



Notice of Environmental & Sustainability Committee Meeting

a Environmental & Sustainability Committee Meeting will be held in the Ballina Shire Council Chambers, Cnr Cherry & Tamar Streets, Ballina on **Thursday 21 August 2014 commencing at 4.00pm.**

Business

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

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal stroke underneath.

Paul Hickey
General Manager

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1. Apologies
 2. Declarations of Interest
 3. Deputations
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1. Apologies

2. Declarations of Interest

3. Deputations

4.1 **Cumbalum Precinct A Development Control Plan Provisions and Developer Contributions Plan**

4. **Committee Reports**

4.1 **Cumbalum Precinct A Development Control Plan Provisions and Developer Contributions Plan**

Delivery Program Strategic Planning

Objective To present to the Council draft development control plan provisions and a draft developer contributions plan, specific to the Cumbalum Precinct A proposed urban release area, and seek the Council's direction with respect to the public exhibition of the documents.

Background

The Environmental & Sustainability Committee of the Council considered a report relating to the finalisation of the Precinct A Planning Proposal at its meeting held on 7 August 2013. The recommendations of the Committee were endorsed by the Council at its Ordinary Meeting held on 22 August 2013 [Minute No. 220813/32]. Therefore the Council has resolved as follows in relation to the matter:

1. *That the Council endorses the Cumbalum Precinct A Planning Proposal.*
2. *That, subject to the landholders agreeing to a deed of agreement (or similar mechanism) identifying that development applications will not be lodged until a development control plan and developer contributions plans are in place or six months has elapsed after the land is rezoned (i.e. following Minister's approval), Council refer the Precinct A Planning Proposal to the Department of Planning and Infrastructure to be finalised.*
3. *That Council amend the relevant developer contributions plans to provide for collection of contributions towards Precinct A playing fields and community facilities, including consideration of provision for access and parking.*
4. *That Council commence the preparation of a development control plan for Cumbalum Precinct A that addresses those matters set out in clause 6.3 of the Ballina Local Environmental Plan 2012.*
5. *That Council advise the proponents that further consideration of land identified as being noise affected and unsuitable for residential zoning is subject to the lodgement of a separate planning proposal.*
6. *That Council advise the proponents that matters relating to small lot rural residential development will be considered separately by the Council, in due course.*
7. *That Council as part of the preparation of the Section 94 plan review the apportionment of the Ross Lane and Cumbalum interchange costs between CURA A and CURA B.*

4.1 Cumbalum Precinct A Development Control Plan Provisions and Developer Contributions Plan

In responding to item 4 of the above resolution, Council engaged local planning consultant Mike Svikis to prepare draft development control plan provisions (primarily a sub-chapter specific to Precinct A for inclusion in the Ballina Shire Development Control Plan 2012) to further guide the future development of the precinct. The preparation of these controls has occurred in consultation with the major development proponents and relevant Council staff.

A suite of draft development control provisions has been prepared, comprising a combination of amendments to the general provisions of the DCP (adding site references and map amendments) along with the addition of a new section, specific to the precinct, for inclusion in Chapter 3 – Urban Subdivision. The draft provisions are provided as Attachment 1 (site specific amendments) and Attachment 2 (general amendments) to this report under separate cover. For the purpose of the development control plan, the locality (Precinct A) is to be known as “Cumbalum Views”, as selected by the landholder representatives.

In responding to item 3 of the above resolution, Council engaged planning consultancy GLN (Greg New) Planning to prepare a draft developer contributions plan for the precinct. The infrastructure items included in the contributions plan (as drafted) include the following:

- Playing Fields including access roads, parking and amenities;
- Community hall;
- District Park; and
- Local Parks (x2).

The draft developer contributions plan is provided as Attachment 3 to this report (under separate cover).

The purpose of this report is to present the draft development control plan provisions and the draft developer contributions plan to the Council and invite the Council to publicly exhibit the plans for comment.

With respect to item 7 above, the need for works associated with the future upgrade of the Pacific Highway interchanges will be considered further in the context of the review of the shire-wide roads contributions plan, which is currently underway as a separate project.

