P/L (MMA) in that the sum of the individual line items did not match the total contract price presented on the Tender Form. This error was brought to the attention of MMA who sent through a revised Schedule with the error corrected, with no change to the total contract price presented on the Tender Form.

A significant amount of variation was noted with two of the tender submissions where Ledonne Constructions P/L and Lahey Constructions P/L present amounts far in excess of the other tender submittals for Mandatory Alternative Number 2. Initially it was thought that this was an error in that instead of presenting an amount that would be +/- to the contract price shown on the contract form, the Tenderer has shown what the total cost would be for this line item.

Ledonne Constructions P/L confirmed that the amount presented would be added to the Contract Price, should the Principal adopt the Mandatory Alternative Number 2. Further clarification was not sought from Lahey Constructions as any change would not affect the relativity of this tender submission compared to the lowest tendered contract price.

As the Mandatory Alternatives offered no savings or advantages to Council, they were not considered further.

The rates tendered in the Schedule of Rates and Lump sums were compared with the pre-tender estimate. The comparison revealed significant differences in some of the individual line items (e.g. construction of 3.5ML RW Reservoir, RW Rising Main Pipelines, Ballina Heights Pumping Station Building, and Directional Drilling). These variances have been reviewed and explained as relating to the configuration of the tenderer's pricing. They raise no issues or concerns.

## **11.4 Tender - Recycled Water Distribution and Storage**

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### *Assessment of Qualifications and Departures*

The tenders of MMA, Ledonne Constructions P/L, Eire Contractors P/L, and Lahey Constructions P/L contained no qualifications and departures. The tenders from Diona P/L and Haslin Constructions P/L contained qualifications and departures (anomalies) and did not fully meet the requirements in the RFT Documents.

Clause 178 of the Regulation requires Council to accept the most advantageous tender. It was not necessary to assess in detail the qualifications and departures from Diona P/L and Haslin Constructions P/L as the analysis would have only resulted in an increase in the Tender Amount, with no change to relativity of these tender submissions compared to the lowest tendered amounts.

### *Determination of loadings and other assessments*

Council has not adopted a local preference policy for its procurement activities, and no other loadings were applicable to any of the tenders.

### *Assessed Tender Amounts*

The tenders were compared on the basis of the Assessed Tender Amounts which for the three lowest tenderers equalled the Tender Amount.

### Selection of the Most Advantageous Tender

MMA had the lowest Assessed Tender Amount and the tender from MMA was therefore identified as the most advantageous. They were assessed as capable of undertaking the work and have completed a number of similar projects.

MMA's Adjusted Tender Amount is 18.8% below the pre-tender estimate. Because this is more than 10% below the pre-tender estimate, MMA was asked to confirm in writing that it fully understands the nature and extent of the contract work and is satisfied the Tender Amount properly reflects all contractual obligations.

The next two lowest tender prices were also below the estimate, confirming that MMA's Tender Amount reflects current market values. It is therefore considered that the Tender Amount of MMA is reasonable.

The Recommended Tender Amount is \$11,053,113.

### Tenderer's Capability

Referee reports indicate satisfactory past performance by MMA on recent contracts. The Tender Evaluation Committee contacted the referees and obtained additional information that supported the reports provided with the tender.

## **11.4 Tender - Recycled Water Distribution and Storage**

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A financial assessment by Kingsway Financial Assessments Pty Ltd rated MMA initially as 'Unsatisfactory' with a rating of 38%. MMA responded to this assessment by stating that this assessment was not a true reflection of their current financial position as the assessment was based on data from the end of the 2011/2012 financial year. A further financial assessment was commissioned by MMA and undertaken by Kingsway on 7 November 2012 based on more current data. Kingsway's rating was subsequently changed to 'Good' at 67%.

MMA has WHS management systems accredited by the NSW Government, and has current third party accreditation to ISO 14001:2004 for its Environmental Management Systems. MMA also has current third party accreditation for its OHS Management Systems (AS/NZS 4801:2001) and its Quality Management Systems (ISO 9001:2008). MMA has demonstrated satisfactory Work Health and Safety management and satisfactory environmental management on previous projects. This is recorded in the completed Checklist for Reviewing Tenderer's WHS Management Performance and the completed Checklist for Reviewing Tenderer's Environmental Management Performance.

