



## Notice of Ordinary Meeting

An Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, 40 Cherry Street Ballina on **Thursday 18 December 2014 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. Development and Environmental Health Group Reports
9. Strategic and Community Facilities 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.

Any documents tabled or given to Councillors during the meeting become Council documents and access may be given to members of the public in accordance with the requirements of the Government Information (Public Access) Act 2009.

The use of powerpoint presentations and overhead projectors is permitted as part of the deputation, provided that the speaker has made prior arrangements with the General Manager's Office at the time of booking their deputation. The setup time for equipment is to be included in the total time of five minutes allocated for the deputation.

### **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 (to be advised)

**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**

**4. Confirmation of Minutes**

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 November 2014 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 27 November 2014.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

## **8.1 DA 2014/512 - Mountain Bike Facility - Bruxner Highway Alstonville**

### **8. Development and Environmental Health Group Reports**

#### **8.1 DA 2014/512 - Mountain Bike Facility - Bruxner Highway Alstonville**

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<b>Applicant</b>	Northern Rivers Dirty Wheels Mountain Bike Club (NRDW)
<b>Property</b>	Lot 12 DP 814359 Bruxner Highway, Alstonville
<b>Proposal</b>	To establish a mountain bike facility and associated works
<b>Effect of Planning Instrument</b>	The land is zoned 1(e) Rural (Extractive and Mineral Resources) under the provisions of the Ballina LEP 1987, a very small portion of the Lot is zoned RU1 – Primary Production under Ballina LEP 2012.
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

#### **Introduction**

DA 2014/512 was lodged on 9 October 2014 to establish a mountain bike facility and associated works upon Council owned land, being Lot 12 DP 814359, immediately west of the Gap Road Quarry.

The application is being reported to Council for determination due to the land being owned by Council and the nature of the submissions. The key issues arising from the assessment and public exhibition of the application relate to traffic safety and issues raised in the letter of objection

#### **Proposal**

The application seeks consent to establish a mountain bike facility and associated works. Specifically the application seeks consent for the following works:

- minor clearing of re-growth vegetation to re-instate some of the existing vehicle tracks
- minor vegetation clearing and earthworks using small machinery and manual excavation techniques (cut and fill up to 1m) to establish narrow single-track trails (typically 150-1000mm wide)
- construction of trails for the purpose of riding mountain bikes
- placement of a small shipping container to provide secure storage for construction and maintenance equipment
- erection of trail-head signage (including information and remote induction signs near the entrance) and trail bollards, situated wholly within the site
- erection of boundary fencing and gates as required to control access
- minor works such as construction of berms and swales
- erection of small structures/bridges to enable bicycles to cross over streams and gullies
- use of the site for NRDW club rides
- use of the site by members of NRDW and the general public

## **8.1 DA 2014/512 - Mountain Bike Facility - Bruxner Highway Alstonville**

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Based on usage of other non-single track riding venues, it is estimated that there could be up to 10 people riding/using the site at any one time. In addition to this, Club rides are proposed to be held monthly and are generally attended by 20 – 30 riders, most of whom will ride to the site.

### **Subject Site**

The land is described in real property terms as Lot 12 DP 814359, Bruxner Highway, Alstonville. The subject land is approximately 4km from the Village of Alstonville and approximately 9km from the Ballina Central Business District.

The land is owned by Ballina Shire Council and is classified as 'Operational Land' in Council's Land Register and Principal General Plan of Management. The nominated land use is 'gravel quarry'.

The Lot is irregular in shape and has a 482.35m southern boundary frontage to the Bruxner Highway, a 447.23m western boundary, a 597.8m eastern boundary and a rear/northern boundary to Chilcotts Creek.

The adjoining land to the east contains an operational quarry (Stoker's quarry). Adjoining land to the north and west comprises rural lots (partly cleared and partly forested) with scattered rural dwellings and associated improvements/buildings. Adjoining land to the south comprises the Bruxner Highway. Essential Energy overhead power lines traverse the south-western corner of the land.

Access to the site is presently available via an existing informal driveway off the Bruxner Highway which is set back from the road.

There is a known history of illegal use within the Lot including four wheel driving and motorbikes. The proposed use will effectively control/prevent these uses through the provision of fencing and gates and legal presence on the site.

### **Background**

In early 2012, the applicant contacted Council and requested assistance in finding a suitable site for the development of a mountain bike facility. A number of possible locations were considered, with the only site identified as suitable, being the subject land (Council owned land described as Lot 12 DP 814359).

The applicant's proposal was reported to Council's Ordinary Meeting of the 25th July 2013 (Item 11.1). At this meeting, Council resolved (Minute No. 250713/4):

1. That Council authorises the General Manager to provide land owner's authority for the Dirty Wheels Mountain Bike Club to submit a development application for a Mountain Bike Park to be established on Lot 12 DP 814359.
2. That subject to formal development consent, Council provides in principle support for the lease/licensing of this land to the Dirty Wheels Mountain Bike Club for use of the land as a Mountain Bike Park.

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A Development Application was lodged with Council on 20 September 2013. The application was given file reference number DA 2013/364.

DA 2013/364 was advertised during the period 2 – 18 October 2013 with adjoining owners being formally notified by letter dated 25 September 2013. Two letters of objection and two letters of support were received by Council.

Council referred a copy of DA 2013/364 to the Roads and Maritime Services (RMS) by letter dated 18 November 2013. The RMS replied via letter dated 18 December 2013 stating that they were not in a position to provide concurrence for a number of reasons including that the application was not supported by a Traffic Study.

Following discussions with Council Staff, the applicant agreed to withdraw the application to enable an unconstrained amount of time to hold discussions with the RMS with the aim of obtaining in principle support prior to re-lodging the application.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil (or state otherwise if this is not the case)

### **Public Exhibition**

The application was placed on public exhibition from 23 October to 6 November 2014. A total of 33 submissions in support including a petition with 99 signatures were received. One objection, on behalf of eight nearby properties, to the proposed development was also received. A copy of each submission is attached to this report. The applicant also provided a submission in response to the issues raised in the letter of objection. This submission is also attached:

The following issues were raised in the letter of objection.

*1. The compromise of the use of the land as a quarry buffer zone.*

Comment: The land is Zoned 1(e) Rural (Extractive and Mineral Resources) and the proposed use is permissible in the zone. The land is not a quarry buffer zone as suggested and the proposed use will not prevent the use of the land for Quarry activities in the future.

*2. The Statement of Environmental Effects (SEE) is deficient*

Comment: The SEE is comprehensive and is not considered to be deficient.

*3. The application proposes no adequate site security or unauthorised access controls and promotes opening up the site to the public*

Comment: The application proposes a boundary fence and gates to control access. Whilst the site will be open to the public, access will be restricted to the Bruxner Highway frontage and fencing will be provided to areas of the eastern, western and southern boundaries where trails are proposed close to these areas.



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No trails are proposed near the northern boundary created by Chilcotts Creek and in any instance the topography of the land will prevent the public from accessing this part of the site.

4. *The land is bush fire prone and highly susceptible to wildfire. There is no bushfire plan.*

Comment: The subject land is mapped as bushfire prone land. The proposed use is one that will not increase the risk of fire or require vegetation to be removed for asset protection purposes. Suitable egress points exist throughout the property in the event of a bush fire and the nature of the use and size of the property ensures that mountain bike riders would be able to evacuate swiftly.

5. *The cumulative impact of the development with Stokers Quarry and Westbridge Lane Quarry has not been addressed.*

Comment: The proposed use is not one that would add to the cumulative impact created by the two Quarries.

6. *The impact of the development on surface and ground water has not been adequately addressed and mitigated.*

Comment: There are no trails proposed within the vicinity of Chilcotts Creek and it is unclear how the proposed use will have any impact on groundwater.

7. *There is no onsite toilet*

Comment: The use is for recreation purposes and will generally only occur for short periods of time. Therefore there is no need for an onsite toilet.

8. *The access to the site is dangerous and non-compliant. There is inadequate parking proposed.*

Comment: This aspect has been considered by Council's Civil Services Group and the Roads and Maritime Services (RMS), where it was concluded that the access is suitable subject to upgrades and restrictions on the number of vehicles parked at the site to four at any one time. This issue is discussed in more detail later in this report.

9. *The activity will have an adverse impact on the flora and fauna of the subject land and surrounding area. There is no proper Flora and Fauna study. A Koala Management Plan is mandatory.*

Comment: The proposed use is minor in nature and is unlikely to have an unreasonable impact on flora and fauna. Further commentary in relation to Koalas is detailed under the SEPP 44 section of this report.

10. *There are negligible social or economic benefits of the development and significant social and economic disadvantages of the development. There is no advantage to the Council or the ratepayers flowing from the development and every possibility of a legal and financial burden.*

Comment: There are social benefits of providing a recreational facility in Ballina Shire and likely economic benefits for local businesses. It is not agreed

that by providing a recreation area that there is no advantage to Council or the ratepayers. This can be seen by the numerous letters of support that the application has received. Broadening the spectrum of recreational opportunities within the Shire is considered a positive outcome for residents of the Shire.

*11. The Ballina Shire Council as the landowner and consent authority will remain responsible to supervise the activity and maintain and rehabilitate the site and will remain legally liable for all damages that flow on from the activity.*

Comment: Council's responsibility as the consent authority is clearly outlined in the Environmental Planning and Assessment Act and Regulations, but does not require Council to supervise the activity. As a landowner, Council will need to enter into a lease arrangement and matters concerning legal liability is something that can be addressed as part of that process.

*12. The application has been notified incorrectly.*

Comment: The application has been notified correctly in accordance with Council policy.

## **Report**

The proposed development has been assessed under the heads of consideration in Section 79 (C) of the Environmental Planning and Assessment Act 1979. The following matters are of particular relevance in Council's determination of the application.

## **Applicable Planning Instruments**

### **State Environmental Planning Policy No. 44 – Koala Habitat Protection**

The subject Lot is greater than 1 hectare in area therefore this SEPP applies to the proposed development.

Clause 7 of SEPP 44 states:

#### **7 Step 1—Is the land potential koala habitat?**

*(1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.*

*(2) A council may satisfy itself as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.*

*(3) If the council is satisfied:*

*(a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or*

*(b) that the land is a potential koala habitat, it must comply with clause 8.*

## **8.1 DA 2014/512 - Mountain Bike Facility - Bruxner Highway Alstonville**

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The applicant's flora and fauna report included a SEPP 44 assessment which states the following:

*"The vegetation found at the site consists of primarily mixed regrowth vegetation dominated by a canopy of Camphor Laurel (at least 50-70%). Some wet sclerophyll vegetation is present around Chilcotts Creek, although this is outside the planned trail network. Central and to the southern end of the site are some large Lophostemon Confertus (Brushbox) and Eucalyptus Microcorys (Tallow wood). E. microcorys is a listed Koala feed tree. The tallow woods found at the site represent a very minor part of the upper and lower stratum of the tree canopy (significantly less than 15%).*

*The land is not considered potential Koala habitat as defined in the legislation and as indicated by the fact that Schedule 2 vegetation does not constitute 15% of the number of trees in the upper or lower strata of the tree component.*

Council is currently in the process of preparing a Draft Comprehensive Koala Plan of Management and a workshop has been held with Councillors. The Draft Plan of Management has been supported by mapping, that maps potential, secondary A and secondary B habitat. This mapping has identified the subject Lot as containing 'Potential Habitat', however this is yet to be backed up by survey work.

On the basis of the information supplied by the applicant, which includes a site flora and fauna assessment/survey, Council is not in a position to suggest that potential habitat exists onsite.

In any instance Council's Environmental Scientist has advised that the proposed use is not the type of use that is likely to have any adverse impacts on Koalas even if the site did contain core habitat.

### **Ballina Local Environmental Plan 2012**

The subject Lot has a small amount of land zoned RU1 – Primary Production (less than 2%) and therefore the following must be considered:

Under the provisions of the Ballina Local Environmental Plan (BLEP) 2012, the proposed development is defined as:

*"recreation facility (outdoor) means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major)"*

Recreation Facilities (outdoor) are listed as a permissible use in the RU1 zone.

The objectives of the RU1 zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural, cultural and landscape character of the locality.*
- *To enable development that is compatible with the rural and environmental nature of the land.*
- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

The proposed development is considered to have had adequate regard for, and is generally consistent with, the objectives of the zone.

The proposal is fully compliant with all other clauses with BLEP 2012.

#### **Ballina Local Environmental Plan 1987**

The proposed development is not explicitly defined in the Ballina Local Environmental Plan (BLEP) 1987 or the Model Provisions. The Lot is mainly zoned 1(e) Rural (Extractive and Mineral Resources) where 'open space' is listed as a permissible use within the zone.

Whilst 'open space' is not a defined land use within the BLEP 1987 or the Model Provisions, it is considered that such a land use would embrace the full range of recreational opportunities from passive to active, set within natural and/or urban man made environments.

The proposed use is considered to generally fall within the term 'open space' and is therefore considered to be permissible with the consent of Council in the 1(e) zone.

The objectives of the 1(e) zone are:

*A The primary objectives are:*

- (a) to identify land which are extractive or mining industry potential,*
- (b) to prohibit development which would result in the withdrawal of actual or potentially productive mineral resources land, and*
- (c) to prohibit development which would be adversely affected by the operations of extractive or mineral resources development, particularly adverse affects from noise, vibration or dust.*

*B The exception to these objectives is development of land within this zone for public works and services, outsider the parameters specified in the primary objectives*

## **8.1 DA 2014/512 - Mountain Bike Facility - Bruxner Highway Alstonville**

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The proposed development will not result in the withdrawal of actual or potentially productive mineral resources land and is not the type of use that will be adversely affected by the operations of extractive or mineral resources development, particularly adverse effects from noise, vibration or dust.

Considering the above, the proposed use is generally consistent with the objectives of the zone.

### Clause 15 – Development adjoining arterial roads

Clause 15 states:

- (1) *A person shall not carry out development on land within Zone No 1 (a1), 1 (a2), 1 (b), 1 (d), 1 (e), 7 (a), 7 (c), 7 (d), 7 (d1), 7 (f), 7 (i) or 7 (l) for a purpose referred to in Schedule 5 within 400 metres of a main or arterial road if any form of direct vehicular access is gained from a main or arterial road except with the concurrence of the Commissioner for Main Roads.*
- (2) *In deciding whether to grant concurrence under subclause (1), the Commissioner for Main Roads shall take into consideration:*
  - (a) *whether the development by its nature, intensity or the volume and type of traffic likely to be generate is likely to constitute a traffic hazard or to materially reduce the capacity and efficiency of the main road to carry traffic,*
  - (b) *whether the development is of a type, whether or not related to the characteristics of the land on which it is proposed to be carried out, that justifies a location in proximity to a main road,*
  - (c) *whether the location, standard and design of access points, and on-site arrangements for vehicle movement and parking, ensure that through traffic movements on the main road will not be impeded, and*
  - (d) *the extend to which the development might prejudice future improvements or realignment of the main road, as indicated to the council from time to time by the Commissioner for Main Roads.*

The application was referred to the RMS seeking concurrence. The RMS provided a response to Council stating that concurrence was not required in this instance. However, the RMS has recommended that certain conditions be included if Council resolves to issue consent for the subject development application. The RMS response is attached to this report.

### **Ballina Shire Development Control Plan 2012**

The proposal has been assessment against the provisions contained within DCP 2012 and is considered to be fully compliant. Further detail is provided on the following key aspects of the DCP.

*Chapter 2 – General and Environmental Considerations*

*Clause 3.3 – Natural Areas and Habitat states:*

*3.3.2 Planning Objectives*

- a. Protect and enhance ecologically significant areas;*
- b. Provide for development that is compatible with ecological values and that minimises risk to ecologically sensitive environments; and*
- c. Encourage development that contributes to the maintenance, enhancement or rehabilitation of environmental values and ecologically sensitive areas.*

*3.3.3 Development Controls*

- i. Development is to be sited, designed and managed to avoid or mitigate potential adverse impacts on natural areas and habitat;*
- ii. All development (except dwellings, basic agricultural buildings and routine agricultural management activities) must demonstrate a net environmental benefit;*
- iii. A development application for land containing a wildlife corridor (as identified on the Wildlife Corridors Map), must demonstrate a long term net benefit to the operation and retention of the wildlife corridor. Compliance with this provision may also meet the requirements of (ii);*
- iv. Where development is unable to be sited, designed and managed to avoid potential adverse impacts on natural areas (as identified on the Natural Areas and Habitat Map), a proposal to remove habitat may be considered. If habitat is proposed to be removed or impacted as part of a development, an offset for the loss of biodiversity may be considered by Council provided it can be demonstrated that the proposed offset will maintain or improve biodiversity outcomes and values.*
- v. Development applications relating to land to which this section applies are to be accompanied by an ecological assessment report prepared by an appropriately qualified and experienced professional.*

The development will be sited and designed to avoid impacts on natural areas and habitats and is unlikely to create any adverse environmental impacts. Whilst the Lot contains a wildlife corridor, the application does not seek to remove any significant vegetation and the proposed use is one that can co-exist with the natural environment.

The application has been supported by a flora and fauna study (ecological assessment report) which is considered to adequately demonstrate that the proposal is unlikely to create adverse environmental. Suitable mitigation measures are proposed to be applied via conditions of consent which are attached to this report.

*Clause 3.19 – Car Parking and Access*

*The objectives of Clause 3.19 states:*

*3.19.2 Planning Objectives*

- a. Ensure that development is accessible and supported by adequate car parking and vehicle manoeuvring areas;*
- b. Ensure that development is designed to be accessed safely; and*
- c. Ensure development does not adversely impact on the public road and car parking system.*

## **8.1 DA 2014/512 - Mountain Bike Facility - Bruxner Highway Alstonville**

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As part of the application, the applicant has submitted documentation to address traffic (Traffic and Parking Assessment prepared by Ardill Payne and Partners, dated September 2014).