Key Issues

- Urban development
- Development guidelines
- Infrastructure funding
- Community consultation

4.1 Cumbalum Precinct A Development Control Plan Provisions and Developer Contributions Plan

Information

Draft Development Control Plan Provisions (DCP Amendment No.4)

The introduction of precinct-specific development guidelines for Precinct A comprises the following:

- The inclusion of precinct-specific subdivision controls provided in Part 5 of Chapter 3 - Urban Subdivision. This material includes a number of maps, relating to structure, staging, mobility, landscaping and open space matters. The draft written provisions and site specific mapping, for inclusion as Section 5.6, are provided as Attachment 1 to this report (under separate cover).
- The inclusion of precinct references and general map amendments as outlined in the following table. The proposed general map amendments are provided as Attachment 2 to this report.

The draft development control plan provisions constitute Amendment No.4 to the Ballina Shire Development Control Plan 2012.

Table 1: Amendments to the general provisions of the Ballina Shire DCP 2012 (Amendment No.4)

DCP Part / Section	Proposed Amendment
<i>Map Amendments:</i>	
Special Area Controls Map - Subdivision	Identifies land to which precinct-specific controls apply. Triggers the need to consider proposed section 5.6 of the DCP (see Attachment 1 to this report).
Natural Areas & Habitat Map	Identifies land proposed (in the Precinct A Planning Proposal) to be zoned E2 and E3 within the precinct (with a 50m buffer). Identification on this map triggers the need for compliance with Section 3.3 of the DCP relating to the protection and enhancement of ecologically significant areas. Note: The E zones were deferred from the LEP amendment due to the State Government's E zone review. However, this amendment to the DCP, and the associated application of environmental provisions to parts of the release area, can be undertaken regardless of the E zone review.

The draft development control provisions that are the subject of this report focus on subdivision matters. The need for further site specific built-form development guidelines may emerge over time as further consideration is given to the desired built form.

Under the proposed approach, the relevant existing provisions of the Ballina DCP 2012 for construction of dwelling houses and other residential structures will apply (that is, special controls for housing separate to those already in place are not recommended at this time). Should the need for further site-

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specific built form controls (or design guidelines) emerge, these will be the subject of further deliberation by the Council, involving further amendment to the DCP.

The implementation of the planning proposal for Precinct A involved the identification of the potential urban footprint of Precinct A in the Urban Release Areas (URA) Map of the Ballina LEP 2012 and, as a consequence, the land is subject to Part 6 of the Ballina LEP 2012.

Part 6 of the Ballina LEP 2012 requires a development control plan (DCP) that addresses the matters set out in clause 6.3, to be in place prior to development consent being granted for the development of the land. Given this, the draft development controls that are the subject of this report have been prepared having regard for the requirements of clause 6.3.

The ways in which the Ballina DCP 2012 will address the requirements of Clause 6.3 are set out in Table 2 below. It is noted that a number of the matters set out in the clause are adequately addressed elsewhere in the shire-wide DCP.

Table 2. Address of LEP Clause 6.3(3) in the Ballina Shire DCP 2012 for Cumbalum Precinct A

Ballina LEP 2012 Clause 6.3(3)	How the matter is addressed
(a) a staging plan for the timely and efficient release of urban land, making provision for necessary infrastructure and sequencing,	Staging plan provided as Figure 5 and linked to Element D and Element G in section 5.6.3 of the DCP.
(b) an overall transport movement hierarchy showing the major circulation routes and connections to achieve a simple and safe movement system for private vehicles, public transport, pedestrians and cyclists,	Mobility Plan provided as Figure 2 and linked to Element B in section 5.6.3 of the DCP.
(c) an overall landscaping strategy for the protection and enhancement of riparian areas and remnant vegetation, including visually prominent locations, and detailed landscaping requirements for both the public and private domain,	A landscape and special places plan is provided as Figure 4 and linked to Element E in section 5.6.3 of the DCP.
(d) a network of active and passive recreation areas,	The structure plan, provided as Figure 1 in section 5.6.3 of the DCP, identifies district playing fields, a community building location, community garden, local parks and district parks. This is linked to Element C of section 5.6.3. Proposed open space ownership is shown in the open space plan provided as Figure 3 in section 5.6.3 of the DCP.