The resources proposed for the work have been reviewed and the Tender Evaluation Committee considers MMA capable of completing the contract satisfactorily.

### **Sustainability Considerations**

- **Environment**  
The construction of the Recycled Water Distribution and Storage Scheme will complement concurrent capital works to produce high quality recycled water in Ballina and Lennox Head. The scheme will reduce the load on the environment whilst reducing the demand for drinking (potable) water to those properties served by the recycled water infrastructure.
- **Social**  
Upgrades to critical infrastructure assist Council to achieve social benefits and public health outcomes.
- **Economic**  
The economic benefits of the contract include stimulus to the economy during the construction stage of the project.

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

This report is provided to assist Council to meet its statutory requirements in regard to procurement.

As indicated, these works form some of the key components for the delivery of the UWMS. Furthermore, Council is not able to commence the supply of dual reticulation services without this infrastructure.

## **11.4 Tender - Recycled Water Distribution and Storage**

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In addition to this program of works, provision has been made for project management of the construction works. This has been provided for in the program budget and suitable staff are in place to resource the requirements of the construction phase.

Loans to cover the project were secured in 2011. As indicated in this report, the tender outcomes are consistent with the planned expenditure for this work with a current financial year budget of \$10.7 million and the residual provided in the 2013-14 budget.

The current budgets shall be modified to better reflect the anticipated project costs and cash flows once the contracts are awarded.

### **Consultation**

A public tender process was conducted.

### **Options**

1. Under the Local Government (General) Regulations 2005 Council must either accept the tender that appears to be most advantageous or decline to accept any of the tenders.
2. The tender of MMA has been assessed as most advantageous to Council, and as such Council has the option of accepting MMA's tender for the works

This recommendation is made on the basis that the works have been programmed for some time and are considered to be essential infrastructure. The current RWTP's are programmed for completion in 2013 and the distribution and storage works are essential in realizing the objectives of the UWMS. The recommendation that follows is to accept this tender.

### **RECOMMENDATIONS**

1. That Council accepts the tender being RFT / Contract Number 1201101, for Recycled Water Distribution and Storage System Construction submitted by Murphy McCarthy and Associates Pty Ltd for the recommended tender amount of \$11,053,113 including GST.
2. Council authorises the Mayor and General Manager to sign the contracts and attach the Council seal to the documents.

### **Attachment(s)**

Nil

12. Public Question Time

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**12. Public Question Time**

**13.1 Notice of Motion - Shaws Bay Management Plan**

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**13. Notices of Motion**

**13.1 Notice of Motion - Shaws Bay Management Plan**

**Councillor** Cr Cadwallader

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I move

That Council considers as part of the 2013/14 budget deliberations, strategies to fund a review of the Shaws Bay Management Plan, which is estimated to cost up to \$50,000.

**Councillor Comment**

Shaws Bay and Lake Ainsworth are the two major recreational water bodies in the shire, once the beaches and the Richmond River are excluded. It is therefore imperative that Council manage both of these areas in a proactive manner.

Council has set aside funding to assist with the redevelopment of the Lennox Head Surf Club, along with improvements to the eastern side of Lake Ainsworth and staff have advised that many of the actions in the existing Shaws Bay Management Plan have now been completed.

It is therefore timely that the Shaws Bay Plan be considered as a high priority for review. An updated plan will help assist Council in establishing priorities for future works, along with seeking grant funds.

**COUNCILLOR RECOMMENDATION**

That Council considers as part of the 2013/14 budget deliberations strategies to fund a review of the Shaws Bay Management Plan, which is estimated to cost up to \$50,000.

**Attachment(s)**

Nil

## **13.2 Notice of Motion - Foreshore Master Plan**

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### **13.2 Notice of Motion - Foreshore Master Plan**

**Councillor**

Cr Cadwallader

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I move

1. That Council consider as part the preparation of our 2013/14 Operational Plan the preparation of a detailed foreshore master plan for the crown land precinct from Martin Street to the Ballina Memorial Swimming Pool (inclusive).
2. To allow adequate consideration of this proposal the General Manager is to provide indicative estimates for the preparation of this work, along with advice as to whether the Department of Primary Industries will provide financial support for the project.