This report has been reviewed by Council's Civil Services Group. The following assessment has been received in relation to the provisions of clause 3.19:

*"The Bruxner Highway is a controlled access road and the site access is limited to the existing designated access point. Vehicle access to the site will be limited to a few vehicles for trail construction & maintenance or emergency vehicles. All vehicles must enter & exit the highway in a forward direction. AADT of the Bruxner Highway is approximately 13,000 vpd.*

*The applicant's traffic assessment estimates "the average daily traffic generated by this development is five vehicles per day with a maximum visitation of four vehicles parked on the site at any one time. The vehicles would enter and exit the site with a left-in, left-out manoeuvre once only, which equates to 10 vehicles movements per day.*

*The access will be conditioned to conform with Council and RMS requirements."*

What must also be considered under the provisions of this clause is the safety of cyclists accessing and leaving the site as a majority of the riders will ride to the site rather than drive. Therefore all cyclists visiting the site will be restricted to 'left in' 'left out' movements via a condition of consent, to ensure safe movements will be achieved during use of the facility.

### **Conclusion**

The proposed development has been assessed and consideration has been given to all the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979, including the provisions of the Ballina Local Environmental Plan 2012, Ballina Local Environmental Plan 1987 and the Ballina Shire Development Control Plan 2012 and submissions made in response to the exhibition and notification of the proposed development.

The key issues for consideration in the determination of this development application are traffic safety and issues raised in the letter of objection.

Traffic safety has been assessed by the RMS and Council's Civil Services Group where it is concluded that subject to restricting the number of vehicles permitted onsite at any one time that the proposal complies with relevant traffic safety legislation.

The intensity of vehicle use will need to be carefully monitored by the applicant to ensure that the proposal does not exceed in intensity levels that were applied for with the application. This includes that a maximum of four vehicles are permitted onsite at any one time and that all vehicles and cyclists are restricted to 'left in' 'left out' movements.

Further, the proposed use is relatively low key in terms of its environmental impact and off-site rural amenity impacts.

## **8.1 DA 2014/512 - Mountain Bike Facility - Bruxner Highway Alstonville**

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Having regard for the outcomes of the assessment undertaken, Council has the following options with regard to determining the subject application:

### **Option One**

That Council approves the development application subject to conditions of consent as attached to this report.

### **Option Two**

That Council refuses the development application on the basis that the proposal creates unreasonable traffic safety impacts for the Bruxner Highway.

Option one is the recommended approach for the reasons outlined in this report.

### **RECOMMENDATION**

That DA 2014/512 to establish a mountain bike facility and associated works at Lot 12 DP814359, Bruxner Highway, Alstonville be **APPROVED** subject to the imposition of the attached conditions.

### **Attachment(s)**

1. Locality Plan
2. RMS Submission / Referral
3. Submissions in support
4. Submission in objection
5. Applicant's response to objection
6. Draft Conditions



## **8.2 DA 2014/377 - Multi Dwelling Housing - Burns Point Ferry Road**

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### **8.2 DA 2014/377 - Multi Dwelling Housing - Burns Point Ferry Road**

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<b>Applicant</b>	Newton Denny Chapelle
<b>Property</b>	Lot: 1 DP 522558, 6 Burns Point Ferry Road, West Ballina
<b>Proposal</b>	Erection and Strata Title subdivision of a multi dwelling housing development comprising 25 two storey dwelling units above basement car parking and associated works
<b>Effect of Planning Instrument</b>	The land is zoned R3 – Medium Density Residential under the provisions of the Ballina LEP 2012
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

#### **Introduction**

DA 2014/377 was lodged 1 August 2014 for the erection and Strata Title subdivision of a multi dwelling housing development comprising 25 two storey dwelling units above basement car parking and associated works at 6 Burns Point Ferry Road, West Ballina.

The application is being reported to Council for determination as the development will be highly visible when viewed from the public domain/surrounding street system due to its design and the amount of fill required for flood protection. The key issues arising from the assessment and public exhibition of the application are:

- Visibility of the proposal from the public domain/street system; and,
- Fill associated with flood protection works.

#### **Proposal**

The application seeks development consent for the erection and Strata Title subdivision of a multi dwelling housing development comprising 25 two storey dwelling units above basement car parking and associated works.

The proposal involves the construction of 20 x three bedroom units and five x two bedroom units.

The development site has existing ground levels within the vicinity of RL 0.75m AHD to RL 1.1m AHD. Council's flood policy requires the land to be filled to RL 2.7m AHD.

This results in the land having to be filled by up to 1.95m above the existing ground level.

The development results in a maximum building height of 7.1m above the required fill level of RL 2.7m AHD. This results in the highest ridge of the development being at RL 9.8m AHD. Whilst the development will visually appear to be in excess of 10m above the existing level, the proposal is fully compliant with the Maximum Permitted Building Height when taking into consideration the fill requirements.

The proposed plans are attached to this report.

### **Background**

The land subject to this application previously contained the 'Ferry Boat Motel', which was demolished in 2008. In October 2013, the subject land was rezoned pursuant to Amendment No. 4 to Ballina Local Environmental Plan 20012 (BLEP 2012). The land is now zoned R3 – Medium Density Residential and is vacant.

The applicant has had two pre-lodgement meetings with Council (7 August 2013 and 3 June 2014) with the main issues arising relating to flooding and streetscape presentation.

The surrounding vacant land is currently within the 'rezoning process' and has advanced past the 'gateway' stage. The future zoning and permissible uses of the surrounding land is yet to be finalised and may either be residential or an enterprise corridor. In either instance the land will be required to be filled to the same level (RL 2.7m AHD) as this site.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The application was placed on public exhibition from 14 August to 28 August 2014. A total of three submissions were received, all of which were in objection to the proposed development. A copy of each submission is included in the attachments to this report.

The following issues of concern were raised within the submissions.

- 1. We request that any land fill in relation to this development be sloped towards Burns Point Ferry Road and not towards the flood plain which adjoins our properties.*

Comment: The stormwater runoff from the development will be directed to the Burns Point Ferry Road drainage system. There will be small landscaped areas surrounding the perimeter of the building that may not be able to be directed back to Burns Point Ferry Road. The runoff from these areas will be less than runoff experienced at the site in its existing state.

- 2. Also we request that all roof and associated rain and run off be channelled into Ballina Council's system away from that area which would increase the likelihood of flooding our houses.*

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Comment: All roof water from the development will be directed to Council's street drainage system in Burns Point Ferry Road.

3. *Would an earthen bund be enough to mitigate flood impacts from the fill required for the site and is a bund of 2.7 AHD sufficient?*

Comment: Council's flood model has verified that filling the site to RL 2.7m AHD is sufficient to mitigate any flooding impacts from flood events up to the 1 in 100 year flood.

4. *How can Council be sure that a proposal will not increase the flood risk elsewhere?*

Comment: Council's flood model was completed on the assumption that this site was filled. The impacts of filling the site were therefore included in the flood model.

### Report

The proposed development has been assessed under the heads of consideration in Section 79 (C) of the Environmental Planning and Assessment Act 1979. The following matters are of particular relevance in Council's determination of the application.

### Applicable Planning Instruments

#### State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) provides that contamination and remediation are to be considered in the determination of development applications.

Council's Public and Environmental Health Section have provided the following comments in relation to SEPP 55 and the proposed development.

*"The Preliminary Contaminated Land Assessment prepared by Melaleuca Group Pty Ltd dated 31 January 2013 was prepared and submitted for the rezoning of this land in 2013 and the report has been prepared generally in accordance with the requirements of the NSW EPA – Guidelines for Consultants Reporting on Contaminated Sites.*

*The consultant undertook a stage 1 investigation in line with the requirements of the Managing Land Contamination Planning Guidelines (DUAP and EPA, 1998). A site history was established and soil sampling undertaken. The results of the soil analysis were compared with Column A of the Table 5 'Health-based Soil Investigation Levels (Commonwealth of Australia 2001) for 'Residential with gardens and accessible soil (home grown produce contributing less than 10% fruit and vegetable intake: no poultry) including children's daycare centres, pre-schools and primary schools, or town houses or villas'.*

*16 surface (0-200mm) soil samples were collected, 12 in a systematic sampling pattern and 4 additional targeted samples. The samples from each site were homogenized into 4 composite samples for analysis, with 2 samples being separately analysed for asbestos fibres. These numbers of samples are adequate for the property size assessed and comply with the requirements of 'Contaminated Sites: Sampling Design Guidelines' (NSW EPA 1995).*

*The soil samples were analysed for the following contaminants of concern; organochlorine pesticides, heavy metals and asbestos. The results demonstrated that none of the targeted pollutants exceeded the Human Based Investigation Levels (HBIL) in the collected soil samples. Manganese was recorded at levels higher than the relevant HILs however this is naturally occurring in our area and the levels detected are within normal background limits.*

*Therefore the report correctly concludes that based on these findings the site is considered suitable for the proposed development (residential) without further investigation of contamination.”*

### **Ballina Local Environmental Plan 2012**

Under the provisions of the Ballina Local Environmental Plan (BLEP) 2012, the proposed development is for ‘multi dwelling housing’ and associated works. The proposal is permissible with the Consent of Council in the R3 – Medium Density Residential Zone.

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To encourage housing and infrastructure that supports the ageing population.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*
- *The above stated zone objectives have been considered during the assessment of this application. It is concluded that the proposal is compliant with the zone objectives.*

### Clause 4.3 Height of Buildings

Clause 4.3 – Height of Buildings states:

- (1) *The objectives of this clause are as follows:*
  - (a) *to ensure that the height of buildings is compatible with the bulk, scale and character of the locality,*
  - (b) *to minimise adverse impacts on existing or future amenity of adjoining properties and the scenic or landscape quality of the locality,*
  - (c) *to protect significant views from public places.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map specifies a maximum building height of 8.5m. The application seeks a maximum building height of 9.8m above the existing ground level. However, this is a direct result of the requirement to fill the site to 2.7m AHD. Clause 4.3A enables this and is discussed below.

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Clause 4.3A – Exceptions to Height of Buildings states:

- (1) *The objective of this clause is to align building height and flood planning provisions and provide for a consistent point of reference for the measurement of building heights in flood prone areas.*
- (2) *This clause applies to land identified as “Minimum Level Australian Height Datum (AHD)” on the Building Height Allowance Map.*
- (3) *The maximum height of a building on land to which this clause applies is to be measured from the minimum level AHD permitted for that land on the Building Height Allowance Map.*

When taking into consideration the requirement to fill to 2.7m AHD, the proposed buildings have a maximum height of 7.1m and are therefore compliant in terms of the Maximum Permitted Building Height of 8.5m.

### Clause 7.3 Flood Planning

Clause 7.3 – Flood Planning states:

- (1) *The objectives of this clause are as follows:*
  - (a) *to minimise the flood risk to life and property associated with the use of land,*
  - (b) *to allow development on land that is compatible with the land’s flood hazard, taking into account projected changes as a result of climate change,*
  - (c) *to avoid significant adverse impacts on flood behaviour and the environment.*
- (2) *This clause applies to:*
  - (a) *land identified as “Flood planning area” on the Flood Planning Map, and*
  - (b) *other land at or below the flood planning level.*
- (3) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:*
  - (a) *is compatible with the flood hazard of the land, and*
  - (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
  - (c) *incorporates appropriate measures to manage risk to life from flood, and*
  - (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
  - (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*
- (4) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.*

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(5) *In this clause: land at or below the flood planning level means land at or below the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard.*

As part of the application, the applicant has submitted a report to address Flood Planning (Report prepared by Newton Denny Chapelle, dated July 2014).

This report has been reviewed by Council's Civil Services Group. The following assessment has been received in relation to the provisions of clause 7.3 and the concerns raised in the submissions to the proposal:

*"Whilst the proposed development is on the fringe of the existing urban area it is required to be filled to the Map 2a2b level to ensure that it has suitable flood immunity. The flood modelling shows that this area will experience rapid inundation/flooding given its location in the floodplain.*

*The proposed design includes a basement car park that will be constructed to a floor height of 0.0m AHD with flood protection provided by a perimeter blockwork wall and raised bridging driveway. The wall and bridging driveway will be built to a height of 2.7m AHD to ensure that the basement car park has an equivalent flood immunity to the minimum fill level at the site.*

*The architect confirmed that the carpark will be ventilated via services shafts located in the car park). The ventilation will therefore not compromise the flood immunity of the development.*

*In order to facilitate the development to transition to the existing ground levels adjoining the site a reduced minimum fill height of RL 2.5m AHD will be required for the landscaped areas surrounding the site.*

*The proposed filling of the site will not cause drainage problems for the adjoining properties."*

### Clause 7.7 (Essential Services)

Clause 7.7(2) – Essential Services states:

- (2) *Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:*
- (a) *the supply of water,*
  - (b) *the supply of electricity,*
  - (c) *the disposal and management of sewage,*
  - (d) *stormwater drainage or on-site conservation,*
  - (e) *suitable vehicular access,*
  - (f) *telecommunication services*

All essential services are available to the proposal.

**Ballina Shire Development Control Plan 2012**

Chapter 2 – General and Environmental Considerations

*Clause 3.4 – Potentially Contaminated Land*

As stated in the SEPP 55 section of this report:

*“Therefore the report correctly concludes that based on these finding the site is considered suitable for the proposed development (residential) without further investigation of contamination.”*

*Clause 3.6 – Mosquito Management*

*Clause 3.6 states:*

*3.6.2 Planning Objectives*

- a. Minimise nuisance and health risk associated with mosquitoes; and*
- b. Minimise human contact with mosquitoes.*

*3.6.3 Development Controls*

- i. All windows, external doors and other openings in buildings comprising residential accommodation; tourist and visitor accommodation, child care centres or respite day care centres that are located in areas subject to mosquito impacts are to incorporate effective insect screening;*
- ii. Where a building in (i) includes large openings which are impractical to effectively screen (such as bi-fold doors), the following provisions apply:*
  - for the room/s containing the opening - when the opening is closed (as may be the case when mosquito activity is elevated) there is light and ventilation available to the room that meets the provisions of the BCA via other openings that are effectively screened;*
  - for all other rooms - all windows, external doors and other openings to habitable rooms are to incorporate effective insect screening;*
- iii. Where rainwater tanks are installed, both the inlet and outlet (overflow) shall be effectively screened with stainless steel or other durable materials to prevent entry to the tank by mosquitoes. Inlet filters must be readily removable for cleaning;*

In accordance with the requirements of the DCP all windows and doors are to be provided with effective insect screening, appropriate conditions have been recommended on the consent.

*Clause 3.9 – Stormwater Management*

*The objectives of Clause 3.9 states:*

*3.9.2 Planning Objectives*

- a. Provide for the ongoing environmental health of downstream receiving waters, with the main receiving waterways being the Richmond River and North Creek;*
- b. Ensure that stormwater management systems are designed and implemented to ensure protection of ground and surface water and ecological values;*
- c. Achieve best practice stormwater treatment targets for stormwater quality;*
- d. Achieve best practice stormwater quantity and detention requirements;*

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- e. *Promote suitable long term low maintenance stormwater devices and infrastructure.*
- f. *Protect and improve stormwater infrastructure; and*
- g. *Provide stormwater infrastructure that minimises risk to the public.*

As part of the application, the applicant has submitted a report to address stormwater management (Report prepared by Newton Denny Chapelle, dated July 2014).

This report has been reviewed by Council's Civil Services Group. The following assessment has been received in relation to the provisions of clause 3.9 and the concerns raised in the submissions to the proposal:

*"A stormwater plan has been provided which is considered to be generally acceptable (Engineering Services Report by Newton Denny Chapelle, Dated July 2014). This plan provides total onsite storage of 160,000L via rainwater tanks. In addition the podium level shall include pit insert/filter devices to pre-treat runoff that is then directed through a 16m<sup>2</sup> bio-retention garden. In addition, the basement car park shall be connected to an oil / water separator that then discharges to the sewer system."*

### *Clause 3.19 – Car Parking and Access*

*The objectives of Clause 3.19 states:*

#### *3.19.2 Planning Objectives*

- a. *Ensure that development is accessible and supported by adequate car parking and vehicle manoeuvring areas;*
- b. *Ensure that development is designed to be accessed safely; and*
- c. *Ensure development does not adversely impact on the public road and car parking system.*

As part of the application, the applicant has submitted documentation to address traffic (Engineering Services Report prepared by Newton Denny Chapelle, dated July 2014).

This report has been reviewed by Council's Civil Services Group. The following assessment has been received in relation to the provisions of clause 3.19:

*"The existing external road network is generally constructed to a suitable standard to service the proposed development with the only modification required being a shoulder widening in Burns Point Ferry Road along the site's frontage.*

*The proposed design provides 56 car parking spaces which complies with the requirement of Council's DCP in regards to the number of car parking spaces. The car park and aisle dimensions are compliant with AS 2890.1 with the exception of section 5.3 which nominates a minimum height from the floor to any overhead obstruction of 2200mm. The design must be modified to comply with this headroom requirement prior to the issue of the construction certificate.*



*The proposed development includes one disabled visitor space. This space complies with the minimum dimension requirements of AS2890.6:2009 other than headroom which states that any disabled space and adjacent shared area must have a minimum clearance of 2500mm. The applicant has confirmed that the design can be amended to accommodate this requirement. The consent shall require the car park to comply with AS 2890.1 and AS 2890.6 including the headroom requirement. “*

#### Chapter 4 – Residential and Tourist Development

##### *Section 3.1.3 Development Controls*

###### *A. Element - Building Height*

###### *Objectives*

- a. Ensure that the height of buildings (building height) is compatible with the bulk, scale and character of the locality;*
- b. Minimise adverse impacts on existing or future amenity of adjoining properties and scenic or landscape quality of the locality; and*
- c. Protect significant views from public places.*

###### *Controls*

- i. The height of any building (building height) is to comply with the provisions of the BLEP 2012.*
- ii. Buildings with 3 levels or greater development must be designed to minimise overshadowing and protect the privacy of occupants of adjoining buildings.*

Comment: The proposal is fully compliant with the maximum building height of 8.5m, additionally the proposal does not create any unreasonable overshadowing or privacy impacts for surrounding properties.