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(e) stormwater and water quality management controls,	Stormwater control locations are identified in Figure 1 and are set out in Element B of proposed section 5.6.3 of the DCP.
(f) amelioration of natural and environmental hazards, including bush fire, flooding and site contamination and, in relation to natural hazards, the safe occupation of, and the evacuation from, any land so affected,	<p>No flood affected land or land known to be contaminated such that it is unfit for residential development is proposed to be zoned for residential purposes in Cumbalum Views.</p> <p>Development controls relating to steep land provided in section 3.1.2 of the Ballina Shire DCP 2012 (existing) will apply. Precinct specific cut and fill controls are included in Element B in section 5.6.3 of the DCP.</p> <p>The management of bushfire hazard, associated with vegetation areas in Cumbalum Views, is addressed in Element E of the proposed section 5.6.3 of the DCP.</p>
(g) detailed urban design controls for significant development sites,	<p>Chapter 4 Part 3 (design controls for residential and tourism development including small lot integrated housing) of the Ballina Shire DCP 2012 (existing) will apply.</p> <p>Further, and more detailed, built form development guidelines may be introduced at a later stage, as required.</p>
(h) measures to encourage higher density living around transport, open space and service nodes,	The R3 Medium Density zone that is designated for the majority of the release area permits a range of densities and housing forms. A net density target for each stage is provided in Element D of proposed section 5.6.3 of the DCP.
(i) measures to accommodate and control appropriate neighbourhood commercial and retail uses,	No specific commercial or retail area has been identified for Cumbalum Views due to proximity to the already planned Ballina Heights commercial precinct.
(j) suitably located public facilities and services, including provision for appropriate traffic management facilities and parking.	The structure plan (Figure 1) and mobility plan (Figure 2) in section 5.6.3 of the DCP illustrate the location of public facilities and traffic management facilities.

In the preparation of the development control provisions and associated mapping for Precinct A, the Council sought and received the assistance of the Precinct A proponents. Notwithstanding, several matters of difference remain between Council staff and the proponents. Key points of difference relate to the following:

- The inclusion of a north/south bypass road;
- The number of district and local parks to be provided; and
- The location of a central district park.

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The need for a direct north/south link road to connect the future urban areas of Precinct A and Precinct B has been considered at length by the Council in relation to the rezoning of the land. It has previously been acknowledged that a direct north/south link road is required in order to provide for efficient and convenient connectivity between the two substantial future communities. Notwithstanding, it has also been acknowledged that the diversion of south-bound through traffic towards Sandy Flat Road and Tamarind Drive and away from Precinct A would have benefits associated with improved amenity (and reduced potential for road noise impacts) within Precinct A. As a consequence of this latter point, the proponents for Precinct A have repeatedly sought to reduce the level of connectivity between Precinct A and Precinct B.

Further to the above, in relation to the preparation of the draft DCP material, the Precinct A proponents have sought to identify a north/south bypass road to provide a direct connecting road between Precinct B and Tamarind Drive. This road was shown on original mapping provided by the proponents, but has been removed in the draft material presented to the Council. The reasons for the removal are:

- The proposed bypass route would traverse approximately 170m of land that lies below 1m AHD and is significantly flood affected. Estimates for the construction of the bypass route are in the order of \$10 million;
- No funding mechanism has been identified for the delivery of this road, and the proponents have explicitly and repeatedly declined to contribute financially to its construction, instead arguing that the road should be paid for by development in Precinct B;
- The purpose of the Precinct A DCP is to apply development controls associated with the development of Precinct A. However, the proponents are seeking the delivery of the bypass road in association with the development of Precinct B. The proposed subchapter of the DCP does not apply to Precinct B;
- It is the considered view of Council staff that other measures are available to address the Precinct A proponents' concerns relating to potential traffic volumes. South-bound Precinct B traffic may be encouraged to travel via Sandy Flat Road and Tamarind Drive through the implementation of traffic calming measures within Precinct A and through careful design of the north/south link road and Sandy Flat Road intersection;
- Notwithstanding the above, the provision of a priority direct north/south connection between Precinct A and Precinct B is considered to be in the public interest, ensuring that convenient and efficient transport connections are provided for the benefit of future residents of both precincts and the broader community.

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In the material provided in support of the DCP amendment, the proponents had sought to include provision for one district park, district playing fields and community hall (only). Further, the developers of the land have proposed the dedication of a 'bushland' park comprising a 17,000m² area of land in the location shown on Figure 3 of the Attachment 1 to this report.