#### **Councillor Comment**

This foreshore precinct, which consists almost entirely of crown land, has the potential to be a cultural and recreational hub for Ballina. Current Council facilities in this location include the Naval Museum, Visitor Centre, Richmond Room, Ballina Library and the Ballina Memorial Swimming Pool.

Council has previously been involved with the preparation of a master plan for the Richmond River which identified opportunities for the establishment of a smaller marina in this locality. The Department of Primary Industries has pursued private interest in the construction of a larger marina at the Ballina Boatharbour site and options for redevelopment of a smaller marina in this locality. Unfortunately to date there has been no private sector interest.

Despite there being limited funding available it is appropriate that Council has a detailed master plan in place to allow us to plan for the future. Over the years there has been funds expended on the Ballina Naval Museum and prior to expending any more monies on this or other facilities we should have a clear, documented plan in place to confirm the direction our planning is heading for in this locality.

#### **COUNCILLOR RECOMMENDATIONS**

1. That Council consider as part the preparation of our 2013/14 Operational Plan the preparation of a detailed foreshore master plan for the crown land precinct from Martin Street to the Ballina Memorial Swimming Pool (inclusive).
2. To allow adequate consideration of this proposal the General Manager is to provide indicative estimates for the preparation of this work, along with advice as to whether the Department of Primary Industries will provide financial support for the project.

### 13.3 Notice of Motion - Motorised Scooters

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### 13.3 Notice of Motion - Motorised Scooters

**Councillor**

Cr Hordern

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I move

That Council write to the NSW Premier seeking an urgent response from the NSW Government in relation to Council's concerns about motorised wheelchairs and scooters and pedestrian safety, including Council's request to establish a new regulatory arrangement that includes registration, speed limitation, compulsory third party insurance, and health and competency assessments.

#### **Comment**

In light of the serious incident that recently occurred in Cherry Street, the purpose of this motion is to seek an urgent response from the NSW Government in relation to Council's concerns about motorised wheelchairs and scooters and pedestrian safety.

The Council considered a report in relation to Mobility Scooters at the meeting held in March this year.

The information presented to Council identified that motorised mobility scooters have become an increasingly viable option for older people to maintain independence and engagement with the community and provide physical, social and health benefits to the user. For these reasons their use should clearly be supported, however there are also important safety concerns that have been emerging over time. There is a substantial emerging upward trend in relation to deaths and serious injuries among persons aged 60 years and older. Data shows that at least 62 Australians, mostly in their 60s-90s, have died from mobility scooter collisions or falls since 2000. Falls, collisions with motor vehicles, collisions with objects and roll-overs are common circumstances of injury.

In response to that report the Council resolved the following;

1. *That Council notes the contents of this report on motorised wheelchairs and scooters.*
2. *That the information in this report provide the basis for the submission to the local Member for Ballina and Minister for the North Coast, the Hon Don Page.*

Under the NSW Road Rules a mobility scooter which is not capable of travelling over 10km/hr is defined as a pedestrian and accordingly should be used on footpaths. The unladen mass of the scooter must not be more than 110 kilograms. Motorised scooters users must have a reasonable need to use a wheelchair due to physical disability or limited mobility; obey all road rules, including signs for pedestrian; not cause a traffic hazard by moving into the path of another driver or pedestrian; not unreasonably obstruct the path of

### 13.3 Notice of Motion - Motorised Scooters

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another driver or pedestrian and not be affected by alcohol (0.05 or over) or drugs when travelling on a road or road-related area such as a footpath.

In all states and territories, except Queensland, you do not need to register a mobility scooter. In NSW a motorised wheelchair does not require registration, a licence or third party insurance and there is no formal testing or medical clearance required to determine the health and competency of a motorised scooter user.

In Queensland, mobility scooters and powered wheelchairs must be registered if using public footpaths or roads. There are no fees for registration or compulsory third party insurance (CTP). CTP is free to registered motorised wheelchair users and is provided by the Nominal Defendant – a statutory body tasked with compensating people who are injured as a result of negligent driving of unidentified and/or uninsured. To register a scooter, the user must acquire a certificate/letter/statement from either a medical practitioner, a registered occupational therapist or a registered physiotherapist confirming that due to a physical or medical condition the person's mobility is severely impaired and they require the use of a motorised wheelchair for assisted travel. The driver must observe all Queensland Road Rules as well as those relating to pedestrians. Other requirements include completion of: a vehicle registration application form; a vehicle details form; a motorised wheelchair statement form; evidence of vehicle's origin; evidence of vehicle's garage address; and evidence of personal identification