The objectives of this control include the requirement for a building's height to be compatible with the bulk, scale and character of the locality. In this instance, due to the undeveloped nature of adjoining Lots, what must be considered is the desired future character of the surrounding locality. Considering that all adjoining Lots will be required to fill to RL 2.7m AHD and that in theory they will be able to build to a maximum height of 8.5m, then the proposal as submitted could be considered to be consistent with the future character of the surrounding area.

###### *C. Element - Building Envelopes*

###### *Objectives*

- i. Ensure buildings are set back progressively from the side and rear boundaries as building height increases so that buildings do not unduly affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy, or unreasonably obstructing views;*
- ii. Ensure that the occupants of residential accommodation have the opportunity to enjoy the optimum use of winter sunlight;*
- iii. Enhance opportunities for solar access to both the development site and adjoining properties;*
- iv. Achieve varied and interesting streetscapes, good orientation of residential developments with regard to sun, shade, wind and neighbouring development, and effective use of allotments to create usable private open space and courtyards;*

- v. *Ensure that buildings are compatible with the bulk, scale and character of the locality; and*
- vi. *Minimise adverse impacts on the existing or future amenity of adjoining properties and the scenic or landscape quality of the locality.*

**Controls**

*i. Residential accommodation (optional for secondary dwellings) and tourist and visitor accommodation in Zone R2 Low Density Residential and Zone R3 Medium Density Residential must be contained within a building envelope measured as follows:*

- *below a plane measured over the land at 45 degrees from a point 1.8 metres above the side and rear boundaries,*
- *where the subject site has a frontage to a secondary street, below a plane measured over the land at 45 degrees from a point 1.8m above a parallel line measured 2.0m inside the secondary street boundary,*
- *where the subject site has a frontage to a public reserve, below a plane measured over the land at 45 degrees from a point 1.8m above the boundary to the public reserve, and*
- *below a plane measured 8.5 metres above ground level.*

Comment: The proposal is mostly compliant with this control, some minor encroachments exist along all elevations from the roof/eaves. The encroachments are minor and do not create any adverse impacts on surrounding properties in terms of overshadowing.

When considering the fact that adjoining Lots will be required to fill to RL 2.7m AHD, then the impacts created by the proposal including overshadowing and privacy are deemed to be reasonable. The proposal is considered to comply with the objectives of this control as stated above.

**E. Element - Building Lines**

**Objectives**

- a. *Protect the amenity of the locality in which the dwelling is situated;*
- b. *Ensure new development makes a positive contribution to the local streetscape; and*
- c. *Setback buildings and garages/carports from the street to provide sufficient space for landscaping, visual and acoustic privacy and vehicle parking, whilst protecting the established character of the neighbourhood.*

**Controls**

- i. *Residential accommodation and tourist and visitor accommodation buildings and all ancillary development on a lot must be setback behind the building line specified on the Building Line Map (except as specified in items (iii) or (iv) below).*
- ii. *Where a building line is not specified in (i) and the land is within Zone R2 Low Density Residential or Zone R3 Medium Density Residential, the building line specified in Table 4.1 applies.*

Table 4.1 - Minimum <i>Building Line</i> – R2 & R3 Zone	
Boundary	<i>Building Line</i> (distance from boundary)
Primary Road	6.0m
Parallel Road	6.0m
Public Reserve or Foreshore	6.0m
Lane	3.5m
Side or Rear	None specified

Comment: The application seeks consent for a 6.0m setback to the street and is in full compliance with the control.

#### G. Element - Landscaping and Open Space

##### Objectives

- a. Ensure residential accommodation and tourist and visitor accommodation are provided with private open space which is usable and meets the needs of occupants;
- b. Maximise the liveability and amenity of residential accommodation and tourist and visitor accommodation;
- c. Ensure that landscaped areas are an integral component of residential and tourist oriented development proposals;
- d. Preserve and retain existing mature native vegetation wherever practicable; and
- e. Support landscape design that incorporates the planning of landscape species indigenous to the part of the shire in which they are being planted;

##### Controls – Private Open Space for Multi Dwelling Housing, Residential Flat Buildings and Tourist and Visitor Accommodation

- i. Each dwelling will have access at ground level to a court yard with a minimum area of 40m<sup>2</sup>, a minimum dimension of 4m and a maximum gradient of 1:10;
- ii. Where dwellings and entries are located entirely above ground floor, Council may consent to the provision of private open space by way of a balcony. To be considered as private open space, balconies must contain a minimum area of 25m<sup>2</sup> and a minimum width of 2.5m;
- iii. Private open space must be directly accessible from a living area; and
- iv. Where practicable, private open space is to be located to the north or east of the dwelling and is required to have appropriate orientation and provisions to allow for winter sun and summer shade.

Comment: Each unit is provided with two private open space areas at both the front and rear of each building. At least one of these spaces meets the minimum area and dimension requirements.

##### Controls –Landscaping for Multi Dwelling Housing, Residential Flat Buildings and Tourist and Visitor Accommodation

- i. Landscaped open space comprising landscaped areas and private open space is to be provided for each dwelling in accordance with Table 4.3; and
- ii. The landscaped open space requirements in (i) are not required for development comprising only backpackers accommodation, bed and breakfast accommodation, farm stay accommodation or hotel or motel accommodation.

- iii. At least 75% of the landscaped open space area must be covered by pervious surfaces that are defined as landscaped areas, such as lawn or landscaping.
- iv. Development applications for multi dwelling housing, residential flat buildings or tourist and visitor accommodation are to be supported by landscaping plans detailing all proposed private open space areas and landscaped areas and shall detail the main structures on the site (including buildings, car parks, fences, retaining walls, surfacing materials and the like), any existing trees to be retained and all proposed plantings (including common names, botanical names, numbers and mature heights).

<b>Table 4.3 – Landscaped Open Space Requirements for Multi Dwelling Housing, Residential Flat Buildings and Tourist and Visitor Accommodation</b>	
<b>Dwelling size</b>	<b>Minimum landscaped open space area per dwelling (note control (iii) in calculating open space requirements)</b>
<b>&lt;60m<sup>2</sup> total dwelling GFA*</b>	<b>50m<sup>2</sup></b>
<b>60m<sup>2</sup> - 85m<sup>2</sup> total dwelling GFA*</b>	<b>70m<sup>2</sup></b>
<b>&gt;85m<sup>2</sup> total dwelling GFA*</b>	<b>90m<sup>2</sup></b>

\* Balconies, courtyards, driveways and required car parking spaces are not included in the total dwelling GFA calculations

Comment: The application seeks consent for 25 dwellings in excess of 85m<sup>2</sup> and therefore requires 2250m<sup>2</sup> (25 x 90) of Landscaped Open Space. The application provides 2399m<sup>2</sup> and is fully compliant.

75% of the required Landscaped Open Space (75% of 2250 = 1687.5m<sup>2</sup>) is required to be deep soil planting, however the application only provides 654m<sup>2</sup> and therefore is non-compliant with this design element. The applicant has provided the following justification for the non-compliance:

*The design approach proposed to achieve the requisite flood planning levels is such that a substantial portion of the communal and private open space is provided on the podium level. This level will include substantial landscaping in the form of planter boxes and the like. The DCP planning objectives regarding open space provision related to ensuring that dwellings are provided with open space which:*

- *is usable and meets with the requirements of future residents;*
- *maximises liveability and amenity; and*
- *is an integral component of the development.*

*As is evidenced in the landscape plans for the project, the development provides for pleasant and usable open spaces for all units. Furthermore, the design approach adopted provides for all vehicles to be removed from the ground level of the development. This results in a substantially improved residential amenity than would be provided if cars were also accommodated at ground level.*

For the above reasons, the proposed variation to this control is considered to warrant Council's support.

*H. Element - Vehicular Access and Parking*

*Objectives*

- a. Provide adequate on site car parking for development;*
- b. Ensure car parking is designed in accordance with the current Australian Standard 2890 (Parking Facilities).*
- c. Ensure car parking areas include adequate space and provision for vehicles to manoeuvre safely on site;*
- d. Ensure site accesses have adequate sight distances and are designed to ensure that all vehicles are able to safely enter and exit the site and maintain the safety and integrity of the road network; and*
- e. Ensure streetscape amenity, character and utility is maintained.*

*Controls – Car parking*

- i. On site car parking for development is to be provided in accordance with Table 4.4;*
- ii. At least one of the required car parking spaces is to be a covered car parking space and located in accordance with Control Element – Garages and Carports; and*
- iii. Car parking provided in association with the residential accommodation specified in Table 4.4 must not be located forward of the building line or setback unless it can be demonstrated that such car parking will be suitably screened along the street frontage.*

<b>Table 4.4 – Car Parking for Residential and Tourist Uses</b>	
	<b>Car Parking</b>
<i>Dwelling Houses</i>	2 spaces per <i>dwelling</i> *
<i>Secondary Dwellings</i>	Nil
<i>Dual Occupancies</i>	2 spaces per <i>dwelling</i> *
<i>Semi-detached Dwellings</i>	2 spaces per <i>dwelling</i> *
<i>Attached Dwellings</i>	2 spaces per <i>dwelling</i> *
<i>Multi Dwelling Housing and Residential Flat Buildings</i>	1 space per <i>dwelling</i> where total GFA of <i>dwelling</i> is less than 60m <sup>2</sup> . 1.5 spaces per <i>dwelling</i> where total GFA of <i>dwelling</i> is between 60m <sup>2</sup> and 85m <sup>2</sup> . 2 spaces per <i>dwelling</i> where total GFA of <i>dwelling</i> is greater than 85m <sup>2</sup> . Plus 1 additional space per 5 <i>dwellings</i> for visitor parking.
<i>Shop top housing</i>	Dwelling requirement plus shop requirement

Comment: The application seeks consent for 25 dwellings all in excess of 85m<sup>2</sup>. This requires the provision of 50 spaces for the dwellings (2 spaces per dwelling) plus five visitor spaces (1 space per 5 dwellings). This results in a total car parking requirement of 55 spaces. The application as submitted provides 56 spaces and therefore fully complies with this control.

Further detail is provided under clause 3.19 above.

*I. Element - Overlooking and Privacy*

*Objectives*

- a. Ensure buildings do not unduly affect existing or future development on adjoining properties by impinging on privacy or obstructing views; and*
- b. Provide visual privacy for internal and external spaces;*

Comment: When considering the fact that adjoining Lots, if rezoned will be required to fill to RL 2.7m AHD and that the proposed development is setback from all boundaries, then the potential privacy impacts created by the proposal are deemed to be reasonable.

*J. Element - Solar Access*

*Objectives*

- a. Ensure new dwellings have adequate direct sunlight to living areas (living rooms, lounge rooms, kitchens, dining rooms and the like) and private open space; and*
- b. Ensure developments do not significantly overshadow living areas and the private open space of adjacent dwellings and areas of foreshore open space.*

*Controls – Dual Occupancies, Semi-attached Dwellings, Attached Dwellings, Multi Dwelling*

*Housing, Residential Flat Buildings and Tourist and Visitor Accommodation*

- i. Dwellings are to be orientated with the main indoor and outdoor living spaces and major window areas facing towards the north and east;*
- ii. The windows of living areas of dwellings and private open space facing north, north east or north west must receive at least three hours of direct sunlight between 9.00am and 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice);*
- iii. The solar access requirements in (i) and (ii) are not required for development comprising only backpackers accommodation, bed and breakfast accommodation, farm stay accommodation or hotel or motel accommodation.*
- iv. New buildings must maintain at least three hours of direct sunlight to the windows of living areas that face north, north east or north west for existing adjacent dwellings and their areas of private open space between 9.00am and 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice);*
- v. Where existing overshadowing by buildings and fences does not provide the required amount of direct sunlight to existing adjacent dwellings and their areas of private open space as required in (iii), new buildings must not result in an unreasonable reduction of existing direct sunlight to adjoining dwellings;*
- vi. Buildings are to be designed, wherever practicable, to include a north or west facing roof where a solar hot water system or collector can be installed*
- vii. New buildings must not result in overshadowing of beaches or adjoining public foreshore open space before 3.00pm (Australian Eastern Standard Time) on 21 June (Winter Solstice) or 6.30pm (Australian Eastern Daylight Saving Time) on 21 December (Summer Solstice).*

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Comment: Each unit is provided with private open space and living areas on the northern or eastern side of dwelling. The development incorporates roof areas suitable for the installation of solar panels.

Given the surrounding land uses, the location of the site relative to the adjoining properties and the setback of all dwellings from the property boundaries, no adverse overshadowing impacts are envisaged.

### M. Element - Adaptable Housing

#### Objectives

- a. *Ensure that residential development is designed such that increased opportunities exist for people with limited mobility to reside in the broader community.*

#### Controls

- i. *At least 10% of all dwellings in an attached dwelling, residential flat building or multi dwelling housing development containing 10 or more dwellings must be designed in accordance with Australian Adaptable Housing Standard (AS 4299-1995). Where this results in a fraction then it shall be rounded to the nearest whole number with 0.5 being rounded down; and*
- ii. *Car parking and garages allocated to dwellings built to the Australian Adaptable Housing Standard (AS 4299-1995) must comply with the dimensions specified in the Standard.*

Comment: As illustrated in Architectural Plans, Units 13, 14 & 15 are designed to be adaptable in accordance with the provisions of AS 4299-1995. In addition, the garages to Units 13 & 15 are compliant with the requirements of AS 2890.6 Off-street Parking for People with a Disability.

### N. Element - Minimum Lot Area

#### Objectives

- a. *Ensure that lot area for different forms of residential accommodation are suitable to provide for the desired residential land use in a manner that is compatible with the provision of required services and amenity outcomes and neighbourhood character; and*
- b. *Provide a clear indication of the potential forms of residential accommodation that a land parcel may accommodate.*

#### Controls

- i. *Except as provided for under element O, development must*

Table 4.6 - Minimum Lot Areas for Residential Accommodation	
Type of Residential Accommodation	Minimum Lot Area
<i>Dwelling house</i>	450m <sup>2</sup> 550m <sup>2</sup> - corner lots
<i>Dual occupancy</i>	450m <sup>2</sup> - attached 600m <sup>2</sup> - detached
<i>Semi-detached dwelling (per dwelling)</i>	300m <sup>2</sup>
<i>Attached dwelling (per dwelling)</i>	300m <sup>2</sup>
<i>Multi dwelling housing</i>	1000m <sup>2</sup>
<i>Residential flat building</i>	1000m <sup>2</sup>

Comment: The subject Lot is 4047m<sup>2</sup> in area which is fully compliant with the above control.

### **Conclusions**

The proposed development has been assessed and consideration has been given to all the relevant matters listed in Section 79C of the Environmental Planning and Assessment Act 1979, including the provisions of the Ballina Local Environmental Plan 2012, Ballina Shire Development Control Plan 2012 and submissions made in response to the exhibition and notification of the proposed development.

The key issues for consideration in the determination of this development application are:

- Visibility from the street
- Flood Planning

As referred to in various sections of the above report, the subject development is required to fill up to 1.95m above the existing ground level. This results in a development which will appear as being in excess of 10m above the existing ground level. However, if the adjoining lands are developed, they will also be filled to RL 2.7m AHD which will assist in softening the visual impact created by the proposal. What Council must be comfortable with, is the visual impact created by the proposal as submitted.

Having regard for the outcomes of the assessment undertaken, Council has the following options with regard to determining the subject application:

- Option One - That Council approves the development application subject to standard conditions of consent.
- Option Two - That Council refuses the development application on the basis of the development's visual impacts on the streetscape.

Option One is recommended on balance, as the matters identified in the report are being, or can be, addressed as the development proceeds.

### **RECOMMENDATIONS**

That DA 2014/377 to undertake the erection and Strata Title subdivision of a multi dwelling housing development comprising 25 two storey dwelling units above basement car parking and associated works at Lot 1 DP 522558 No. 6 Burns Point Ferry Road, West Ballina be **APPROVED** subject to standard planning, building and engineering conditions of consent.

### **Attachment(s)**

1. Locality Plan
2. Submissions
3. Plans of Development



### **8.3 Commercial Use of Public Reserves - Adjoining Properties**

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### **8.3 Commercial Use of Public Reserves - Adjoining Properties**

**Delivery Program** Strategic Planning

**Objective** To assess how Council wishes to manage the use of public reserves by immediate neighbours for commercial purposes.

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#### **Background**

Council has a Commercial Use of Footpaths policy which applies to the use of Council public roads for small scale commercial activities such as street vending and footway restaurants (alfresco dining). The policy outlines the legislative framework, approval process, design requirements and standard conditions of operation.

The general aims of the policy are to stimulate the commercial centres, promote economic activity, ensure safe pedestrian access and to provide consistent assessment criteria against which proposals are assessed.

Council also has a Commercial Activity on Public Land Policy which deals with commercial activities such as boot camps, surf schools, etc on Council owned or controlled land.

Council is currently considering a development application (DA), which includes a request for an alfresco dining area to be established on a Crown reserve, which adjoins a shop in the Ballina town centre. The application seeks consent to use the existing shop as a refreshment room and to open it onto Captain Cook Park and to provide an alfresco area in the park immediately adjoining it.

The submission of the DA follows discussion between the applicants and the Council's Reserve Manager about the occupation of the reserve area on a license / lease basis.

The aim of this report is to deal with the assessment criteria that should be considered for the use of the reserve. It does not address the determination of the DA as that will most likely be dealt with under delegated authority, or possibly reported to Council dependent upon the outcomes from this report.

#### **Key Issues**

- Conflicts between commercial and public use of Council land
- Precedents

#### **Information**

The opportunity to use public reserves for small scale commercial use is somewhat similar in impact to that use occurring on public roads. The benefits of the current Commercial Use of Footpaths Policy have been identified as:

### 8.3 Commercial Use of Public Reserves - Adjoining Properties

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- Create vibrant and stimulating commercial centres where the public is encouraged to shop and dine in an outdoor environment and take advantage of the favourable local climate
- Enhance and promote the established central business areas of the Shire, particularly those of Ballina, Lennox Head, Alstonville and Wardell as focal shopping, business and social places
- Provide clear guidelines for applicants, staff, Council and the community with respect to Council's expectations in relation to street vending and the establishment of footway restaurants
- Ensure that pedestrian and traffic safety is not compromised by the activities of street vending and/or footway restaurants
- Ensure equitable access for all, including people with disabilities
- Promote economic activity by providing opportunities for alfresco dining and for the display of goods and merchandise on footpaths.