The "Bushland Park" site contains remnant rainforest that was proposed to be zoned E2 Environmental Protection, under the terms of the planning proposal relating to the land. Due to the deferral of E zones from the Ballina LEP 2012, the site is presently zoned RU2 Rural Landscape. Subject to the rehabilitation of this bushland site, sufficient to limit the long term maintenance associated with the land, the acceptance of this site into public ownership as passive open space may have merit.

However, it is important to note that the land is heavily vegetated and is located on steeply sloping land. Therefore, despite the potential amenity of the site, the usability of the land may be limited for the purpose of passive open space.

Whilst the "Bushland Park" is identified for potential dedication to Council in the DCP as a public reserve, it is proposed that that area not be included in the calculations for open space nor specifically included in the s.94 plan for Precinct A ("Cumbalum Views"). Rather, the draft DCP provisions for the land acknowledge that the site may be offered to be dedicated by the developers of the land, and subject to the land being in an acceptable condition, the site may be accepted by the Council for dedication at subdivision stage, following further consideration by the Council. It is noted that the land may, alternatively, be integrated within residential lots if the Council considers the land to be unsuitable and undesirable as publicly managed open space.

With respect to other parkland and facilities matters, Council's standard rates of provision for open space and community facilities requires the provision of 10,000m² of district parks and up to three local parks (depending on location) for Precinct A. This is on the basis of an anticipated yield in Precinct A of 776 dwellings (estimated population of 2,095 persons at an average occupancy rate of 2.7 persons per dwelling), as outlined in Table 3 below.

Table 3. Open Space and Facilities Provision in Precinct A (Open Space Strategy 2008 Standards)

Open space / recreation facility	Minimum standards	Quantum to be provided in Precinct A	Other specifications
Local Parks	0.33 hectares per 1,000 population	6,914m ²	Minimum size of 2,000m ² .
	Embellishment cost equivalent to 1.5 playgrounds per 1,000 population	3 playgrounds	All residents to be within 400 metres of a local park.
District Parks	0.5 hectares per 1,000 population	1 hectare (10,000m ²)	Centrally located reserves that may include picnic and social/recreation facilities including picnic shelters,

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Open space / recreation facility	Minimum standards	Quantum to be provided in Precinct A	Other specifications
			walking opportunities, public art and play equipment etc.
District playing fields and outdoor courts	1.7 hectares per 1,000 population	3.6 hectares	Minimum 4 ha site for each facility.
	1.2 full size playing fields per 1,000 population.	2 playing fields	Selection of field type to be undertaken on a 'district' catchment basis.
	1.0 courts per 1,000 population	2 courts	
Multi-purpose halls	105m ² GFA per 1,000 population	(220m ²)	Hall to have the following components:
	Minimum size of 250m ² GFA, with an auditorium size of approximately 170m ² .	250m ²	<ul style="list-style-type: none"> • A meeting hall, which is able to be divided into two separate spaces, suitable for activities of local groups • At least 2 offices for groups or visiting services • A capability for use for vacation and after-school care (including play areas) • Kitchen, storage and amenities • Access for the disabled.

In summary, Council's standard rates of provision for open spaces and community facilities indicate that the future development of Precinct A will generate demand for the following open space and community facility infrastructure:

- Local parks comprising 6,900m² of land (with each park to occupy an area of 2,000m²);
- Three playgrounds;
- District parks comprising 10,000m² of land;
- District playing fields comprising four hectares of land including two playing fields and two outdoor courts (with associated access, parking and amenities); and
- Multi-purpose community hall comprising a minimum floor area of 250m².

The location of facilities to be provided is determined on the basis of a combination of numeric 'rates of provision' standards and standards relating to ensuring that facilities are provided within reasonable walking distance from all residents.

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Notwithstanding the above, Ballina Shire is well-endowed with passive open space opportunities, particularly in Ballina, the closest coastal settlement to Precinct A. In light of this, rather than strict adherence to the numeric standards in this case, the provision of facilities within Precinct A, as provided in the DCP provisions and the s94 plan the subject of this report, has had regard for the following:

- the usability and proximity of the facilities to cater for the future needs of the population;
- the ability for Council to recoup works funded via s94 plan, in light of the State Government's cap on s.94 of \$30,000 per dwelling; and
- the cost implications for Council associated with maintaining additional open space areas over the longer term.

