

8.4 DA 2010/892 - Highway Service Centre - Section 96 Amendment No. 12

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<b>Applicant</b>	Planners North (on behalf of Ballina HSC Pty Ltd)
<b>Property</b>	Lot 11 DP 1011575, No. 565-589 River Street, Ballina
<b>Proposal</b>	To seek modification to DA 2010/962 (Highway Service Centre) – amendment to Condition 5.22
<b>Effect of Planning Instrument</b>	The land is zoned part RU2 Rural Landscape under the provisions of the Ballina LEP 2012 and part 2(a) – Living Area under the provisions of the Ballina LEP 1987
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

**Introduction**

Council at its Ordinary Meeting held on 23 June 2011, resolved to grant deferred commencement conditional consent to the Construction of a Highway Service Centre comprising Service Station, associated Fast Food Restaurants, Auto Repair Centre, associated Vehicular Accesses (including a roundabout intersection on the Pacific Highway alignment), Car and Truck Parking, Infrastructure Works, Filling, Landscaping, Earthworks and Advertising Structures upon Lot 11 DP 1011575, Pacific Highway (now known as No. 565-589 River Street, West Ballina) and a Two Lot Subdivision (Lot 1 – Highway Service Centre and Lot 2 – Agricultural Residue).

Council has considered a number of amendments to the consent, the most recent being proposed Modification No. 11 that was reported to the meeting of 26 June 2014. This modification requested that Council consider an amendment to Condition 5.22 – Developer Contributions (North and West Ballina Roads Contribution as outlined in Schedule 1) to have regard to the “material public benefit” provided by Ballina HSC Pty Ltd in relation to the provision of two additional flood relief culverts (four in total) with respect to local flooding. The proposed modification would have had the effect of reducing the Roads Contribution levy from \$623,169.00 to \$5,718.26 in recognition of the Proponents cost of \$623,450.74 for the provision of additional culverts.

It was resolved by Council at the June 2014 Ordinary Meeting that proposed Modification No. 11 to DA 2010/962 be refused for the following reasons:

1. The requirement for the additional two culverts has been imposed as a condition of consent and the cost of the culverts should not be deducted from the Ballina Shire Roads Contribution Plan 2010 in accordance with Clause 2.10 of the Plan:
  - a) As the works do not relate to the works schedule in the plan; and
  - b) Council remains of the opinion that four culverts is required to mitigate the direct impacts of DA 2010/962

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2. The circumstances of the application are considered by Council not to be in the public interest.

This report seeks a determination from Council in relation to an application lodged via Section 96 (1A) of the Environmental Planning and Assessment Act 1979 (Amendment No. 12) to amend Condition 5.22 – Developer Contributions, by providing an addendum to Condition 5.22 to allow the finalisation of the calculation of contributions pursuant to the North and West Ballina Roads Contribution and the Roads Administration Plan 2010 in recognition of a range of works associated with the provision of the two additional culverts. This proposal is outlined in further detail in the following section of this report.

**Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

**Report**

The applicant has provided the following additional details in relation to the proposed modification to Condition 5.22:

The initial application (proposed Amendment No. 11) to Council did not plainly articulate the elements for which a Material Public Benefit was sought as distinct from the work required to implement the required two culverts. The subject application has been based upon a clearer explanation of the situation in terms of the items for which a Material Public Benefit adjustment is sought.

The key construction elements associated with the provision of culverts under River Street and the elements for which recognition of a Material Public Benefit is sought are outlined below:

1. Establish 40 metre wide floodway easement through property; (no Material Public Benefit sought)
2. Site establishment; (no Material Public Benefit sought)
3. Construction of side road for traffic to go around the culvert construction work; (no Material Public Benefit sought)
4. Implementation of traffic management control; (no Material Public Benefit sought)
5. Implementation of soil and water management control; (no Material Public Benefit sought)
6. Clearing and grubbing; (no Material Public Benefit sought)
7. Geo-technical and Control survey; (no Material Public Benefit sought)
8. Stormwater control; (no Material Public Benefit sought)

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9. Remove existing highway formation; (no Material Public Benefit sought)
10. Treatment of soil for acid sulfate (*Material Public Benefit sought only with respect to the two additional culverts*)
11. Pile culvert foundation & construct culvert slab; (*Material Public Benefit sought only with respect to the two additional culverts*)
12. Supply and install culverts; (*Material Public Benefit sought only with respect to the two additional culverts*)
13. Supply and install head walls; (*Material Public Benefit sought only with respect to the two additional culverts*)
14. Filling and compaction over culverts; (no Material Public Benefit sought)
15. Sealing of roadway over culverts; (no Material Public Benefit sought)
16. Removal of side road; (no Material Public Benefit sought)
17. Re-establish main thoroughfare; (no Material Public Benefit sought)
18. Establish Vegetation and Landscaping (no Material Public Benefit sought)
19. Design and project management; and (*Material Public Benefit sought only with respect to the two additional culverts*)
20. Goods and Services Tax. (*Material Public Benefit sought only with respect to the two additional culverts*).

The applicant is seeking Council's support for Amendment No. 12, which would provide an addendum to Condition 5.22 to allow the finalisation of the calculation of contributions pursuant to the North and West Ballina Roads Contribution and the Roads Administration Plan 2010 in recognition of work for:

- Treatment of soil for acid sulfate for two culverts only;
- Culvert foundation/piling and culvert slab construction works for two culverts only;
- Supply and install two culverts only;
- Supply and install headwalls for two culverts only;
- Design and project management fees for two additional culverts only; and
- Goods and Services Tax relating only to the supply and installation of two additional culverts.