To assist with enabling these uses to occur, Council has the following guidelines in the Commercial Use of Footpaths policy:

- Small scale commercial use, such as alfresco dining allowed
- Area limited to 30m<sup>2</sup> per operator
- Operated in conjunction with adjoining use
- No permanent enclosures or structures
- Provides safe and free passage for pedestrians
- No loss of car parking

The Commercial Use of Footpaths policy also includes the following statement:

*There is no additional car parking requirement to be provided from the increase in floor area used by the business. There are also no Section 94 contributions or Section 64 charges due to increased demand on infrastructure from the increase in the business floor area.*

This clause reflects that the use of the footpath is temporary in nature and subject to a licence from Council.

In the case of the current application, the applicant is seeking a private agreement to operate in a manner that is consistent with general community expectations for the reserve.

In the main, the business operation will be on adjoining commercial land and direction is sought from the Council whether there is support to assess the application in a way similar to those contained in the Commercial Use of Footpaths policy.

In this respect the main items for consideration with the current application are:

1. Is the use of this public reserve for small scale business use acceptable?
2. Should the Council waive the requirement for the additional car parking to be provided by the development (on-site or by monetary contribution) due to the increase in demand created by the increased floor area?

### **8.3 Commercial Use of Public Reserves - Adjoining Properties**

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3. Should the Council waive the requirement for Section 94 contributions (roads) and/or Section 64 charges (water and sewer) due to the increase in demand created by the increase in floor area?

Benefits of favourably considering the application with regard to the above points are:

- Establish consistency with the Commercial Use of Footpaths policy
- Stimulate the use of public space where the use is compatible with the public space
- Promote economic activity in the business area and
- Obtain an appropriate financial return from any licence fee.

The drawbacks of adopting the above points are:

- The demand for car parking in the business centres would be marginally affected
- Council will forgo financial returns from Section 94 and Section 64 payments, assuming the development did proceed, if it had to pay contributions
- There will be exclusive use of public land for a business use while the business is operating.

#### **Sustainability Considerations**

- **Environment**  
Any business use could potentially have a detrimental impact on the public land.
- **Social**  
The small scale commercial use of public reserve by a private business means part of the public area would be occupied for the exclusive use of a commercial business during their business hours. The use must be compatible with any plan of management for the reserve and therefore consistent with the identified/planned use of the reserve.
- **Economic**  
The lease or licence would require an annual fee.

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

Any area used exclusively for a commercial use would require the operator to provide all necessary insurances, along with paying an annual fee.

The opportunities for this type of small scale commercial use of public reserves are limited and it is anticipated only a small number of applications would be received.

There are adequate resources available to deal with any application and licensing arrangements.

### Consultation

To date there has been no consultation undertaken as the matter is being considered to a limited degree in the context of a single application.

### Options

1. Do not allow the use of public reserves for business expansion and use by adjoining businesses;
2. Allow the use of public reserves for business expansion, subject to normal development assessment guidelines which include car parking associated with an increase in floor area, Section 94 contributions and Section 64 charges due to increased demand on infrastructure; or,
3. Allow use of public reserves for business expansion, with any assessment to be consistent with the Commercial Use of Footpaths Policy and not require additional car parking, Section 94 contributions or Section 64 charges.

In support of option one are the concerns over precedent along with the fact that in this case the building owner will be undertaking renovations to their building that will provide frontage to the reserve. This means there will most likely always be an expectation that they will have access to the use of the reserve for their operations. This is significantly different to footpath dining where the business has always had access to the road reserve, as that represents the legal entrance to the business.

Similarly with footpath dining, if in the future, a Council does not want to continue with the policy, possibly due to overcrowding of footpaths, concerns from pedestrians etc, the business owner has typically not modified their building to allow access to the footpath dining area, as again that is the legal entrance to their business.

In this case the business will be actually refurbishing their building to allow entrance to the reserve and therefore incurring expense in doing this. This then creates that sense of moral obligation for Council to permanently allow access to the reserve, albeit that footpath dining licences are only issued for a set period of time.

In support of option two is the recognition that Council wants to encourage business development, particularly in the western end of River Street, however as the building requires modifications to access the reserve area then developer contributions should be charged.

This would appear to be unreasonable, or inconsistent with the existing Commercial Use of Footpaths policy, assuming that no permanent structures will be placed on the crown reserve area and the use of that area would be subject to a Council licence.

In support of option three is again the recognition that Council wants to encourage business development and the use of the reserve is subject to an annual licence fee, there would be consistency with the Commercial Use of Footpaths Policy and no permanent fixtures are allowed on the public reserve.

### **8.3 Commercial Use of Public Reserves - Adjoining Properties**

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Options one and three are considered to be the most relevant options and the recommendation that follows is to support option three, primarily with a focus on generating activity in the town centre, especially the western end of River Street.

Finally any use will need to be consistent with the Captain Cook Master Plan, where Council is trying to encourage use of this reserve. This report also acknowledges Council is Reserve Trust Manager of this location, however rather than reporting it to a Reserve Trust meeting, the preference was to obtain an overall policy position, from a Council perspective.

#### **RECOMMENDATIONS**

1. That Council provides in principle support for the use of Council owned or control public land for commercial purposes within the defined commercial centres, by adjoining properties, subject to the following minimum provisions:
  - a) the use is consistent with any plan of management applying to the land
  - b) no permanent structures are to be placed on the land
  - c) public access is to be maintained
  - d) a licence for use of the land is to be entered into with Council, with the licence including agreed lease fees and minimum insurance standards
  - e) the assessment of any car parking provisions and developer contributions payable for the public land component of a development application (i.e. Section 94 or Section 64 contributions) is to be consistent with the provisions applied in respect to the current Commercial Use of Footpaths Policy (i.e. waived) due to the non permanent nature of the use of the public land
  - f) along with any other relevant provisions identified in Council's Commercial Use of Footpath's Policy that may be relevant to this type of activity, as determined by the General Manager in the interim, until Council adopts a formal policy to manage these applications as per point two below.
2. That the Council receive a further report providing either a new policy or amendments to existing policies to reflect the sentiments expressed in point one.
3. That in respect to the current development application relating to Captain Cook Park the General Manager is authorised to allow the assessment of that application to be determined, subject to consideration of the various provisions outlined in point one.

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

Nil

## **8.4 Compliance Work Plan - Six Month Update**

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### **8.4 Compliance Work Plan - Six Month Update**

**Delivery Program** Development Services

**Objective** To provide Council with an update on the progress of the adopted Compliance Work Plan for 2014/15

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#### **Background**

At the June 2014 Ordinary Meeting, Council adopted a Compliance Work Plan for the 2014/15 financial year. This report provides a half yearly update report on that Work Plan.

#### **Key Issues**

- Level of Compliance
- Results achieved

#### **Information**

The Compliance Work Plan nominated four areas as the priorities for this financial year as they were considered to be the areas of highest risk or potentially lowest levels of compliance.

These priority areas are:

1. *Audit of Major Developments within the Shire (Ongoing Program)*
2. *Audit of Identified Development Consents (Ongoing Program)*
3. *Review of all Development Consent approvals issued within the Russellton Industrial Estate.*
4. *Review of Arterial Road Signage.*

In addition to these areas of identified priority, the Compliance Team respond to customer requests received from members of the general public as well as from Council employees and State and Federal Government Agencies.

In relation to the specific items in the Compliance Work Plan, compliance investigations to date have revealed that overall compliance with conditions of consent is high.

Of the nominated priority areas within the Compliance Work Plan, Council is provided with the following updated advice:

1. *Audit of Major Developments within the Shire (Ongoing Program)*

Major Developments are defined as developments consisting of five or more units/parcels of land/dwellings as well as all developments within areas of high environmental significance.

This program originally commenced in the 2008/09 financial year with an audit of 2006 development applications. As this program now covers over five separate years, it is intended that each audit year will be reported separately.

## **8.4 Compliance Work Plan - Six Month Update**

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Of the 65 major developments from 2006, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 61 of these 65 major developments were in compliance with the issued development consents.

With respect to the remaining four consents, all developments have been inspected and require further follow up inspections. These developments, whilst listed as separate development applications, relate to one rural subdivision in East Wardell, where the landowner has been placed into receivership.

Compliance is working with the receivers and the new landowners to bring the environmental restoration in line with the approved revegetation management plans approved for each development. There is a condition of consent that requires ongoing revegetation of the sites, which will take place for at least the next three years or until the objectives of the revegetation management plans are achieved.

Of the 89 major developments from 2007, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 86 of these 89 major developments were in compliance with the issued development consents.

Regarding the remaining three consents:

- One consent has lapsed
- One consent has not been commenced and is due to lapse in the week prior to Christmas and
- One consent has recently commenced, just prior to the consent lapsing.

Of the 77 major developments from 2008, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 72 of these 77 major developments were in compliance with the issued development consents.

Regarding the remaining five consents:

- Four developments have been inspected and require further follow up inspections. These developments have all commenced however works on site have not been completed at the time of the last inspection
- One development has not commenced and has lapsed.

Of the 43 major developments from 2009, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 29 of these 43 major developments were in compliance with the issued development consents.

## 8.4 Compliance Work Plan - Six Month Update

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Regarding the remaining 14 consents:

- Eight major developments have been completed to Council's satisfaction and have been finalised
- Six major developments have been inspected and require further follow up inspections. These developments have all commenced however works on site have not been completed at the time of the last inspection;

Inspections have now commenced for the 2010 financial year development consents. Of the 82 major developments, Council is advised that:

- 73 developments have been inspected
- 36 developments have been completed to Council's satisfaction and have been finalised
- 15 developments have not commenced at the time of inspection
- 21 developments have been inspected and require further follow up inspections. These developments have all commenced however works on site have not been completed at the time of the last inspection
- One development has not commenced and has lapsed; and
- Nine developments have not been inspected.

It is planned to commence auditing the 2011 financial year major development consents by March 2015.

### 2. *Audit of Identified Development Consents (Ongoing Program)*

Identified Development Consents are defined as all approvals issued by Council *EXCEPT* those identified as either (a) Major Developments or (b) Consents that require further approvals from Council or an accredited certifier, (e.g. Construction Certificates, Occupation Certificates, Subdivision Certificates, Food Inspection Certificates) and therefore have a 'built in' mechanism or stage within the consent where compliance with conditions are checked.

This program originally commenced in the 2008/09 financial year with an audit of 2006 development applications, which included applications that had been determined or withdrawn. This program has continued on to audit 2007, 2008, 2009 and 2010 development applications.

Of the 143 identified developments from 2006, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 142 of these 143 identified developments were in compliance with the issued development consents.

The remaining development has been inspected and requires further follow up inspections. This development relates to a business within Newrybar that has recently undertaken civil works to create a car park and improve Council's road infrastructure. Further inspections are required to bring the On-Site Sewage Management System and business into compliance with the approved development consent.



## **8.4 Compliance Work Plan - Six Month Update**

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Of the 131 identified developments from 2007, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 130 of these 131 identified developments were in compliance with the issued development consents.

The remaining development relates to a business within Wardell that requires reports certifying all building works undertaken to the building. Compliance action is currently underway to address this non-compliance and a formal Order has now been served on the landowner.

Of the 131 identified developments from 2008, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 105 of these 131 identified developments were in compliance with the issued development consents. Council is advised that since the June 2014 meeting:

- 14 developments have been completed to Council's satisfaction and have been finalised
- Seven developments have been inspected and require further follow up inspections. These developments have all commenced however works on site have not been completed at the time of the last inspection
- Five consents have lapsed.

Of the 99 identified developments from 2009, all developments have been inspected for compliance with the terms and conditions of the development consent. As reported to Council at the June 2014 meeting, 95 of these 99 major developments were in compliance with the issued development consents.

Of the remaining four developments:

- Three identified developments have been inspected and require further follow up inspections. These developments have commenced however works on site have not been completed at the time of the last inspection
- One identified development has been completed to Council's satisfaction and has been finalised.

Inspections have now commenced for the 2010 financial year development consents. Of the 147 identified developments, Council is advised that:

- 145 developments have been inspected;
- 124 developments have been completed to Council's satisfaction and have been finalised;
- Nine developments have not commenced at the time of inspection;
- 12 developments have been inspected and require further follow up inspections. These developments have all commenced however works on site have not been completed at the time of the last inspection; and
- Two developments have not been inspected.

It is planned to commence auditing the 2011 financial year development consents by March 2015.

## 8.4 Compliance Work Plan - Six Month Update

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### 3. *Review of all Development Consent approvals issued within the Russellton Industrial Estate;*

This is a carryover program from the Compliance Work Plan for 2013/14.

Compliance staff have written to all landowners and tenants within the Russellton Industrial Estate and have conducted preliminary inspections for illegal parking and road obstructions within the Russellton Industrial Estate, resulting in approximately 15 warnings being issued.

The desktop audit of all recent development consents has now been completed and site inspections to assess the compliance with issued development consents will commence in January 2015.

### 4. *Review of Arterial Road Signage.*

This is a carryover program from the Compliance Work Plan for 2013/14.

This programme is currently underway and it is expected that all signage will have been inspected by mid January 2015. Following the completion of these inspections, these records will be cross referenced against the existing Council ledgers to create an up to date electronic map and record of all existing arterial road signage.

It is envisaged that this programme will be completed by the end of March 2015.

### *Local Court Proceedings*

Some matters investigated by the Compliance Unit result in the commencement of legal proceedings, either in the Ballina Local Court or, where circumstances warranted, the Land and Environment Court of New South Wales. Any legal action through the Courts is undertaken in line with the provisions of Council's *Enforcement Policy*.

This current financial year, no new Court prosecutions have been commenced or finalised.

### *Legal Notices*

In addition to any Court matters, the Compliance Unit issues legal Notices for any identified breaches and non-compliances identified. These legal Notices are the commencement of the process to remedy identified breaches and non-compliances within Ballina Shire.

This current financial year, the Compliance Unit has:

- Issued 59 formal Notices for identified breaches and non-compliances; and
- Finalised 13 formal Notices, where the matter has been resolved to Council's satisfaction.

## 8.4 Compliance Work Plan - Six Month Update

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### *Liquor Licensing Issues*

In addition to the above matters, the Compliance Unit also assess and make submissions to the Office of Liquor, Gaming and Racing on liquor licence applications lodged within the Ballina Shire in line with Council's adopted

### *Liquor Licence Application Policy*

During the current financial year, the Compliance Unit has dealt with 14 liquor licence applications.

### **Sustainability Considerations**

- **Environment**  
Compliance with issued development consents enhances the protection of the built and natural environments.
- **Social**  
Not applicable
- **Economic**  
Compliance with development conditions results in a more level playing field for business operators.

This program aims to efficiently utilise the resources allocated for enforcement activities.

### **Consultation**

This report has been provided for public information.

### **Options**

The options are to note the contents of the report or to amend the identified compliance project work program where Council believes there may be higher priorities that need to be addressed. The recommendation is to note the report as Council has previously endorsed the compliance work plan for 2014/15 and the priorities are considered to reflect the highest priorities for the broader community.

### **RECOMMENDATION**

That Council notes the contents of this report on the status of the Compliance Work Plan for 2014/15.

### **Attachment(s)**

Nil

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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### **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

**Delivery Program** Development Services

**Objective** To recommend that Council endorse the commencement of legal proceedings for the unauthorised clearing of vegetation on Dalmacia Drive Council Reserve

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#### **Background**

On 25 June 2014, Council received a complaint from a local resident in relation to overgrown vegetation at the Dalmacia Drive Public Reserve.

This complaint was investigated that same day and it was observed that a large area of Dalmacia Drive Public Reserve had been cleared, with whipping, mowing and pruning of vegetation having been recently carried out without the prior consent of Council.

This Public Reserve is approximately 4.8 hectares in size and consists primarily of regenerating and remnant sub-tropical rainforest and a portion of cleared land surrounding the unnamed creek that flows through the Reserve. Following the unauthorised clearing works, it was evident that additional areas of the Dalmacia Drive Public Reserve had been damaged to create a larger cleared area than had previously existed within the Reserve.

On Friday 4 July 2014, Council's Rangers had a conversation with the owner of 18 Cerreto Circuit, Wollongbar, a property adjoining the Council Reserve. During the conversation, the owner made admissions to the mowing, clearing of vegetation, construction of a dam and earthen bridge over a creek and indicated that he did not seek the formal consent of Council to undertake these works.

On 15 July 2014, Council's Natural Resources Officer inspected the Dalmacia Drive Public Reserve and observed:

- (a) vegetation clearing works from the regenerating rainforest and riparian zone
- (b) vegetation waste piles on the reserve
- (c) stumps from chain sawed trees
- (d) dumped logs in the creek
- (e) soil dumped in the creek blocking the flow of the creek
- (f) rocks stockpiled within the Creek and
- (g) a cubby house in tree, sand and other garden effects on the reserve adjacent to the dwelling located at 18 Cerreto Court, Wollongbar.

There were also numerous excavator tracks running over the reserve on both sides of the creek where the clearing was undertaken and around the rear of the house and the side of the house of 18 Cerreto Court, Wollongbar. The tracks showed the excavator entered from Cerreto Circuit onto the public reserve between 18 and 20 Cerreto Circuit, Wollongbar and filled the creek with soil to create a land bridge and the tracks were evident on the south side

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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of the creek below Dalmacia Drive where further clearing had been undertaken.

Much of the groundcovers had been stripped by the clearing on the reserve and within the riparian zone of the creek causing erosion concern for the creek.

On 17 July 2014, the adjoining owner was provided with a written direction to immediately cease all works including earthworks, vegetation clearing works, storage works, construction works and vehicle access within the Dalmacia Drive Public Reserve, Wollongbar located to the rear and side of 18 Cerreto Circuit, Wollongbar.