Having regard for the above, the following quantum of facilities (at a minimum) is proposed to be provided for in Council's planning documents for the development of Precinct A ("Cumbalum Views"):

- Two local parks comprising a minimum area of 2,000m² for each park;
- Two playgrounds to be located on the district and/or local parks within the estate. To be determined prior to construction;
- District park/s comprising 10,000m² of land (a single park or two parks and may include the bushland park area);
- District playing fields comprising four hectares of land including two sporting fields and two outdoor courts (with associated access, parking and amenities); and
- Multi-purpose community hall comprising a minimum floor area of 250m².

The (general) locations of the above facilities are shown on 'Figure 3 - Open Space Plan', provided in Attachment 1 to this report.

In the provision of draft mapping to the Council to support the subject DCP, the proponents had sought to identify the proposed central district park in a location that included equivalent portions of land of the two major landholders of Precinct A, and straddling a Crown road reserve. That location has not been retained in the draft material included in this report, but instead the park has been located nearby, and adjacent to the water reservoir site, for the following reasons:

- The proponents proposed the location of the central park on the basis that the site provides the potential for significant view corridors. However, upon inspection by Council staff, it appears that the land adjacent to the water reservoir provides greater opportunities to achieve long-distance views from the future park, due to its elevation;
- Locating the district park adjacent to the water reservoir appears to provide improved opportunities for visual screening of the reservoir;
- The original proposed location of the district park appeared to be concerned largely with ensuring that the location would result in the equal dedication contribution for each of the major landholders, rather than the ideal design/location of the park;
- As the provision of the park is included in the draft s94 plan, the acquisition of the park site would be unnecessarily complicated by having to acquire land over two private landholdings and a Crown road

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reserve. Approximately 1,600m² of the land identified comprises a Crown land reserve; and

- The proponents have not provided a clear design rationale, showing why the proposed site over the Crown road reserve is more suitable than the land closer to the reservoir, to support their proposed approach.

Notwithstanding the above, the location of the district park can be further refined at development application stage. It is further noted that the sizing of the (western) district park shown on the draft DCP material is indicative only. The sizing of that facility would need to be approximately double of that shown if only one district park is to be provided.

Developer Contributions Plan

As Councillors will be aware, the NSW State Government has placed a cap on the amount of s.94 contributions that may be charged on development. In association with the rezoning of the land, Council requested and was granted an extension to the cap on the amount of s.94 developer contributions that may be levied for development within Cumbalum Precinct A, to a maximum of \$30,000 per dwelling (previously the cap was \$20,000 per dwelling).

Council had originally indicated its preference was a Voluntary Planning Agreement (VPA) to ensure the delivery of the community infrastructure for this locality however the landowners were not prepared or able to provide such an agreement, resulting in Council's fall back position being the \$30,000 development contribution cap. A VPA is the agreed method of infrastructure delivery for Cumbalum Precinct B.

As mentioned earlier Council has engaged planning consultancy GLN Planning (Greg New) to prepare a s.94 developer contributions plan for the provision of open space and community facilities infrastructure to service Precinct A ("Cumbalum Views"). The draft plan, as attached, includes those items of infrastructure outlined in the previous section of this report and associated road infrastructure (as outlined below).

A key reason for a site specific contributions plan is the multiple ownerships of the land and the varied lot yield and infrastructure costs for each landholder. The location of the sporting fields is of particular concern in that it is located on land not associated with the early stages of development. The s94 plan seeks to enable the timely delivery of the fields and that costs are shared across the landholders with regard to lot yields.

The proponents have previously supported the Council identifying the provision of district playing fields and associated access and amenities and a community hall in a s94 developer contributions plan for Precinct A.

It is noted, however, that the proponents have repeatedly called on the Council to allow the future developers of the land to dedicate land and provide embellishments associated with local and district parks directly, rather than relying on a developer contributions plan.

It is noted that the Environmental Planning & Assessment Act states, in part, that

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94(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

- (a) the dedication of land free of cost, or*
- (b) the payment of a monetary contribution, or both.*

and

94B(1) A consent authority may impose a condition under section 94 or 94A only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

The consequence of the above (and other related) provisions of the *EP&A Act 1979*, is that the preparation of a developer contributions plan provides the only definitive legal mechanism available (in the absence of a Voluntary Planning Agreement) for Council to secure the provision of such infrastructure on terms that are acceptable to the Council under its planning documents (i.e. a DCP cannot enforce the dedication of land free of cost).