The applicant has proposed that the cost of this work would be certified by an independent quantity surveyor.

In addition, the applicant has advised that the proposed amendment to Condition 5.22 will provide for the equitable provision of additional culverts to serve as flood relief for the greater Ballina community and maintain the environmental objectives of Council and the proponent in relation to the subject development.

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Council's Civil Services Group have assessed the proposed modification and provided the following comments.

The "West Ballina Flood Relief Optimisation Study" prepared by specialist consultants BMT-WMB was tabled at the Council Ordinary Meeting of 27 February 2014 and provided advice that two culverts would sufficiently mitigate the impact of the development on the floodplain. In the opinion of Council, four culverts are preferred to two culverts as this provides the maximum flood mitigation and provides some buffer to the risks associated with the limitations of the model.

The applicant's position is that two culverts suitably mitigate the impacts of their development and therefore any additional culverts provide a material public benefit.

It is acknowledged that proposed Amendment No. 11 was previously reported to Council's Ordinary Meeting on 26 June 2014, whereby Council determined the application by way of refusal. This modification requested that Council consider an amendment to Condition 5.22 – Developer Contributions (North and West Ballina Roads Contribution as outlined in Schedule 1) to have regard to the "material public benefit" provided by Ballina HSC Pty Ltd in relation to the provision of two additional flood relief culverts (four in total) with respect to local flooding. The proposed modification would have had the effect of reducing the Roads Contribution levy from \$623,169.00 to \$5,718.26 in recognition of the proponent's cost of \$623,450.74 for the provision of additional culverts.

This assessment addresses the culverts under River Street only. It is noted that the construction of the culverts under River Street may need to be replicated on the internal access road, with their construction at full cost to the Proponent.

The applicant's submission for proposed Amendment No. 12 includes a list of "the key construction elements associated with the provision of culverts under River Street for which recognition of a material public benefit is sought." Although the list of 20 items is not comprehensive, it does generally identify the key elements of the construction process and specifically identifies six items for which *'material public benefit is sought only with respect to the two additional culverts.'* The submission also proposes that the cost of the work be certified by an independent quantity surveyor.

If this development proceeds, there are significant construction costs in undertaking the works and management of the site including, for example, traffic, storm water, geotechnical, filling, road pavement works and environmental constraints whether two or four culverts are constructed. The only items for which material public benefit is sought are those items directly attributable to the additional two culverts and listed as such in the submission.

Should Council consider there is some material public benefit attached to the two additional culverts and decides to have them installed in conjunction with the other road & drainage works, there is a benefit to Council. This is because only construction and material costs for the two culverts are identified as being funded by Council and the inherent site construction costs associated with the development are being met by the developer.

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The actual cost of the works has not been fully determined and this needs to be understood to ensure Council understands its financial commitment to the project should it consider this to be a suitable outcome. It is noted that the applicant has detailed that the cost of this work would be certified by an independent quantity surveyor. One option to manage Council's liability would be to limit the material public benefit to the applicable section 94 roads contributions.

As mentioned in the report for proposed Amendment No. 11 (Refer to Attachment 2), the Roads Contribution Plan 2010 has not identified this specific development would occur and did not include the proposed works in the works schedule attached to the plan. The plan did not envisage it would receive contributions from this development and, in general terms, had not factored in receiving funds for or spending funds on these works at this time. So, it can be argued that, the delivery of this infrastructure is in advance of and at a future cost to the plan.

In view of the above, it is considered that proposed Amendment No. 12, can be supported, subject to the applicant and Council reaching agreement on the following points:

- The works schedule as outlined earlier in this report
- The timing of the independent quantity surveyor assessment - For example that may be confirmed closer to the works being undertaken
- The quantity surveyor to be selected by Council.
- It would also seem appropriate to limit Council's exposure to a maximum credit equivalent to the applicable section 94 roads contributions.

All of this information would represent the costs attributable to the additional two culverts.

**Conclusion**

Based on the advice provided by Council's Civil Services Group, the Section 96 (1A) application – proposed Amendment No. 12 to amend Condition 5.22 should be supported, subject to the applicant and Council reaching agreement on the process to confirm the costs attributable to the additional two culverts.

It is recognized that there is some material public benefit attached to the two additional culverts and their installation in conjunction with the other road & drainage works, provides a benefit to Council. As discussed above, this is because only construction and material costs for the two culverts are identified as being funded by Council and the inherent site construction costs associated with the development are being met by the developer.

**RECOMMENDATION**

That delegation be granted to the General Manager to determine the subject application (Amendment No. 12) under Section 96 (1A) of the Environmental Planning and Assessment Act 1979 to amend Condition 5.22 in relation to the recognition of a Material Public Benefit provided by the two additional culverts, subject to the applicant and Council reaching agreement on the process to determine the costs attributable for the additional two culverts, with Council supporting the methodology outlined in this report.

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**Attachment(s)**

1. Section 96 Amendment No. 12 - Locality Plan

11.1 **DA 2010/962 - Section 96 Amendment No.12 - Highway Service Centre.DOC**

8.4 **DA 2010/892 - Highway Service Centre - Section 96 Amendment No. 12.DOC**