On 27 July 2014, a written response was received from the owner via email, inter alia:

*"...we have ceased any works in Dalmacia Drive Public Reserve and apologise for any inconvenience or damage that may have been caused. The work was carried out in order to improve public access across Dalmacia Drive Public Reserve, which had become overgrown. I have maintained the northern side of the creek for fifteen years and recently (within the last year) I have also taken control of maintenance of the southern side of the creek. I am also repairing a rotten timber retaining wall on my property, replacing it with a rock wall, which is why I have used the Council reserve as access for material deliveries, which has caused some damage to the turf that I maintain. I am confident that with top dressing and overseeding the turf will be back to good condition in no time at all and as I maintain the turf I take full responsibility for its repair".*

This report examines whether Council wishes to take any further action. An aerial map of the site is attached.

### **Key Issues**

- Unauthorised clearing of Public Reserve
- Unauthorised earthworks and damming of Creek within Public Reserve
- Works undertaken without Council consent

### **Information**

The Dalmacia Drive Public Reserve, being Lot 105 DP 807798, is 4.847 hectares in size and is an urban bushland consisting of regenerating and remnant sub-tropical rainforest in the riparian zone of an unnamed perennial creek flowing into Maguires Creek.

The sub-tropical rainforest is an endangered ecological community listed as "Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions" under the *Threatened Species Conservation Act 1995*.

The rainforest to the south is one of the urban remnants of the "Big Scrub" and is of high conservation value.

The *Wollongbar Rainforest Reserve Action Plan* July 2005 identifies part of the cleared and impacted area as that within Zone D of the Action Plan.

The methodologies and damage to the reserve are completely inconsistent and appear to be in breach of the plans requirements for restoration.

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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Council's Civil Services Natural Resource Officer conducted a re-inspection of the public reserve on Friday 25 July 2014 and confirmed the following:

- 1) Three separate cleared areas of vegetation with the ground covers and canopy cleared consisting of:
  - a) Cleared Area 1 to south (red hatching): 551.4m<sup>2</sup>
  - b) Cleared Area 2 to west (red hatching): 83.6m<sup>2</sup>
  - c) Cleared Area 3 to north (red hatching): 66m<sup>2</sup>

A total of 701<sup>2</sup>m as shown on the attached Map in red hatching;
- 2) An area under canopy whereby the groundcovers had been cleared so that the soil was exposed up to the creek. This consisted of:
  - a) Understorey Cleared Area 4 to north: 247.6m<sup>2</sup> (Blue Hatching)
- 3) A vegetation stockpile on the south side to cover an area of 53m<sup>2</sup> within the Cleared Area 1 to the south. This stockpile was up to 1.5 metres in height at the western end;
- 4) A vegetation stockpile within cleared area 3 consisting of a callistemon that had been removed and chopped up. It contained a 30cm diameter stump, onsite and the debris pile was 7m long, 1.5m wide and 1m high.
- 5) Council's Natural Resource Officer also observed that there was a cleared area of the creek itself where all vegetation, including groundcovers and stabilising species had been removed and/or buried within the vicinity of the unnamed creek. This vegetation appears to have been then deposited into the creek and covered by the soil scraped from the immediate area resulting in the blocking the creek and the creation of a land bridge over the creek.

This area of unapproved vegetation removal and dumping is shown on the attached Map in yellow.

The total of all the cleared area of the public reserve was 960 m<sup>2</sup>, including creek side vegetation mapped yellow.

### ***Vegetation Community within Dalmacia Drive Public Reserve:***

Aerial photography indicated vegetation consisting of canopy and or lower strata groundcovers/shrubs existed previously on the cleared areas. This existing vegetation consisted of native vegetation, exotic and weed species, which provided a suitable buffer to the adjacent sub-tropical rainforest.

The Cleared Area 1 to the south (red hatching) provided a buffer of protection to the subtropical rainforest immediately to the east on the clearing edge.

This subtropical rainforest is an endangered ecological community and consisted of Black Bean, Lilli Pilli, Brown Kurrajong, Sally Wattle, Bangalow Palm and Wonga Vine.

The removal of this buffer has opened up the understory of the rainforest exposing light and wind and human access threats to the rainforest.

There was also evidence of native vegetation clearing in the debris pile on the south side of the Reserve.

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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Approximately seven vegetation root balls of tree/large shrub species were visible in the vegetation debris pile and also located outside of the vegetation debris pile as a result from the land clearing.

It is evident that the majority of the vegetation that was located within the vegetation piles was either exotic or weed species, but there is evidence to indicate that a number of native species have also been removed. It also should be noted that the owner left three paw-paw trees uncleared in the cleared area 1 to south.

The vegetation debris pile had deteriorated since its clearing, however many species were still easily distinguishable. The species that were identified as evident from green and or dead leaf and branch structure included the following native species Blue Lilly Pilly (*Syzygium oleosum*), Black Bean (*Castanospermum australe*), Alexandria Palm (*Archontophoenix alexandrae*), Cockspur.

### **Compliance Investigation:**

A review of the background information to the complaint and a separate site inspection has been undertaken which has confirmed the clearing and associated works described above have occurred on the subject Council Reserve.

A review of Council records has revealed that the owner and/or his wife, have been in contact with Council since at least March 2012, when they raised concerns about the upkeep of the Dalmacia Drive Public Reserve.

In an email dated 14 March 2012 to Council it was stated, inter alia:

*"It was once possible to drive a 4 wheel drive through this reserve from Dalmacia Dve to Cerreto Cct" and "It is now impossible to mow on the side of the walking track next to the rainforest reserve as the lantana and weeds have taken over".*

Recently, there have also been a number of telephone requests in relation to the state of Dalmacia Drive Public Reserve. These requests have asked for clearing of the Reserve and then progress onto requesting the removal of vegetation that had been pruned within the Reserve.

The removal of vegetation, whether native or exotic, is prescribed under the provisions of the *Ballina Local Environmental Plan 2012* (BLEP 2012). Specifically, Clause 5.9 of BLEP 2012 states:

### **5.9 Preservation of trees or vegetation**

- (1) *The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*
- (2) *This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

*Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.*

## 8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve

(3) **A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:**

(a) **development consent, or**

(b) **a permit granted by the Council.** (Emphasis Added)

In addition, Chapter 2a Vegetation Management of the *Ballina Shire Development Control Plan 2012* provides additional controls in relation to the removal of vegetation. Part 3 – Development Controls of this Chapter provides that development consent is required for vegetation management works within urban zones.

Vegetation Management Works are defined as:

**vegetation management work** means any activity or work that affects vegetation and includes the undertaking of any of the following actions with regard to vegetation: burning, clearing, cutting down, destroying, felling, injuring, killing, logging, lopping, poisoning, pruning, removing, ringbarking, slashing, thinning, topping, digging up or uprooting.

With respect to vegetation management works, Part 3 states:

### **Part 3 Development Controls**

#### **3.1 Development Consent Requirements applying to Urban Zones**

##### **3.1.1 Application**

<b>Applies to:</b>	
<i>Location/s:</i>	<i>Zones R2, R3, B1, B2, B3, B4, B6, IN1, SP2, RE1 &amp; RE2.</i>
<i>Development Type/s:</i>	<i>Applications for vegetation management works</i>

##### **3.1.2 Development Control**

*Development consent is required for vegetation management works on land located within an urban zone when the vegetation management works will affect:*

- a) Any tree (either native or non-native) with a height of 6 metres or greater;** (Emphasis Added)
- b) Any tree of the species *Pandanus tectorius* (Screw Pine) with a height of 3 metres or greater and located in the localities of East Ballina, Lennox Head or Skennars Head;**
- c) Any vegetation located on land identified as Significant Urban Bushland on the Significant Urban Bushland Map; and** (Emphasis Added)
- d) Any tree with a height of 3 metres or greater located on land containing an Item of Environmental Heritage as specified in Schedule 5 of the Ballina Local Environmental Plan 2012.**

For the purposes of the Ballina DCP 2012, the area cleared is mapped as Significant Urban Bushland. Given the above, the prior consent of Ballina Shire Council was required prior to the undertaking of the clearing works.



## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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With respect to the damming of the small tributary creek within the Reserve, “earthworks” are defined within the BLEP 2012 as:

**earthworks** means excavation or filling.

In relation to earthworks, Clause 7.2 of BLEP 2012 states:

### **7.2 Earthworks**

- (1) *The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land*
- (2) **Development consent is required for earthworks unless:**
  - (a) **the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or**
  - (b) **the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.** (Emphasis Added)

Given the above, the prior consent of Ballina Shire Council was required prior to the undertaking of the earthworks and damming of the small tributary creek.

With respect to the erection of a retaining wall within the property at 18 Cerreto Circuit, Wollongbar, a check of Council development application records has revealed that at the time of the owner’s submission to Council dated 27 July 2014, it was stated that:

*“I am also repairing a rotten timber retaining wall on my property, replacing it with a rock wall, which is why I have used the Council reserve as access for material deliveries, which has caused some damage to the turf that I maintain”.*

The owner had not lodged any application with Council for these works at that time. Council records indicate that the application for these building works was not lodged until 18 August 2014. This development application was approved by Council under delegated authority on 4 September 2014

Given the above, the prior consent of Ballina Shire Council was required prior to the undertaking of the construction of the retaining wall.

On 18 September 2014, the investigation into this matter was completed with a recommendation that further action should be taken.

### **Sustainability Considerations**

- **Environment**  
The vegetation removal and earthworks identified have had an adverse impact on the environment, given the proximity of the activities to an unnamed Creek and vegetation identified as Significant Urban Bushland on the Significant Urban Bushland Map.
- **Social**  
Not Applicable

- **Economic**  
Not applicable

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

Legal proceedings are generally costly and to minimise costs and to achieve an acceptable outcome to give effect to the Stop Work Notice as served by Council, there are a number of options available.

### **Consultation**

No consultation with any of Council's legal representatives has been undertaken at this time. There has been significant correspondence with the parties involved.

This report has been listed in open Council as all the information within the report is a matter of public record. If the Council needs to debate any potential legal matters, it may be necessary to resolve to move into confidential session.

### **Options**

Council has a number of options as to what form of action, if any, it wishes to take for the clearing of vegetation and associated works within the Dalmacia Drive Public Reserve. These options are more fully outlined in the *Ballina Shire Council Enforcement Policy* originally adopted by Council on 26 November 2009 and endorsed at the December 2013 Council meeting (hereinafter referred to as the "Enforcement Policy").

Council also has to give due consideration to the requirement for a general deterrent to other residents, both within the immediate vicinity and within the Ballina Shire as a whole, that unauthorised works and the removal of vegetation from Council Reserves is not acceptable.

Should Council decide to take minimal action for these unauthorised clearing works within a Council Reserve, it could create an undesirable situation within the local area that may result in similar unauthorised works being undertaken by adjoining residents.

Having given due regard to the considerations for legal action as outlined in Part 3 of the Enforcement Policy and the need for a clear deterrent to the general public, further enforcement action is justifiable against the owner for unauthorised clearing of Dalmacia Drive Public Reserve and the pollution of waters by the depositing of soil into the unnamed creek running through the reserve.

Council currently has five options available in relation to this unauthorised works as identified within the Enforcement Policy. Council's options are:

1. Issue Formal Warnings
2. Issue Penalty Infringement Notices
3. Commence Local Court Criminal Prosecution Proceedings

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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4. Commence Land and Environment Court Criminal Prosecution Proceedings
5. Commence legal proceedings in the Court of appropriate jurisdiction requiring the restoration of the Reserve.

### Option One

Issue Formal Warnings - When viewed in isolation, the service of Formal Warnings is not considered to be a suitable and substantial deterrent for the unauthorised clearing of almost 1,000 square metres of a Council reserve without the prior consent of Council and for the filling of a tributary creek and the commencement of unauthorised building works within 18 Cerreto Circuit, Wollongbar.

### Option Two

Issue Penalty Infringement Notices - The total amount of vegetation that has been removed from Dalmacia Drive Public Reserve is 959.94 square metres as well as the damming of a creek within the Reserve utilising 4.41 cubic metres of soil removed from the Reserve itself.

On this basis, Penalty Notices could be written for the following offences:

1. Development without development consent – individual – other (@\$1,500) for the clearing of vegetation;
2. Pollute Waters – individual – (@\$4,000);
3. Unlawfully remove plant from public place – (@\$220).

There are two other potential offences detected in relation to this clearing activity, however there is no Penalty Notice attached to these offences.

A Penalty Notice could also be issued for the offence of unauthorised construction of a rock retaining wall as works were commenced without the required consent of Council:

4. Development without development consent – individual – other (@\$1,500) for the partial construction of the retaining wall.

Council records indicate that, although the application was not lodged at the time of the commencement of the building works, the owner / applicant ceased work and lodged the application with Council. This application was subsequently approved on 8 September 2014. Any Penalty Notice, if issued, would be purely for the commencement of works without development consent.

The issuing of Penalty Notices in isolation does not require the revegetation of the Council Reserve and payment of any Penalty Notice would not be legally viewed as an admission of guilt, but rather a decision not to challenge the Penalty Notices in Court.

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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### Options Three and Four

Options three and four recommend the commencement of criminal prosecution proceedings for:

- Unauthorised clearing of Dalmacia Drive Public Reserve
- Pollution of Waters with the damming of the Creek running through Dalmacia Drive Public Reserve
- Injure/damage/disturb plant within public place
- Unlawfully remove plant from public place
- Unauthorised construction of a rock retaining wall within 18 Cerreto Circuit, Wollongbar and
- Failure to obtain approval for activity in a public place.

The major difference between these two options is the Court jurisdiction, with the Land and Environment Court being a division of the NSW Supreme Court and having the relevant standing.

In this jurisdiction, any criminal prosecution, if successful, would leave any party subject to a maximum penalty of \$1,100,000, whilst the Local Court jurisdiction would only be able to impose a maximum penalty of \$110,000.

Council would need to also consider the ability of any party to pay any penalty that maybe imposed by the relevant Court. As stated, monetary penalties issued by the Land and Environment Court can be substantial, and this may be the preferred approach as the Council's main aim is to seek a general deterrent for this type of activity.

These options would adequately address the punishment requirements and on successful completion of the proceedings, would provide a general deterrent to the general public for the unlawful clearing of a Council Reserve and the Local Court action is recommended as being commensurate with the level of the offences.

### Option Five

Option five is an avenue for Council to require the owner to provide adequate funding to repair the damage caused to the Dalmacia Drive Public Reserve.

This option provides an avenue to have an appropriate plan prepared and endorsed by the Court, requiring the proper revegetation of the area of identified Significant Urban Bushland within the Reserve and the ongoing maintenance for a period of up to five years to ensure that the works are well established.

### Use of Multiple Options:

There is no legal impediment to Council utilising more than one of the above options to remedy the unapproved activity. When referring to actions within the Land and Environment Court, it is common practice, should sufficient evidence exist, for both criminal and civil proceedings to be commenced for an unlawful activity. Further, Council could utilise three or four options should circumstances require.

The use of multiple options is also consistent with the Enforcement Policy.

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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In this particular instance, the Council would be remiss if more than one option was not considered appropriate, given the need for a pecuniary penalty and remediation action that is considered to be necessary in this matter.

Any decision in relation to this report should be made consistent with previous resolutions.

In April 2012 Council considered a matter involving Verna Wall and Chambers Constructions Pty Ltd and in May 2013 considered the matter involving Jade and Fiona Rose, Karen Wiggins and TCDE Pty Ltd. In these instance, Council was presented with multiple options and after due consideration, resolved to take legal action in the local Court for the identified offences.

The Magistrate found all parties guilty of the offences and issued fines ranging from \$5,700-00 up to \$24,250-00 plus legal costs in each individual case.

The recommendation that follows outlines the preferred course of action which is considered to be a reasonable balance in respect to the options available. The owner's name is Mr Chapman as per the recommendation.

### **RECOMMENDATIONS**

1. That Council obtain legal advice as to the best legal avenue to require Mr Chapman to pay all rehabilitation costs for works to bring Dalmacia Drive Public Reserve back to a suitable condition prior to the unauthorised clearing works being undertaken, including:
  - a) all preparatory works, including the preparation of any required Revegetation Management Plans or the like
  - b) the engagement of appropriate staff to carry out all necessary works in line with any Revegetation Management Plans or the like and
  - c) ongoing monitoring and remedial actions to ensure that the revegetation of Dalmacia Drive Public Reserve is successful.
2. That Council commence legal proceedings to seek a Court Order to ensure the successful revegetation of Dalmacia Drive Public Reserve.
3. That, subject to point four below, Council pursue a Local Court Prosecution against Mr Chapman for the offences of:
  - (a) Unauthorised clearing of Dalmacia Drive Public Reserve
  - (b) Pollution of Waters with the damming of the Creek running through Dalmacia Drive Public Reserve
  - (c) Injure/damage/disturb plant within public place
  - (d) Unlawfully remove plant from public place
  - (e) Unauthorised construction of a rock retaining wall within 18 Cerreto Circuit, Wollongbar and
  - (f) Failure to obtain approval for activity in a public place.

## **8.5 Legal Proceedings - Unauthorised Clearing of Council Reserve**

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4. That Council authorises as an alternative to recommendation three, should sufficient evidence and circumstances permit, the commencement of legal action at the same time and in the same Court referred to in recommendation two, in the event that Council's legal representative is of the opinion that this option is the more appropriate course of action.