Importantly, the direct provision of such facilities, by the future developers of the land, is consistent with the introduction of a contributions plan. The plan can provide a mechanism by which such works can be 'credited' against the 'shared' works included in the plan. That is, the presence of a contributions plan does not prevent developers from providing identified infrastructure and then being 'credited' for it.

As a consequence of the above, the public exhibition of the draft development contributions plan, provided as Attachment 3 to this report, is considered to be strongly in the public interest, with respect to this matter.

In the preparation of the draft s.94 plan, staff have sought to include (for consideration) all infrastructure that is considered to be associated with the provision of 'shared' facilities (for open spaces & community facilities).

As a consequence, in order to plan for and secure suitable access to the future playing fields, the following items of road infrastructure have been included in the draft s.94 contributions plan, as attached:

1. Extension of Ballina Heights Drive - between the centre of the development site (reflecting the approximate development stage at which the playing fields will be required) and Sandy Flat Road (involving land acquisition and construction);
2. Upgrade of part of Sandy Flat Road between the extension of Ballina Heights Drive (referred to above) and the future playing field access road (involving construction only); and

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3. Future playing field access road to be located along the future north/south link road alignment, with east/west link to the future playing fields (involving land acquisition and construction).

These three items were seen as areas of road infrastructure essential to secure access to the fields, however due to the various land ownerships, there are concerns that Council would not be in a position to ensure the delivery of this infrastructure through standard development consent conditions at a time consistent with the need for the sports fields. Therefore inclusion in the contributions plan allows Council to collect monies for this work and then deliver both the road works and the sports fields at a time consistent with the community's needs.

However once these works are included the total s. 94 contributions payable per dwelling exceeds the \$30,000 cap (i.e. new rate of \$23,017 as per draft plan plus existing contributions of \$16,299). Consequently, it is now proposed that items 1 and 2 above (extension of Ballina Heights Drive and upgrade of part of Sandy Flat Road) be omitted from the s.94 plan, and that this road infrastructure be secured through conditions of development consent in association with future development.

It is acknowledged, however, that depending on the staging of development with Precinct A, this may present challenges associated with the provision of access to the playing fields, with respect to timing.

In addition to the above, it is proposed that the acquisition of the two local parks (listed in the s.94 infrastructure schedule) also be omitted from the s.94 plan, on the grounds that these facilities can be appropriately provided for directly by the developer.

Based on these comments the revised s.94 cost schedule (summary) following the omission of the above items is provided in Table 4 below.

Table 4. Proposed revised s.94 contributions plan infrastructure schedule (summary)

Infrastructure	Cost
<i>Playing fields and courts</i>	<i>\$4,915,068</i>
<i>Local and district parks</i>	<i>\$2,619,404</i>
Less the following items:	
- C – Land acquisition for local park (north) (Portion C)	- \$81,000
- D – Land acquisition for local park (south) (Portion D)	- \$90,000
Sub-total (less above items)	<u>\$2,448,404</u>
<i>Community facilities</i>	<i>\$1,120,300</i>
<i>Road works</i>	<i>\$8,113,672</i>
Less the following items:	
- B – Land acquisition for playing fields access road south of Sandy Flat Road (Portion B);	- \$1,523,500
- R2 – Construction of Playing Fields	

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access road south of sandy flat road;	- \$3,195,280
- R4 – Construction of section of Sandy Flat Road	- \$726,200
- Contingency adjustment (on construction)	- \$784,296
Sub-total (less above items)	<hr/> \$1,884,396
<i>Pacific Highway roads works</i>	\$218,000
Total Cost (revised)	\$10,586,168
<i>Contribution per dwelling (mid yield estimate of 738 dwellings)</i>	<i>\$14,344 per dwelling</i>

Based on this revised table the infrastructure liability that would be levied if the cap was not in place is \$30,643 (being \$14,344 additional to the existing contribution liability of \$16,299), meaning there is an unfunded liability for the Council of approximately \$474,534 (i.e. estimated 738 dwellings x \$643). Without these items removed the Council liability is approximately \$7m.

Subject to the Council's agreement, the draft s.94 developer contributions plan, provided as Attachment 3 to this report, will be amended as per the above table, prior to public exhibition.

With a s. 94 plan Council now carries the financial risk of any works included in the plan, particularly if actual construction costs are above the estimates in the plan, which is why Council's original preference was for a VPA.