The Council's submission to the Minister was informed by a report commissioned by the Australian Competition and Consumer Commission (ACCC) and prepared by the Monash University Department of Forensic Medicine and Accident Research Centre. The report, published on Thursday 24 March 2010, represented the initial step in understanding the problems associated with motorised mobility scooters and determining what opportunities exist to prevent injury and death whilst minimising negative effects on mobility for older persons. The report raised a number of issues including the following;

- The supply of mobility scooters to the Australian market and concerns that the unregulated nature of the industry could be contributing to the unsafe and inappropriate use of motorised scooters.
- General lack of policy related to motorised scooters suggesting the incorporation of mobility scooter use in planning, transportation and aging documents.
- General lack of clarity in current definitions of motorised mobility scooter and the rules and regulations relating to them and their appropriate use.
- The lack of a third party insurance schemes for scooters users.
- The need for scooter training and education to improve the safety of users and the wider community.
- Concerns about the quality of imported models and second-hand motorised mobility scooters being purchased.
- The design of motorised mobility scooters in terms of stability, lack of safety design features, poor visibility of scooters, steering, braking, speed and size of mobility scooters.
- Whether users possess the attributes and skills to operate the scooter (eg requirements for well-developed vision, cognitive function, and physical strength).

### **13.3 Notice of Motion - Motorised Scooters**

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- Environment conditions for operating scooters (eg surface quality and access to footpaths, and provisions of places to park and charge scooters within the community).

Council's submission has been forwarded by the local member, Hon Don Page MP to the Roads Minister. Council has yet to receive a reply. As noted above, in light of the serious incident that recently occurred in Cherry Street, the purpose of this motion is to seek an urgent response from the NSW Government.

#### **COUNCILLOR RECOMMENDATION**

That Council write to the NSW Premier seeking an urgent response from the NSW Government in relation to Council's concerns about motorised wheelchairs and scooters and pedestrian safety, including Council's request to establish a new regulatory arrangement that includes registration, speed limitation, compulsory third party insurance, and health and competency assessments.

#### **Attachment(s)**

Nil

#### **13.4 Notice of Motion - Coastal Country Music Festival**

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#### **13.4 Notice of Motion - Coastal Country Music Festival**

**Councillor**

Cr Hordern

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I move -

1. That Council approves funding of \$25,000 for the Coastal Country Music Festival from the 2013/14 festivals and events program.
2. This funding commitment will allow the co-ordinators to market and promote the Ballina festival at the January 2013 country music festival in Tamworth, which is the biggest Country music festival in Australia.

#### **Councillor Comment**

As has been discussed previously it is important that festival organisers have adequate time to plan and promote their events. The current plan for the 2013/14 festival's funding allocation is to call for expressions of interest during December 2012 to February 2013 with the preferred options reported to the February or March 2013 meeting.

The Coast to Country festival continues to have the potential to become a signature event for Ballina and the event co-ordinators have confirmed that the Tamworth event provides a great opportunity to promote the Ballina festival, along with attracting artists.

As Tamworth occurs in January adequate time is needed to prepare promotional material / collateral prior to January.

#### **COUNCILLOR RECOMMENDATIONS**

1. That Council approves funding of \$25,000 for the Coastal Country Music Festival from the 2013/14 festivals and events program.
2. This funding commitment will allow the co-ordinators to market and promote the Ballina festival at the January 2013 country music festival in Tamworth, which is the biggest Country music festival in Australia

#### **Attachment(s)**

Nil

**14.1 Commercial Services Committee Minutes - 19 November 2012**

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**14. Advisory Committee Minutes**

**14.1 Commercial Services Committee Minutes - 19 November 2012**

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The minutes and recommendations from this meeting will be distributed to Councillors following the meeting and prior to the Ordinary meeting.

**RECOMMENDATIONS**

That Council confirms the minutes of the Commercial Services Committee meeting held 19 November 2012 and that the recommendations contained within the minutes be adopted.