### **Attachment(s)**

1. Aerial Site Map

## 8.6 Development Consent Statistics - November 2014

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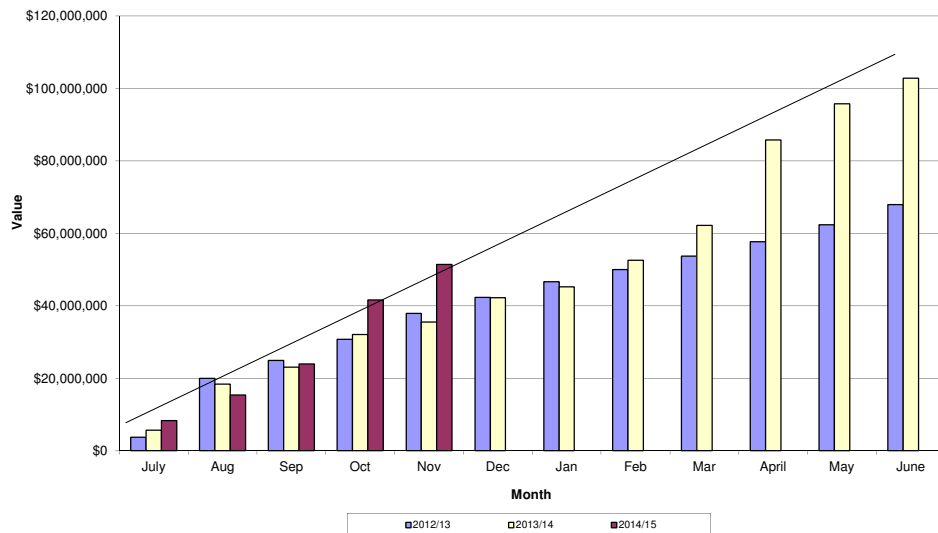
### 8.6 Development Consent Statistics - November 2014

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During the period of 1 November 2014 to 30 November 2014 the Development and Environmental Health Group issued Development Consent comprising of:

<b>Number of Applications</b>	<b>Value of Work</b>
45 Other Building Related	\$ 2,367,000
17 Dwelling/Duplexes/Residential Flat Buildings	\$ 7,452,000
5 General Developments	\$ 0
<b>Total Value</b>	<b>\$ 9,819,000</b>

The following chart details the cumulative consent figures for 2014/15 as compared to 2013/14 and 2012/13. A trend line has also been provided for 2013/14 to assist in the comparison.



### RECOMMENDATION

That Council notes the contents of the report on development consent statistics for 1 November 2014 to 30 November 2014.

### Attachment(s)

Nil

## 8.7 Development Applications - Works in Progress - December 2014

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### 8.7 Development Applications - Works in Progress - December 2014

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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
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	Being Assessed
2012/291	23/07/2012	Newton Denny Chapelle	To undertake a staged 47 Lot Community Title residential subdivision with lots ranging in 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, West Ballina	Being Assessed
2013/446	15/11/2013	Newton Denny Chapelle	To undertake a boundary adjustment subdivision, demolition of existing dwelling house, erection of residential accommodation comprising 20 multi dwelling housing units	Being Assessed



**8.7 Development Applications - Works in Progress - December 2014**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			and associated earthworks, access driveway, services, tree removal and car parking. The development is to be undertaken in a staged manner. The Amended Proposal also includes the construction of a roundabout at the intersection of Teven Road, Ballina Road and the development site – 209 Ballina Road, Alstonville	
2014/19	24/01/2014	Visionstream Pty Ltd	To erect a telecommunications (fixed wireless broadband) facility comprising a 30 metre high monopole tower with antennas, compound area, equipment and associated works – 55 Beacon Rd, Teven	Referred to Government Departments
2014/307	27/06/2014	Ardill Payne & Partners	Two lot boundary adjustment subdivision and erection of a dual occupancy on one of the modified lots - 608 Ellis Road, Rous	Awaiting Additional Information
2014/328	7/07/2014	K Tantarri	To undertake the continued use of the	Awaiting Additional Information

**8.7 Development Applications - Works in Progress - December 2014**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			premises as a place of public worship and erection of new awning – 12 De Havilland Crescent, Ballina	
2014/349	14/07/2014	D M Dossor	Residential subdivision comprising 17 allotments and one open space allotment and associated civil and environmental works – Amber Drive, Lennox Head	Determination Pending – Report to January 2015 Council Meeting
2014/370	30/07/2014	M L Thompson	Change of Use to a Food and Drink Premises – 8/216-234 River Street, Ballina	Determination Pending
2014/387	8/08/2014	Visionstream Pty Ltd	To Erect a Telecommunications Facility Comprising a 45m High Lattice Tower and Ancillary Equipment – 11 Dees Lane, Lynwood	Referred to Government Departments
2014/441	3/09/2014	Chris Abbott Surveying	Two Lot Rural Subdivision to create 1 x 1.05 hectare Lot 1 x 20.3 hectare Lot (Lot 2 - Primary Production Lot) via State Environment Planning Policy (Rural Lands) 2008 – 50 Weis Lane, Rous	Referred to Government Departments
2014/508	08/10/2014	Richard Lutze & Associates	Erection of Storage Shed and additional Knight Statue (fronting the	Referred to Government Departments

**8.7 Development Applications - Works in Progress - December 2014**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			new Pacific Highway) associated with an ancillary to an existing Tourist Facility (The Macadamia Castle) - 1697-1699 Pacific Highway, Knockrow	
2014/525	15/10/2014	Ardill Payne & Partners	Additions to a Rural Industry and Offensive and Hazardous Industry Comprising Metal Fabrication and Abrasive Blasting - 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2014/550	27/10/2014	SG Fitzpatrick	To Erect a Holiday Cabin - 188 Old Byron Bay Road, Newrybar	Awaiting Additional Information
2014/553	27/10/2014	M Mittag	Strata Title Subdivision of Building - 12 Shelly Beach Road, East Ballina	Awaiting Additional Information
2014/557	29/10/2014	Mr A J Felsch	Strata Title Subdivision of an Existing Dual Occupancy - 43 Bayview Drive, East Ballina	Referred to Government Departments
2014/564	31/10/2014	P Sternberg	To use an existing building for tourist and visitor accommodation - 10 Martins Lane, Knockrow	On Exhibition
2014/578	7/11/2014	Pazcup Pty Ltd	To undertake the removal of seven banksia trees - 162	Being Assessed

**8.7 Development Applications - Works in Progress - December 2014**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			Patches Beach Road, Patches Beach	
2014/583	11/11/2014	Dept of Education	To undertake vegetation management works involving the pruning of nine fig trees upon the Alstonville Public School site - 58 Main Street, Alstonville	Awaiting Additional Information
2014/585	12/11/2014	Northern Rivers Surveying Pty Ltd	Two Lot Rural Subdivision to create 1 x 1.2ha Lot (Lot 1 – Residue Lot) and 1 x 49ha Lot (Lot 2 – Primary Production Lot) via SEPP (Rural Lands) 2008 - Friday Hut Road, Brooklet	Awaiting Additional Information
2014/586	12/11/2014	Northern Rivers Surveying Pty Ltd	Two Lot Rural Subdivision to create 1 x 1.2ha Lot (Lot 1 – Residue Lot) and 1 x 36.71ha Lot (Lot 2 – Primary Production Lot) via SEPP (Rural Lands) 2008 - Jorgensens Lane, Brooklet	Awaiting Additional Information
2014/588	14/11/2014	I P Grier	Alterations and Additions to Existing Shop - 16 Old Pacific Highway, Newrybar	Being Assessed
2014/597	18/11/2014	M Stevenson	Vegetation management works comprising the removal of	Being Assessed

**8.7 Development Applications - Works in Progress - December 2014**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
			three trees - 70 Fig Tree Hill Drive, Lennox Head	
2014/609	21/11/2014	Planners North	To undertake a mixed use development comprising the erection and strata title subdivision of a two storey commercial premises fronting Ballina Street and four, three storey, shop top housing units at the rear of the site adjacent to Rayner Lane and associated works including vehicle access off Rayner Lane and a central ground level car parking area - 45-49 Ballina Street, Lennox Head	Being Assessed
2014/611	25/11/2014	Telstra	Erection of a Telecommunications Facility comprising a 20 metre high monopole and triangular headframe with antennas (overall height of 21.6 metres) and the removal of an existing 12 metre timber pole and 13 metre concrete pole and associated works - 1A Suvla Street, East Ballina	On Exhibition
2014/614	26/11/2014	Aldi Stores	Alterations and	Being

**8.7 Development Applications - Works in Progress - December 2014**

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
		C/- Planit Consulting	Additions to Existing Aldi Store - 2-6 North Creek Road, Ballina	Assessed

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

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
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	Referred to Government Departments
2013/286	5/08/2013	Ballina Shire Council	Establishment and Operation of a Biochar and Waste-to-Energy Facility - 167 Southern Cross Drive, Ballina	Referred to Government Departments
2014/615	27/11/2014	Ardill Payne & Partners	To undertake the expansion of an existing extractive industry (quarry) - Old Bagotville Road, Bagotville	On Exhibition

## 8.7 Development Applications - Works in Progress - December 2014

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### Major Development (Determined by Minister)

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
SSD-6422	8/12/2014	Holcim (Australia) Pty Ltd	Expansion of Existing Quarry involving the extraction and processing of up to 500,000 tonnes per annum of hard rock for 30 years and recycling and processing up to 10,000 tonnes per annum of concrete - Stockers Lane, Teven	On Exhibition

### RECOMMENDATION

That Council notes the contents of the report on the status of outstanding development applications for December 2014.

### Attachment(s)

Nil

## 9.1 Wollongbar Community Pre School

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### 9. Strategic and Community Facilities Group Reports

#### 9.1 Wollongbar Community Pre School

**Delivery Program** Community Facilities and Services

**Objective** To update the Council in relation to the occupation of Council Community Land by the Wollongbar Community Preschool and seek direction to address and rectify tenure issues at the preschool site.

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#### **Background**

The Wollongbar Community Preschool Inc (the preschool) has been operating a facility in Wollongbar since 1985. Initially commencing in the Wollongbar Hall, the preschool relocated into the purpose built facility it currently occupies in 1990. The land occupied by the preschool is Council-owned community land located adjacent to the Wollongbar Hall.

At the time of construction, the preschool building was built over a cadastral boundary and currently occupies two separate parcels of public reserve (community land). One of the parcels partially occupied by the preschool also includes Wollongbar Hall, as illustrated in the image below. This parcel of land also comprises Hill Park Oval.



In accordance with the requirement of the *Local Government Act 1993*, the preschool currently holds a community group lease with Council for its occupation of the site.

In 2011, the preschool obtained development consent from Council to undertake alterations and additions to the building that will increase its size and provide improved disability access. While consent has been granted for these works, construction has not commenced due to funding limitations.



## 9.1 Wollongbar Community Pre School

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In April 2014, the preschool was successful in obtaining a grant from the NSW Government of approximately \$190,000 to carry out the works as approved in the 2011 development consent.

A condition of receiving this funding is that the preschool enter into a ten year lease with Council and that a Mortgage on Lease be granted to the NSW Government as security for the funding. This will require the preschool's lease to be registered on the Certificate of Title, which will then enable the Mortgage on Lease to be registered.

Council's community group leases have historically been prepared internally by Council staff to save on legal costs, for both Council and the community groups, and to avoid the legal expenses of registration of leases and other associated costs. While the preschool currently has a lease agreement with Council for the occupation of the site, the lease document is not of the duration required to enable the grant funding to be advanced, and is not in registrable form. This means a new lease agreement will need to be prepared.

In order to register a lease the preschool will be required to be fully located within a single lot. Given the preschool building and associated outdoor play area currently occupy two lots, it will be necessary to undertake a boundary adjustment subdivision to enclose the entire preschool facility within one lot to enable the registration of the lease. The boundary for the proposed new lot is illustrated in red on the image below:



### Key Issues

- Registration of lease for Wollongbar Community Preschool Inc;
- Costs

### Information

To enable the preschool to access their funding, the following actions are needed to meet the provisions of the *Local Government Act 1993* and the *Real Property Act 1900*:

- a preliminary survey to be undertaken to determine the appropriate boundary
- the preparation of a development application to obtain consent for a boundary adjustment subdivision
- the preparation of final subdivision plan, application for subdivision certificate and registration
- the publication of the required notice of the proposed lease of community land for a ten year period
- the preparation, execution and registration of lease.

The above process is expected to take approximately six months; however, the preschool has advised that it anticipates commencing building works during April 2015.

In the event the above process is not completed in time for the construction works to commence, an option may be for the grant funding to be secured by way of caveat over the existing lot occupied by the preschool (but not the Hill Park Oval land).

A staff review of the history of the Hill Park Oval and the original preschool construction identifies that the boundary issue is not the fault of the Wollongbar Preschool Committee and accordingly, the costs of rectification should be met by Council.

The original Development Application in 1989 by the Wollongbar Preschool Committee shows that the issue of the placement of the building over the property boundary was identified by the Committee, with the proposal of a subdivision of the land being carried out prior to construction. The notes recorded on the file by Council staff in 1989 state that a subdivision was not necessary as Council owned both property parcels.

The other matter to note with the original construction of the Wollongbar Preschool, as recorded in the DA file, was that the construction of the preschool was authorised without the normal standards for onsite car parking being applied. At the time, an assessment was made that ample parking for preschool users would be available in the adjacent public reserve.

As Councillors are aware, there are now significant parking and traffic safety issues in the locality, particularly during peak usage periods. The 2011 development consent granted in respect of the preschool provides for an increase in the footprint of the building, but does not authorise any additional preschool places, presumably due to the restrictions on available parking.

### Sustainability Considerations

- **Environment**  
Not Applicable

## 9.1 Wollongbar Community Pre School

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- **Social**

The Wollongbar Community Preschool provides an essential service to the Wollongbar community. The receipt of the grant funding will allow it to enhance the existing facility and improve disability access to the preschool, which in turn will enable a greater service to be provided to the community. The grant funding will enable the facility to achieve compliance with the Commonwealth *Disability Discrimination Act 1992* at no cost to Council.

- **Economic**

Taking steps to facilitate the allocation of State Government funding to the Wollongbar Community Preschool will allow the upgrade of the facility at minimal cost to Council.

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

To address the boundary adjustment and lease registration will require Council to bear costs of approximately \$8,000. While these costs would not normally be incurred by Council in accordance with the community group lease which has previously been prepared, it appears that the establishment of the preschool facility across the two lots was undertaken with Council's knowledge and consent. In addition, the assessment of the 2011 development application did not make any reference to this issue and did not require, as a condition of consent, that the preschool consolidate its occupation to one lot.

### **Consultation**

The preschool has consulted with the Wollongbar Progress Association, being the occupants of the adjoining Wollongbar Community Hall.

The development application for the proposed boundary adjustment subdivision may be exhibited for public comment. The proposal to register a 10 year lease will also require public exhibition in accordance with the requirements of the *Local Government Act 1993*.

### **Options**

1. Proceed with the proposal as set out above with Council to meet all subdivision costs.
2. Proceed with the proposal as set out above in a cost sharing arrangement.
3. Proceed with the proposal as set out above, with the preschool to meet the costs of subdivision.
4. Do not proceed with the subdivision.

Having regard for the particular circumstances, options two and three are considered to be unreasonable, given the history of the development of the site. Option four is impractical, as the effect of this would be that the preschool would not be in a position to accept the funding which it has been successful in attracting. Consequently, the first option is the preferred and recommended option. Staff will attempt to manage the various costs within existing budgets.

**RECOMMENDATIONS**

1. That the Council notes the contents of this report concerning the Wollongbar Community Preschool.
2. That the General Manager is authorised to implement the various actions contained in this report to facilitate the preschool's ability to accept the grant funding which is currently available for alterations and additions to the premises. Further, that all costs associated with the proposed boundary adjustment subdivision and lease documentation shall be borne by Council.
3. The General Manager is authorised to affix the Council Seal in respect of any documentation associated with the subdivision, lease, mortgage on lease or caveat in relation to the Wollongbar Community Preschool Inc's occupation of the land the subject of this report.

**Attachment(s)**

Nil

## **9.2 Policy (Review) - 4WD Beach Access - Seven Mile Beach Lennox Head**

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### **9.2 Policy (Review) - 4WD Beach Access - Seven Mile Beach Lennox Head**

**Delivery Program** Governance and Finance

**Objective** To review the 4WD Beach Access - Seven Mile Beach Lennox Head policy.

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#### **Background**

All of Council's policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Four Wheel Drive (4WD) Beach Access – Seven Mile Beach Lennox Head policy.

Council first adopted this policy in August 2010. On the basis of the policy, Council has implemented a permit system for beach access on Seven Mile Beach northward of the Lake Ainsworth Sport and Recreation Centre. A plan showing the area to which the policy applies is contained in the policy document in Attachment 1.

This is the first review of this policy. It has been reviewed with particular regard for the experience gained in operating the beach permit system, Council's beach management roles and responsibilities and the communication of key policy requirements to beach users.

Importantly, this policy review relates to Crown Land within the Ballina Coastal Reserve that Council has been appointed by the Minister for Lands to manage. As such, the policy should be considered from both a Council and Reserve Trust perspective.

#### **Key Issues**

- Ensuring Council policies remain contemporary
- Providing the community an opportunity for feedback
- Communication of policy provisions to beach users

#### **Information**

The review of the policy has identified opportunities to clarify the application of the policy and provide improved delineation between the operation of the beach access permit system and Council's regulatory roles in terms of beach management. In response, the revision of the policy (as contained in Attachment 1) incorporates the following key amendments:

- Reinforcement of the policy objectives to encompass access, safety and environmental elements as well as allowance for special uses.
- Clarification of the management role and responsibility of Council for the beach, which is Crown land.
- Clarification of the key definitions used by the policy and introduction of a map of the area to which the policy applies.

## **9.2 Policy (Review) - 4WD Beach Access - Seven Mile Beach Lennox Head**

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- Relocation of beach use guidelines from within the policy provisions to an annexure and an associated community information brochure.
- Alignment of the permit processing system with current practice.
- Adjustment and addition to provisions addressing special circumstances for beach access (e.g. for persons with a disability, filming and research).
- Inclusion of illustrations depicting key requirements of the beach use guidelines.
- Removal of a provision that applies a fee for issue of a replacement permit.
- Inclusion of a specific requirement for Council to maintain a register of valid permits.

Of particular note is the revision associated with the *Guidelines for 4WD Vehicles on Seven Mile Beach, Lennox Head*. Whilst the substance of the guidelines remains the same, they are no longer embodied as provisions of the policy, but rather are provided as a referenced attachment. This is to assist in distinguishing between the administrative elements of the policy and the applicable beach use guidelines drawn on by relevant officers (such as Council's Rangers).