Deed of Agreement Restriction on DA Lodgement

During the finalisation of the Cumbalum Precinct A Planning Proposal Council negotiated a deed of agreement with the Precinct A proponents that obliged the landholders to not lodge a development application prior to the adoption of a s.94 plan or until six months had elapsed from the commencement of the rezoning.

The purpose of the deed of agreement was to provide Council with sufficient opportunity to prepare, publicly exhibit and adopt a s94 plan and development control plan prior to the lodgement of development applications for subdivision works within Precinct A.

Amendment No. 9 of the Ballina Local Environmental Plan 2012 came into affect, by publication on the NSW Legislation website, on 23 May 2014 (i.e. the land was rezoned from this date). Consequently, the timeframe for the conclusion of the DCP and s.94 plan preparation process is for adoption to occur prior to 23 November 2014. In order for this timeframe to be met, including the public exhibition of the documentation, it is noted that unnecessary delays in the consideration of this matter should be avoided.

The potential consequence of not completing the s.94 plan by 23 November 2014, is that Council would not be able to collect the required contributions commensurate with the planned facilities if a development application for subdivision is lodged (until the plan is in place).

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Legal / Resource / Financial Implications

The public exhibition and reporting of the draft development controls and the s.94 plan can be accommodated within existing resources.

Council is required to exhibit the draft DCP and Contributions Plan for a period of at least 28 days in accordance with the terms of the *Environmental Planning and Assessment Act 1979* and associated regulation.

There are financial implications from the s.94 contributions plan, with Council now having the responsibility to deliver any works included in the plan.

Consultation

This report proposes that the draft development controls and the draft s.94 plan that are the subject of this report be publicly exhibited for 4 weeks, in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*. The draft DCP provisions have been prepared in consultation with landholders in the precinct.

Options

1. That Council endorses the Cumbalum Precinct A ("Cumbalum Views") draft development controls and development contributions arrangements, the subject of this report, for public exhibition purposes.

Should the Council support this option, the draft DCP and s.94 plan will be publicly exhibited. The amendments will constitute Amendment No.4 to the Ballina Shire DCP 2012.

Under this option, the draft Development Control Plan and s.94 Plan material will be prepared for public exhibition to reflect the changes recommended in this report (including minor changes to text and formatting).

Following public exhibition, the matter will be reported back to the elected Council for further deliberation.

Due to the history and planning context relating to this matter and the timeframe associated with the deed of agreement (referenced above), this option is recommended.

2. That Council hold a workshop to further discuss the matters outlined in this report.

The development of Cumbalum Precinct A has been the subject of detailed and lengthy deliberations by the Council, to date. Further, the timeframe relating to the deed of agreement restricting the lodgement of a development application is limited. Council also held a workshop on this matter, at the proponents' request, on 7 July 2014. Consequently, an additional workshop in advance of the commencement of exhibition of the draft DCP amendments is not recommended.

4.1 Cumbalum Precinct A Development Control Plan Provisions and Developer Contributions Plan

Alternatively, Councillors may wish to convene a further workshop during or immediately following the exhibition period.

3. Cease further work on the DCP and s.94 plan.

Given that Cumbalum Precinct A is zoned to enable urban development, it is prudent to ensure that suitable local planning provisions to guide development and character outcomes are in place. Further, it is also considered prudent to ensure that appropriate arrangements for the levying of development contributions associated with the delivery of infrastructure are in place, prior to Council receiving development applications for the subdivision of the land. Therefore, this option is not recommended.

RECOMMENDATIONS

1. That the draft development control plan amendment for "Cumbalum Views" (DCP Amendment No.4) be placed on public exhibition, in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.
2. That the draft developer contributions plan for "Cumbalum Views", amended to delete land acquisition for local parks and land acquisition and construction of certain roads as outlined in the Council report, be placed on public exhibition, in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.
3. That Council receive a further report addressing the exhibition and submissions received following the conclusion of the public exhibition period.

Attachment(s)

1. Draft precinct-specific controls "Cumbalum Views" - Ballina DCP 2012 Amendment No.4 (Under separate cover)
2. Ballina DCP 2012 Amendment No.4 - General Amendments (Under separate cover)
3. Draft Cumbalum Urban Release Area - Precinct A - Contributions Plan 2014 (Under separate cover)