**Attachment(s)**

Nil

## 15.1 Mayoral Meetings

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### 15. Reports from Councillors on Attendance on Council's behalf

#### 15.1 Mayoral Meetings

**Councillor** David Wright

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Activities since the October 2012 Ordinary meeting:

<u>Date</u>	<u>Function</u>
27/10/12	Alstonville Show Opening
29/10/12	Porter Park Sod Turning
30/10/12	Richmond River County Council meeting
30/10/12	ABC Community Forum - Lismore
31/10/12	Aboriginal Land – Proclamation – Richmond Room
31/10/12	Developer Contribution Meeting
1/11/12	Meeting Regional Manager – APN
1/11/12	Community Meeting re Crawford Park land – Alstonville Bowling Club
2/11/12	NOROC – Lismore Council Chambers
2/11/12	Volunteers of the Gallery – Community Gallery
2/11/12	NovaSkill Presentation – Ballina RSL
3/11/12	Wollongbar School Fete Judging
3/11/12	Gallery Launch new Exhibition
6/11/12	Police meeting – Lismore Police Station
7/11/12	Meeting Minister Carr and Janelle Saffin
7/11/12	Induction - Integrated Planning
8/11/12	‘C’ Ward Meeting
10/11/12	Paceline Ride - Ballina
10/11/12	Quota Birthday Dinner – House With No Steps
11/11/12	Remembrance Day - Alstonville
11/11/12	Tintenbar Hall - Verandah Opening
12/11/12	Induction – Budget Review
13/11/12	‘A’ Ward Meeting
14/11/12	Ballina Naval Museum
14/11/12	Induction – Budget review
15/11/12	TV Interview at Lennox Head headland
16/11/12	BACCI Opening – Ballina RSL
17/11/12	Naval Assoc Dinner – Ballina RSL
19/11/12	Induction Budget review
21/11/12	ALEC Meeting
22/11/12	November meeting

#### **RECOMMENDATIONS**

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

#### **Attachment(s)**

Nil

## **15.2 Cr Smith - Zero Waste Management Conference, Melbourne**

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### **15.2 Cr Smith - Zero Waste Management Conference, Melbourne**

**Councillor** Ben Smith

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#### **Day 1**

Day one of the zero waste conference began with Dr Adam Reed, a speaker from the UK with 20 years experience in waste management.

His presentation was both fascinating and practical.

The speaker covered the history of waste management and recycling over the last 25 years and how they have got to where the UK is today.

There were a lot of similarities with the UK to Australia, most of the changes had occurred as a result of mandated targets and forced legislation at national and EU level.

Landfill taxation is just one example of similarities across both countries, in the UK it has existed for quite some time and in 2008 it got to the critical point where essentially most forms of recycling became cheaper than landfill.

What did seem to come out of these points were that, although no one liked mandatory targets, they did force change and did force local authorities to lift their game which they responded to appropriately and the waste recovery has come up from as little as 20% in the 90's to a minimum base level of 50% today in the UK.

An important point of this speak was the evolution and effectiveness of AWC (Alternate weekly collection). There is regular debate in Ballina with the introduction of fortnightly mixed waste and weekly green waste whether we should re-consider this approach.

Every single one of the top performing local councils in the UK use AWC, and it's now the industry standard approach. AWC gives an proven instant benefit in recycling rates without increased costs, and despite the initial public/media backlash (that has happened everywhere), over time with education, when people begin to understand the benefits, they readily accept AWC as the way forward.

Finally there was a focus on the importance of communication and education (as recently learnt by Council with our green waste contamination issues). It's one of those aspects of waste management that is extremely important, and continued education is key to successfully achieving waste diversion targets.

Interestingly, someone asked from the audience approximately how much should be spent on education/communication of waste management and the consultant provided a guide of between \$3-5 per household, which would roughly equate to a communication budget of between \$40,000 - \$70,000 for Ballina Shire.

## **15.2 Cr Smith - Zero Waste Management Conference, Melbourne**

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At the time of writing this report, the figures weren't available but it would be expected that Ballina Shire Council is meeting this target, and if not should be aspiring to it.

Overall, one of the most important things to be taken away from Day 1 is that our Council is doing an exceptional job at waste management.

All of the important points and key issues are aspects of waste management that we are working on, we are clearly on the right track for waste management in Ballina shire and should be proud that we are using some of the best practices and industry leading concepts from around the world.