The guidelines have also been reworded with community use in mind rather than inclusion in a local government policy document. This has the advantage of allowing a more direct application of the guidelines into an information brochure for dissemination to beach users and other interested parties. Upon adoption of the policy, it is intended that the guidelines will be published in a new brochure format. This change is an attempt to convey a less bureaucratic approach towards administration of the beach access policy.

### **Sustainability Considerations**

- **Environment**  
The policy seeks to establish an administrative framework for beach access on Seven Mile Beach that balances recreational and environmental considerations as well as safety and special access matters.
- **Social**  
As above.
- **Economic**  
As above.

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

There are no specific legal or resource implications associated with the policy.

From a finance perspective, it is proposed that the policy removes an existing provision that specifies a charge for issue of a replacement permit. Replacement permits are rarely issued and there is currently no charge set in Council's adopted fees and charges. This approach represents a good will gesture to those that may seek a replacement permit.

## **9.2 Policy (Review) - 4WD Beach Access - Seven Mile Beach Lennox Head**

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The current charges for permits as adopted by Council are \$62 for a year, \$35 for six months and \$25 for three months.

### **Consultation**

It is recommended that the policy be placed on public exhibition for a period of at least four weeks. Where submissions are received, it is recommended that the matter be reported back to Council for consideration. Where no submissions are received, it is recommended that Council adopt the policy with no further reporting required.

### **Options**

Council may accept or amend the proposed changes to the policy. It is recommended that the policy be publicly exhibited as presented, and then adopted where no submissions are received.

### **RECOMMENDATIONS**

1. That Council (and Council as Reserve Trust Manager) adopts the amended 4WD Beach Access - Seven Mile Beach Lennox Head policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

### **Attachment(s)**

1. Policy (Revised) - 4WD Beach Access - Seven Mile Beach

## 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 documents.

US14/41	<p>Ballina Shire Council Agreement to Lease, Leases, Deed of Acknowledgement, Store Room Licence Agreement and Carpark Licence Agreement to Mogers Pty Ltd (Café Swish) for Shop 145 and 147 River Street, Ballina for a term of five years with a five year option.</p> <p>Explanation: The lease and licence agreements negotiated were reported to Council at the Commercial Services Committee meeting on 18 November 2014.</p>
US14/42	<p>Ballina Shire Council Lease and Carpark Licence Agreement to Corrie Steadman for Shop 141 River Street, Ballina for a term of five years with a five year option.</p> <p>Explanation: The lease and licence agreements negotiated were reported to Council at the Commercial Services Committee meeting on 18 November 2014.</p>
US14/43	<p>Ballina Shire Council Lease, Storeroom Licence Agreement and Carpark Licence Agreement to Troy Daley for Shops 9 &amp; 10 Wigmore Arcade, River Street, Ballina for a term of five years with a five year option.</p> <p>Explanation: The lease and licence agreements negotiated were reported to Council at the Commercial Services Committee meeting on 18 November 2014.</p>
US14/44	<p>Ballina Shire Council Lease and Carpark Licence Agreement to Cathy Munro for Shop 2 Wigmore Arcade, River Street, Ballina for a term of five years with a five year option.</p> <p>Explanation: The lease and licence agreements negotiated were reported to Council at the Commercial Services Committee meeting on 18 November 2014.</p>
US14/45	<p>Ballina Shire Council Lease to Pauline Rutten and Ann Hartley T/a Creative Artisans Gallery for Shop 1 Wigmore Arcade, River Street, Ballina for a term of one year with two x two year options.</p> <p>Explanation: The lease and licence agreements negotiated were reported to Council at the Commercial Services Committee meeting on 18 November 2014.</p>



## 10.2 Investment Summary - November 2014

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### 10.2 Investment Summary - November 2014

**Delivery Program** Governance and Finance

**Objective** To provide 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 November 2014.

#### Key Issues

- Compliance with Investments Policy and the return on investments.

#### Information

Council's investments are all in accordance with the Local Government Act, the Regulations and Council's Investments Policy. The balance of investments as at 30 November 2014 was \$64,763,000. This represents a decrease from November of \$1,292,000. Council's investments as at 30 November are at an average (weighted) rate of 3.57%, which is 0.81% above the 90 Day Bank Bill Index of 2.76%. The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 November 2014 was \$5,898,077.

Commentary on the funds held in the cheque account is included in the following report in this agenda which examines our cash flow management.

In respect to the current state of the investment market the monthly commentary from the NSW Treasury (T-Corp) is included as an attachment to this report. The majority of Council's investments portfolio, approximately \$65 million, is restricted by legislation (external) and Council (internal) uses for the following purposes:

Reserve Name	Internal/External Restriction	% of Portfolio*
Water Fund (incl developer contributions)	External	15
Wastewater Fund (incl developer contributions)	External	26
Section 94 Developer Contributions	External	6
Bonds and Deposits	External	2
Other External Restrictions	External	12
Land Development	Internal	8
Employee Leave Entitlements	Internal	3
Carry Forward Works	Internal	11
Miscellaneous Internal Reserves	Internal	11
Unrestricted		6
<b>Total</b>		<b>100%</b>

\* Based on reserves held as at 30 June 2014

## 10.2 Investment Summary - November 2014

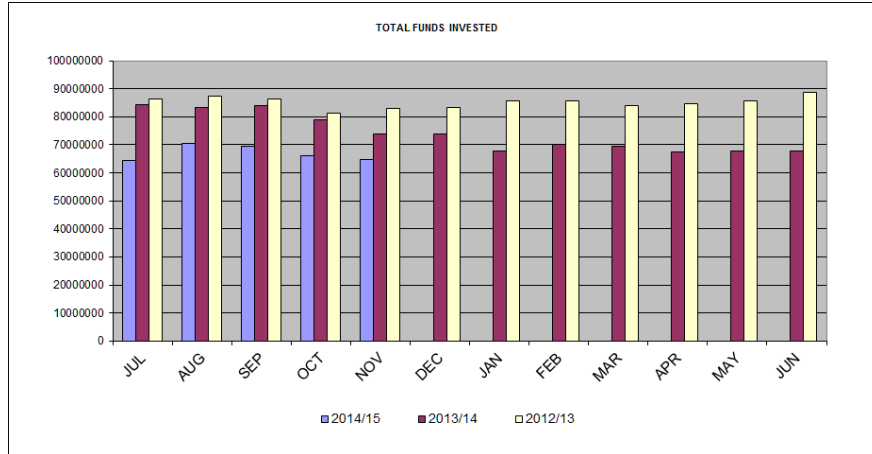
### A. Summary of investments by institution

#### A. Summary of Investments by Institution

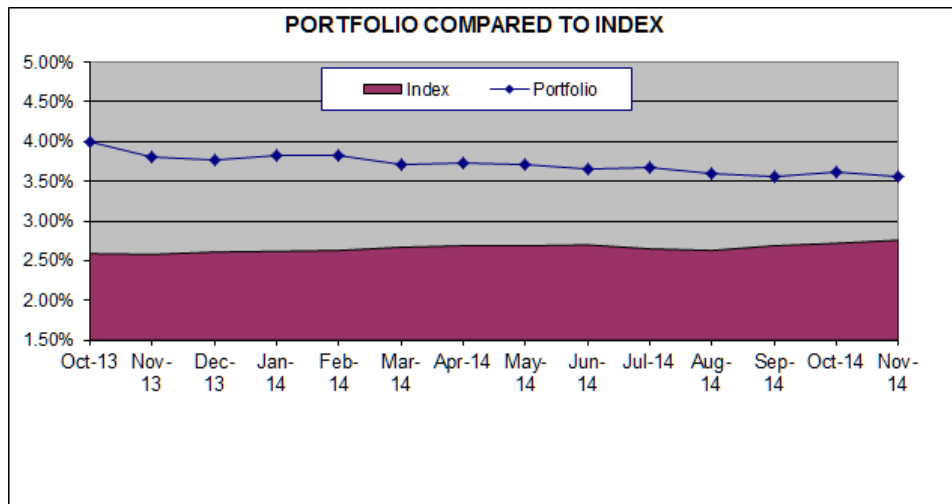
Funds Invested With	ADI Rating	Previous Month (\$'000)	Current Month (\$'000)	Quota %	% of Total	Total
<b>Grandfathered Investments</b>						
Goldman Sachs	AA-	1,000	1,000	0	1.5%	
National Australia Bank	AA-	1,788	1,788	0	2.8%	-
National Wealth M'ment Holdings	A	2,000	2,000	0	3.1%	<b>7%</b>
<b>Rated Institutions</b>						
AMP Bank	A+	6,000	6,000	20%	9.3%	
Bank of Queensland	BBB+	4,000	3,000	10%	4.6%	-
Bank of Western Aust	AA-	6,000	8,000	20%	12.4%	-
Commonwealth Bank of Australia	AA-	3,267	3,975	20%	6.1%	-
Defence Bank Ltd	BBB+	1,000	1,000	10%	1.5%	-
Greater Building Society	BBB	2,000	2,000	10%	3.1%	-
Heritage Bank	BBB+	3,000	0	10%	0.0%	
ING Bank Ltd	A-	3,000	4,000	10%	6.2%	
Members Equity Bank	BBB+	4,000	4,000	10%	6.2%	
National Australia Bank	AA-	9,000	8,000	20%	12.4%	-
Newcastle Perm Bld Society	BBB+	2,000	2,000	10%	3.1%	-
Rural Bank Ltd	A-	1,000	1,000	10%	1.5%	-
Suncorp-Metway Bank	A+	10,000	10,000	20%	15.4%	-
Westpac Banking Corporation	AA-	7,000	7,000	20%	10.8%	<b>93%</b>
<b>Unrated ADI's</b>				\$1m	0.0%	
<b>Total</b>		<b>66,055</b>	<b>64,763</b>		<b>100%</b>	

**10.2 Investment Summary - November 2014**

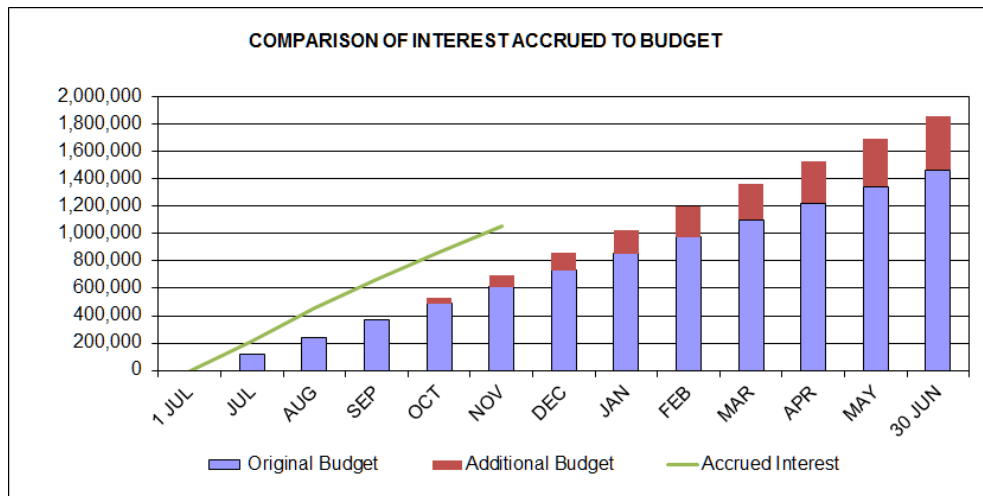
**B. Monthly Comparison of Total Funds Invested**



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



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



## 10.2 Investment Summary - November 2014

### E. Investments held as at 30 November 2014 (\$'000)

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
at call	Commonwealth Bank Of Australia	CDA	2.45%	at call	1,982	1,982
20/09/04	National Australia Bank (ASX Listed)	FRN	3.89%	Perpetual	1,788	1,418
12/04/06	Goldman Sachs	FRN	3.17%	12/04/16	1,000	998
16/06/06	National Wealth M'ment Holdings	FRN	3.27%	16/06/26	2,000	1,944
24/01/12	ING Bank Ltd	FRTD	4.59%	24/01/17	1,000	1,000
06/02/12	Westpac Bank	FRN	4.40%	06/02/17	1,000	1,029
25/01/13	Commonwealth Bank Of Australia	TD	4.25%	25/01/18	1,993	2,054
05/06/13	National Australia Bank	FRTD	3.91%	05/06/15	2,000	2,000
07/06/13	Greater Bld Society	FRN	4.08%	07/06/16	2,000	2,011
06/11/13	Bank of Queensland	TD	3.80%	06/05/14	1,000	1,000
25/11/13	Suncorp-Metway Bank	TD	3.65%	25/05/14	2,000	2,000
24/01/14	AMP Bank	TD	3.80%	23/01/15	2,000	2,000
25/02/14	Westpac Bank	FRN	3.58%	25/02/19	2,000	2,021
13/06/14	Westpac Bank	TD	3.65%	10/12/14	2,000	2,000
23/06/14	Rural Bank Ltd	TD	3.65%	22/12/14	1,000	1,000
03/07/14	Suncorp-Metway Bank	TD	3.45%	05/01/15	3,000	3,000
31/07/14	AMP Bank	TD	3.50%	27/01/15	2,000	2,000
05/08/14	AMP Bank	TD	3.50%	27/01/15	2,000	2,000
11/08/14	ING Bank Ltd	TD	3.45%	11/02/15	2,000	2,000
26/08/14	National Australia Bank	TD	3.65%	26/02/15	1,000	1,000
04/09/14	Suncorp-Metway Bank	TD	3.45%	03/03/15	2,000	2,000
22/09/14	Members Equity Bank	TD	3.65%	22/09/15	1,000	1,000
13/10/14	Suncorp-Metway Bank	TD	3.50%	13/04/15	3,000	3,000
14/10/14	National Australia Bank	TD	3.55%	14/04/15	2,000	2,000
29/10/14	BankWest	TD	3.40%	28/04/15	2,000	2,000
03/11/14	National Australia Bank	TD	3.58%	04/05/15	2,000	2,000
03/11/14	Bank of Queensland	TD	3.50%	04/05/15	1,000	1,000
03/11/14	Newcastle Permanent Bld Society	TD	3.35%	02/02/15	2,000	2,000
05/11/14	BankWest	TD	3.45%	04/05/15	2,000	2,000
06/11/14	BankWest	TD	3.45%	05/05/15	2,000	2,000
10/11/14	BankWest	TD	3.45%	11/05/15	2,000	2,000
10/11/14	Westpac Bank	TD	3.35%	11/05/15	2,000	2,000
10/11/14	Members Equity Bank	TD	3.55%	10/04/15	1,000	1,000
13/11/14	National Australia Bank	TD	3.57%	25/05/15	1,000	1,000
13/11/14	ING Bank Ltd	TD	3.52%	13/05/15	1,000	1,000
17/11/14	Members Equity Bank	TD	3.50%	15/05/15	2,000	2,000
17/11/14	Defence Bank	TD	3.50%	15/06/15	1,000	1,000
20/11/14	Bank of Queensland	TD	3.55%	19/05/15	1,000	1,000
20/11/14	Bank of Queensland	TD	3.55%	02/06/15	1,000	1,000
24/11/14	Suncorp-Metway Bank	TD	3.60%	25/05/15	1,000	1,000
24/11/14	Suncorp-Metway Bank	TD	3.60%	01/06/15	1,000	1,000
<b>Totals</b>					<b>67,763</b>	<b>67,457</b>
TD = Term Deposit			FRTD = Floating Rate Term Deposit			
CDA = Cash Deposit Account			FRN = Floating Rate Note			

**RECOMMENDATION**

That Council notes the record of banking and investments for November 2014.

**Attachment(s)**

1. TCorp Local Government Economic Commentary - November 2014

### **10.3 Investment Summary - Cash Flow Management**

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#### **10.3 Investment Summary - Cash Flow Management**

**Delivery Program** Governance and Finance

**Objective** To provide details of how Council's cash flow is managed and to consider options to reduce the balance of at call accounts.

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#### **Background**

Further to questions from Councilors in the October 2014 meeting, a review of the cash deposit account and management has been undertaken by Council staff. This review is timely, particularly in light of recent regulatory changes in the banking industry.

This report provides an overview of up and coming changes in the banking industry, an understanding of current practices used in the management of cash flows and to outline options to reduce the balance of 'at call' accounts.

#### **Key Issues**

- Maximising returns from available funds.

#### **Information**

##### *Changes in the Banking Industry and Impact on Council*

Australian banks are required to be fully compliant with new (Basel III) banking regulations by 1 January 2015. These regulations, aimed at strengthening the banking industry, include new Liquidity Coverage Ratio requirements for banking institutions.

In response to these new regulations, a recent change imposed on Council is that term deposits can no longer be broken without giving 30 days' notice. The impact of this is that Council's last-resort options of managing cash payments are diminished.

Additional changes are expected to be implemented by banking institutions in the lead up to 1 January 2015 and these changes are expected to reduce yields received on short term funds. All term deposits will carry liquidity costs for deposits less than 30 days and this will be reflected in the rate offered. The impact of this is that Council's yield, on at call accounts, is expected to be diminished.

##### *Current practices*

The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 November 2014 was \$5,898,078. The balance of the cash deposit account at the Commonwealth Bank, Ballina as at 30 November 2014 was \$1,981,582. These two accounts have a combined balance of \$7,879,660 as at 30 November 2014, however it is noted that this combined balance varies significantly day to day.

### 10.3 Investment Summary - Cash Flow Management

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The cheque account and the cash deposit account are used collectively to manage cash flows and ensure sufficient funds are on hand to pay creditors, loan repayments and payroll costs. The cash deposit account receives a return of 2.45% (in comparison to Council's portfolio average investment return of 3.57%) and this account is used as a backup to the cheque account as required, with transfers between these two accounts completed on line and immediate.

The balance of the cash deposit account is actively monitored with the aim of minimising the balance of this account where possible. Cash payment forecasts are obtained from various areas within Council on a monthly basis, to allow an assessment of future cash flow requirements for large expenditures. Also cash receipts are anticipated based on historical records and current information.