Key concepts such as:

- AWC (alternate weekly collection which has been successful with our green waste)
- Importance of collaboration, co-ownership, joint-procurement which achieves 8-10% in savings (which we are doing through our MOU with Lismore, among other projects)
- Use of co-mingled recyclables (which we have been doing for a few years now and increases recycling rates)
- Reinforcing and monitoring the right behaviours towards recycling (which we do a lot of with our existing technology i.e. cameras in the trucks and notes on bins etc)
- Investing in communication and education for waste (which we have been doing extensively)

It is overall very positive to see that many of the key concepts to waste management we are already doing and continuing to work on. Overall, it's a clear sign that we are on the right track and in many areas leading the way in waste management.

With that said, there were a couple of interesting ideas that came out of the speech which I believe Council should consider.

I think it has become clear that we need to deal with the inconsistency of how we dispose of waste in town is different to our approach at home.

It's important, not necessarily from a recovery point of view, but from an education point of view, that public recycling is used as a strategic component to reinforcing the right behavior and educating the public on the importance of recycling as much as possible.

This is probably one area we have neglected and it's important from an education point of view we address this issue.

### **E-Waste – What's being done**

Later in the Day Senator Don Farrell Secretary for Sustainability and urban water spoke on a number of product stewardship programs and also a lot of the work the federal government is doing on e-waste.

## **15.2 Cr Smith - Zero Waste Management Conference, Melbourne**

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It's important to note, that there is a national approach to e-waste going on right now and it is slowly working, moving into the future, Council should have no problem dealing with e-waste, particularly now as e-waste is becoming a profitable business for a number of private operators, with e-waste making up less than 1% of our waste composition(source: integrated waste strategy), it's fair to say that e-waste will be covered comfortably at a national level.

### **Day 2**

Day two of the zero waste conference was led off by extensive coverage of AWT (Alternate Waste Technologies), Mike Ritchie (Previously with SITA and now running his own consultancy business) led off the discussion of AWT saying how much of poor history australia has had with AWT, particularly gasification and anaerobic digestion of which only 2 plants in australia are still operational.

Mike perceived AWT to be high risk, with a high failure rate, with that said, the speaker from the UK that followed on from Mike, had a number of examples across Europe of successful AWT plants.

The key issue for AWT (and whether Pyrolysis will be successful for us) was emphasized as having a market for the by product and ensuring you've got the feedstock you need to ensure the plant remains operational.

There was a strong emphasis on ensuring your feedstock provides the right output. This emphasizes the importance of the work Ballina Shire Council has done to date, ensuring through the test plant that our feedstock will sufficiently meet the requirements of a Pyrolysis plant, ultimately it was further reinforcement that we are approaching Pyrolysis in the right way.

The AWT discussion provided a level of confidence that we are on the right track, but it did also highlight the risk involved in these types of projects and the importance of mitigating as much risk as possible through out the process.

Later in the morning Sam Gill, from Sydney City Council discussed their 2030 strategy, very similar to council's own planning documents and our own environmental action plan.

One of the key points that came out of this discussion was the sheer volume of financial and human resources Sydney City puts into marketing and communication of their waste programs to deliver the outcomes of their 2030 strategy. Sydney City spends roughly \$3.20 per individual on waste communication and marketing.

The emphasis on communication was once again pushed in this session.

While unrelated, it was an interesting fact to note that Sydney City Council cleans up 260,000 instances of graffiti per year in their council area, it makes our graffiti problem look like a drop in the ocean.

### **Carbon Pricing- How it affects us**

Later in the day, the mythical carbon pricing and potential impacts were covered in detail.

## **15.2 Cr Smith - Zero Waste Management Conference, Melbourne**

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A one sentence summary is to say it's fair to conclude that there's substantial uncertainty due to a number of factors, including in part, because of the design of the program that ultimately the taxpayer/end consumer will pay for.

The carbon tax will apply to landfill and the methodology being used creates a myriad of problems.

The fundamental problem Council will have is determining what exactly to charge on a tonne of waste that goes through the gates into council's waste management facility.

Unfortunately, unlike the State Government levy (which is a once off fixed price per tonne of waste), council will be charged for the co2 emissions from the tonne of waste for the life of the waste, each year, over approximately it's 40 year life.

What this means in simple terms is Council will need to guesstimate the price of carbon on the market for the full lifecycle of the waste (approx 40 years) and hedge its bets on an approximate price to charge for that tonne of waste going through the gates.

This creates an enormous problem as there is no accurate way of determining this and thus determining whether Council will potentially create a massive liability for itself in the years to come.

In response to this many waste facilities are taking an extremely conservative approach to carbon pricing, so each tonne of waste that goes through the gates at most landfill sites will likely have a carbon price on it that is substantially higher than what the final cost might be.

In other countries such as New Zealand they are proposing an alternative model where you pay for the 40 year lifecycle straight away at the present carbon price, so there is certainty and waste management facilities know what they will have to pay and know what the risk is.

This model would result in better value for the user that pays and a more confident model, however, this won't be the case within Australia.

in 2015 Australia's scheme will tie in with Europe's carbon pricing scheme and will ultimate drop the currently artificially set price of carbon down from \$25 to roughly \$8.50 (Europe's current price)

As a result of this, one of the extremely important points that came out of this was that, for example where Ballina Shire Council is taking waste up to the Gold Coast, when we start paying for carbon we need to ensure that there is a claw back clause within our contracts to ensure that if the price drops in 2015 (as predicted) we can claim back the funds that we paid at a higher price (remembering that when we pay the carbon price we are paying for 40 years of the life of the waste).

Furthermore, if the carbon pricing scheme is scrapped all together as proposed by the Coalition, then Council needs to ensure it can get the money back that it would have paid for carbon.

## **15.2 Cr Smith - Zero Waste Management Conference, Melbourne**

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Lastly, in relation to biochar and potential carbon credits, the science needs to provide that biochar can keep the carbon sequestered in the ground for approximately 100 years before biochar production can get to the stage of being eligible for carbon credits itself.

The CSRIO is currently actively involved in research to see if this is the case, and if the science backs this, then it'll likely be included as part of the carbon credit scheme.

At this stage, only the waste to energy aspects of Council's Pyrolysis project will benefit from carbon credits.

It's fair to say overall however, there is substantial uncertainty about carbon pricing and its eventual effects on landfill operators across Australia, the scheme still has a long way to go, and while the uncertainty exists it's fair to say that Council's total liability is unknown.

The final part of day 2 covered some lessons learnt from organic waste in Penrith city council and some other regional councils across the country.

This section was once again a strong reminder that Ballina shire council has done organics waste right, when Penrith City Council says we are going well and still have substantial issues with bin conversion, non standard collection schedules (ratepayers can choose what combinations of bins they want and how often they are collected as long as they use all 3 bins) and a contamination rate of 6% (Ballina Shire has a rate under 4%), it's fair to say that Ballina Shire Council did green waste right the first time and because of this we have experienced a low contamination rate and received maximum benefit from the green waste service.

Penrith City initially attempted to convert their mixed waste bins to green waste then purchase new smaller mixed waste bins, this naturally created confusion and high levels of contamination, it was a complete failure and Penrith learnt the hard way how to not do green waste.

Ballina Shire Council's implementation of green waste is clearly an implementation that was designed, knowing what has and hasn't worked elsewhere and the final outcome once again shows that we are on the right track.

### **Summary**

Overall, in summary the zero waste conference was useful to see where Ballina Shire Council fits within the current waste management mix within Australia.

The biggest message from the conference was that Council is on the right track, Ballina Shire Council's waste actions to date, including the introduction of green waste, alternate weekly collection (AWC), our education campaigns and our investment into Pyrolysis is all industry best practice, leading the way and is most certainly on the right track.

Further information and slideshows from the presentation are available for any interested councillor.

## **15.2 Cr Smith - Zero Waste Management Conference, Melbourne**

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### **RECOMMENDATION**

That Council notes the contents of the report from Cr Smith on his attendance at the Zero Waste Management Conference in Melbourne.

### **Attachment(s)**

Nil

16. Questions Without Notice

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**16. Questions Without Notice**

**17. 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:

17.1 Tender - Management of Community Centres

This report contains information relating to Council negotiating tenders for the provision of management services and part of this evaluation involves the continued employment of Council staff.

**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.

**17.1 Tender - Management of Community Centres**

**Reason for Confidentiality**

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

- a) personnel matters concerning particular individuals (other than councillors); and
- d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret

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 Council is in the process of negotiating tenders for the provision of management services and part of this evaluation involves the continued employment of Council staff.