Term deposits that are maturing during the month are used to assist with meeting projected cash outflows.

A summary of month end balances of the cheque account, the cash deposit account, as well as an approximation of cash outlays for the last few months is shown in the following table.

**Summary of Cash Balances and Cash Payments**

<b>Balance at month end</b>	<b>Cheque Account(*)</b>	<b>Cash Deposit Account</b>	<b>Combined Balance</b>	<b>Cashflow Payments (approx) for the Month</b>
30-Nov-14	5,898,078	1,981,582	7,879,660	9,500,000
31-Oct-14	1,910,194	1,274,055	3,184,249	7,400,000
30-Sep-14	1,015,704	3,774,055	4,789,759	9,000,000
31-Aug-14	1,850,418	6,753,032	8,603,450	9,000,000
31-Jul-14	2,206,447	3,748,287	5,954,734	11,100,000

*\* The cheque account balances stated are as per the bank statement at that date, and do not take into account unpresented cheques, therefore the balances as noted are in fact overstated. Also this is the balance on the day as opposed to monthly average.*

It can be seen that cash outlays in all months are many millions and can vary significantly month on month.

For the month of November 2014, total estimated payments were in the vicinity of \$9-10 million, inclusive of \$1.0 million payroll and \$500,000 for Rous Water.

The month of December 2014 is anticipated to have large fluctuations both in receipts and payments.

### 10.3 Investment Summary - Cash Flow Management

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Total estimated payments for December are expected to be in excess of \$10 million, inclusive of \$3.6 million loan repayments, \$1.5 million payroll and one-off creditor payments such as \$300,000 for the installation of the solar system at the depot and \$250,000 for Commercial Services (Wigmore refurbishment).

Hence the balance of the 'at call' accounts is regularly multiple millions however given the quantum of payments this is a necessary position. It is considered however that there is scope to reduce the tolerance for unforeseen transactions given some fine tuning of practices.

#### **Sustainability Considerations**

- **Environment**  
Not applicable.
- **Social**  
Not applicable.
- **Economic**  
See Financial Implications below.

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

Sound cash flow management practices will enable Council to maximise returns on available funds.

#### **Consultation**

In researching this report, Council staff recently met with representatives of the Commonwealth Bank (CBA) to gain a more detailed understanding of what products are available to Council in light of the changing banking regulations. The CBA is Council's transactional banker. Discussions have also been held with finance staff of surrounding councils to gain a more comprehensive understanding of how their cash flows are managed.

#### **Options**

##### *Options to reduce the balance of 'at call' accounts*

The proposed regulatory changes to the banking industry mean that now is an opportune time to review Council's management of cash flows and to review what is available in the market to best respond to these changes. This has been completed by undertaking the following activities:

1. Review of Cash Flow Forecasting  
Consideration of forecasting practices, information sources and tolerance above estimated balances for unforeseen events.
2. Review of Investment Strategies  
Consideration has been given to deposit product mix and structure of deposits to maintain accessibility to funds without compromising yield.



### 10.3 Investment Summary - Cash Flow Management

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#### 3. Review of Contingency Planning

Consideration has been given to alternative options to support urgent cash needs as well as service levels to creditors.

Management strategies include the following, in isolation or combination:

- Precise management of term deposit maturity dates to coincide with anticipated cash flows. There are two key risks with this approach. The primary risk is that the timing of receipts and payments cannot always be predicted with precision well in advance. Council's current investment portfolio consists of term deposits with a range of terms, taken out with a view of obtaining the most favourable returns offered at the time.

If maturity dates were to be lined up more precisely with projected payments, this would diminish the ability to take the best rate of return at the time. For example it may be preferable to take out a six month term (if at a higher rate of return) however this strategy may require the investments to be taken out over shorter terms (at a lower rate of return) if trying to manage availability of funds more precisely.

The other inherent risk is that the precise timing of cash flows month's out cannot be predicted with precision. Staff endeavour to spread the timing of deposit maturities to assist in minimising at call accounts.

- One way of managing future availability of funds is to reduce the size of individual term deposits and spread the maturity dates to allow greater flexibility. For example, having \$1 million mature 5 May and a further \$1 million mature on 12 May, rather than, say, having \$2 million mature on 10 May. This approach does require additional staff time.
- Breaking of term deposits. Previously, Council had the option of breaking a term deposit early, if required. This is an option that would have incurred a loss of interest returns and would have been considered as a last alternative only. As noted new regulations have recently been implemented within the banking industry. The result of these regulations is that term deposits can no longer be broken without giving 30 days' notice. The impact of this is that Council's last-resort options of managing cash payments are diminished.
- Utilisation of bank overdrafts. Council does not currently have a bank overdraft facility. Use of an overdraft may be one way that Council could maintain sufficient ability to meet commitments in circumstances where precise timing of cash flow is not possible and where predicted cash flow does not eventuate. Based on enquiries a facility of <\$2.4 million would incur an interest rate of 9.45% p.a. on any overdrawn funds, or a facility of >\$2.4 million would incur an interest rate of 13.95% p.a.

The cost of managing funds in this manner is likely to be more than the opportunity cost of maintaining funds in the 'at call' account.

- Minimise the balance held in the 'at call accounts' and accept that at times there may not be sufficient funds for payments to creditors when due. In some circumstances this has the possibility of bringing current works to a standstill and may lead to dissatisfaction by creditors and possibly late payment fees.

### **10.3 Investment Summary - Cash Flow Management**

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- Use of short term floating rate notes. Floating rate notes can be sold very quickly and provide a means of accessing funds on notice which can be used as a contingency back up in the event of unexpected payments.
- Consideration of alternative 'at call' accounts. Council's at call account is currently held with the Commonwealth Bank at a rate of 2.45%. Whilst rates on offer do fluctuate Council may be able to negotiate a higher 'at call' rate with an alternative institution such as AMP.

Investigation at the time of writing this report indicates that this would be a valid option. Consideration will need to be given to any operational issues as there will not be an ability to seamlessly transfer balances between the 'at call' account and the cheque account. However it is unlikely that operational issues will be a decisive factor.

On balance, based on the review of available options and current practices, it is considered that both the cheque account and cash deposit accounts should remain active. However to further improve our performance the following actions are being reinforced or initiated:

- Staff continue to refine and modify our cash flow forecasting
- Staff to reduce the current tolerance levels above the minimum forecast balance; i.e. lower the threshold for amounts held in the 'at call' accounts
- Staff to increase the frequency of maturity dates. This should enable a gradual reduction in the average balance of the 'at call' accounts without impacting investment returns
- Payments to suppliers will continue to be managed to assist cash flow where required and there may be the occasional need to pay accounts after the due date, although this will be closely monitored and minimised
- A small holding of short term floating rate notes will be considered. However a review is being conducted on the floating rate notes currently in the portfolio and no action will be taken to acquire more floating rate notes pending the outcome of that review
- Subject to confirmation of the operational issues associated with using an alternative bank to hold 'at call' funds, the use of an 'at call' account with another institution, such as AMP, with a potentially higher yield.

The situation will be progressively monitored, particularly as the changes to banking regulations unfold and in respect to service levels to creditors. However it is expected that the balance of the 'at call' accounts will diminish over coming months.

#### **RECOMMENDATION**

That Council notes the contents of this Investment Summary - Cash Flow Management report and the proposed actions outlined in the report.

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

Nil

## **10.4 Recognition of Long Serving Employees**

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### **10.4 Recognition of Long Serving Employees**

**Delivery Program** Human Resources

**Objective** To formally recognise long serving Council employees.

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#### **Background**

Council has a practice of annually recognising employees who have completed either 10, 20 and 30 years of service by providing an annual presentation at the December Council meeting, along with joining the Councillors for morning tea.

#### **Key Issues**

- Acknowledgment of the service of employees.

#### **Information**

At 10.30 am Council will recognise the service of the following employees:

##### 30 Years

Anthony (Tony) Halpin

##### 20 Years

Dennis Bellato  
Larry White  
Jay Ellis  
Andrew Smith

##### 10 Years

John (Jack) Izzard  
Andrew Coote  
Peter Dyson  
Neil Spencer  
Peter Suffolk  
Tracy Lister  
June Beresford  
Kerry Bridge  
Arthur (Art) Jenkins  
Larry Schmitzer

The majority of the employees will be present at the meeting.

## **10.4 Recognition of Long Serving Employees**

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### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Long term employees make a significant contribution to the expertise, tradition and social fabric of the Council.
- **Economic**  
Not Applicable

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

Nil

### **Consultation**

This report is provided to publicly recognise long serving employees.

### **Options**

This report recognises long servicing employees.

### **RECOMMENDATION**

That Council acknowledges and congratulates the staff members outlined in this report on their service with Council.

### **Attachment(s)**

Nil

## 10.5 Community Donations

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### 10.5 Community Donations

**Delivery Program** Governance and Finance

**Objective** To invite Council to consider an additional donation request.

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#### **Background**

Council approved a large number of donations at the July 2014 Ordinary Meeting for the 2014/15 financial year. Since that time additional requests have been received and generally applicants are advised to reapply next financial year to allow Council to assess all applications at the one time. However the donations policy does allow applications to be submitted to Council where there may be exceptional circumstances.

The following request is considered to be justifiable in reporting to Council for separate consideration. A copy of the request is attached.

#### **Key Issues**

- Community benefit
- Funding available

#### **Information**

##### ***Life Without Barriers***

Life Without Barriers is a not-for-profit social service organisation that has been operating for twenty years.

One of the services they provide on behalf of Federal Home Care (ACAR) Packages is to assist and support the elderly in the community with the aim to enable them to stay in their own homes rather than enter into residential aged care. One such elderly lady lives in South Ballina and the cost of travelling on the Burns Point Ferry is proving to be costly.

They are asking Council to provide a ferry pass to the various carers travelling to South Ballina.

One option is for Council to provide a 'various' ferry pass so the different carers travelling on the ferry can use the same pass. The cost of the various pass is determined by Council's fees and charges ferry procedure in determining if a *resident fee* (\$250pa in 2014/15) or *non-resident fee* (\$450pa in 2014/15) is applicable. As Life Without Barriers has an office situated in Alstonville they would be classified as *resident*. If Council resolved to donate a 'various' ferry pass it would only be valid until 30 June 2015 at a cost of \$125 plus \$5 (administration fee).

Council should bear in mind that the donation of the pass could set a precedent for various other community groups.

## 10.5 Community Donations

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### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
Donations can provide community benefits to the Ballina Shire.
- **Economic**  
Not Applicable

### Legal / Resource / Financial Implications

The current status of the donations budgets for 2014/15 is as follows:

Items	Budget	Allocated	Balance
Donations (General)	50,000	39,676	10,324
Donations (Public Halls)	41,000	39,802	1,198
Donations (Planning Fees)	2,000	2,439	(439)
<b>Net Amount Available</b>			<b>11,083</b>

### Consultation

The annual donation program is subject to formal public exhibition and Council attempts to ensure that all donations are considered at the same time to ensure there is equity in the allocation process. There has been no specific consultation in respect of these requests.

### Options

The options are to approve or decline the request.

### RECOMMENDATION

That Council approves / refuses the donation of a various ferry pass for the Life Without Barriers carers.

### Attachment(s)

1. Policy - Donations - Rates and Charges
2. Letter - Life Without Barriers

## 10.6 Councillor Expenses

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### 10.6 Councillor Expenses

**Delivery Program** Governance

**Objective** To seek Council support for the payment of expenses for Councillors.

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#### **Background**

The Councillor Expenses and Facilities Policy clarifies the reimbursement of expenses to Councillors.

The report that now follows deals with reimbursement for Councillor related expenses.

#### **Key Issues**

- Compliance with Expenses Policy

#### **Information**

##### ***Cr Jeff Johnson – Claim for Expenses in Excess of Three Months***

Cr Johnson has submitted a claim for expenses dating back to August 2014 [travel to August Environmental and Sustainability Committee meeting and Ordinary meeting, and phone related expenses (\$80)]. Clause 2.1.1 of the Councillor Expenses & Facilities Policy states in part, as follows:

*“To ensure claims are submitted promptly and accurately any claims submitted in excess of three months of the time of expenditure will not be approved”.*

Cr Johnson has asked for this matter to be reported to Council to seek Council determination on this issue. Council has followed a similar process with late claims from Cr Cadwallader and Cr Hordern.

#### **Sustainability Considerations**

- **Environment**  
Nil
- **Social**
- **Economic**

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

Funds are available within the Council's professional development budget to finance these expenses.

## **10.6 Councillor Expenses**

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### **Consultation**

The Councillor expenses policy is exhibited each year for public comment.

### **Options**

Approve or not approve the payment of the claim in excess of the three month timeframe from Cr Jeff Johnson. The recommendation is for approval as Council has previously approved late claims for Cr Cadwallader and Cr Hordern.

### **RECOMMENDATION**

That Council authorises the claim for expenses from Cr Jeff Johnson in excess of the three month timeframe as per the contents of this report.

### **Attachment(s)**

Nil



## **10.7 Flat Rock Tent Park - Adoption of Fees and Charges 2015/16**

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### **10.7 Flat Rock Tent Park - Adoption of Fees and Charges 2015/16**

**Delivery Program** Commercial Services

**Objective** Setting of fees and charges for Flat Rock Tent Park for 2015/16

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#### **Background**

Council resolved to advertise a set of draft Flat Rock Tent Park fees and charges, and associated notes, for 2015/16 for public comment following the 23 October 2014 meeting and a Councillor workshop.

A copy of the exhibited information is attached.

The purpose of this report is to comment on any submissions received.

#### **Key Issues**

- Increases in fees and charges
- Conditions attached to the fees

#### **Information**

The draft fees and charges and associated notes have been on public exhibition for the required twenty eight days and as a result of the exhibition process no submissions were received.

#### **Sustainability Considerations**

- **Environment**  
Council needs to operate the tent park in a sustainable manner, taking into account any environmental impacts.
- **Social**  
The tent park plays a major social role in that people holidaying in the tent park come from broad socio-demographic groups, this creates a large social interaction of people.
- **Economic**  
The tent park provides economic benefits to both Council and the broader business community.

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

Council is legally required to exhibit and adopt its fees. The tent park budget is formulated as part of Council's annual budget deliberations

#### **Consultation**

The documents were subsequently placed on public exhibition from 5 November to 3 December 2014.

## **10.7 Flat Rock Tent Park - Adoption of Fees and Charges 2015/16**

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The documents were exhibited to encourage public comment and exhibited at Council's normal consultation points (administration centre and libraries) and on the Council website.

### **Options**

1. Council adopts the fees and charges for the 2015/16 year as exhibited.

This option is recommended as no submissions were received during the public exhibition period. The increased fees and charges improve the profitability of the park.

2. Council does not adopt the fees and charges for the 2015/16 year as exhibited.

This option is not recommended as no submissions were received in opposition to the proposed fees and charges during the public exhibition period. Not adopting the increased fees and charges fails to recognize the increasing costs of running the park.

### **RECOMMENDATION**

That Council adopts the draft Flat Rock Tent Park fees and associated notes, as exhibited for 2015/16.

### **Attachment(s)**

1. Proposed Fees and Charges

## **10.8 Ballina Byron Gateway Airport - Car Rental Car Park Overlay**

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### **10.8 Ballina Byron Gateway Airport - Car Rental Car Park Overlay**

**Delivery Program** Commercial Services

**Objective** To obtain Council approval to construct a new asphalt overlay to the car rental car park at the Ballina Byron Gateway Airport.

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#### **Background**

Over the past few years the condition of the sealed surface of the car rental car park has deteriorated to the stage where it is now considered a significant operational issue and safety risk. The issues highlighted include:

- The sealed surface is full of repaired pot holes
- The surface is uneven and very difficult to traverse with wheeled travel bags, backpacks, suitcases, trolleys, mobility aids and high heels
- The seal coat is virtually non-existent (in some areas) and the surface has failed under repeated movement of the hire cars
- We are unable to line mark the area (with the operator names) due to the condition of the sealed surface
- The surface is sub-standard and unsuitable for use by the car rental operators/customers/clients and the airport users.

In summary, the car rental parking area needs to be resurfaced with an asphalt overlay as soon as possible.

This work was originally included in the capital works program for 2014/15 for the airport, however the project was deferred to 2015/16 due to the airport cash reserve being well overdrawn. The car rental operators are now asking for Council to reconsider this decision as the poor state of the car park is impacting detrimentally on their businesses.

#### **Key Issues**

- Asset Maintenance
- Safety Concerns/Personal Injury
- Customer Service and customer and stakeholder satisfaction levels
- Funding

#### **Information**

The current proposal put forward involves a hard sweep (via street sweeper) of the entire area, the application of a heavy tack coat, installation of a correction course of asphalt (where required) and the installation of a 45-50mm thick layer of asphalt over the entire car park. The attachment to this report provides a sketch of the car park.

The work is anticipated to take three to four days to complete, weather permitting, and will involve temporary repositioning of all rental cars to the new long-term car park for the duration of works.

## 10.8 Ballina Byron Gateway Airport - Car Rental Car Park Overlay

This work will be followed by the installation of line marking and signage to all rental bays and the relocation of cars as required.

The latest estimated cost for this work is \$175,222 (excl. GST). This figure was previously \$130,000 when the original budget was transferred from 2014/15 to 2015/16.

Over the past few weeks staff have been investigating alternate ways to fund this project in the current financial year to minimise Council's risk exposure to a personal injury or incident and to respond to concerns from the business operators. Some of these options include:

1. An internal loan from Council with possible repayment in July 2015.
2. A deletion of the shade structure component of the new car park project and construction of same in 2015/16. This would allow these funds to be redirected to the car rental car park.
3. An operational lease arrangement over the next five years. An indicative quote has been obtained based on a lease amount of \$150,000 over a five year term. Repayment would be \$37,580 p.a. equating total repayments of \$187,900. This would free up some funds for construction of the asphalt overlay of the rental car park, but carries a cost penalty in term of interest/lease payments.
4. Reinstate the proposed works and budget for a larger deficit in the airport reserve, as at 30 June 2015.

In respect to option one the airport is effectively already operating with an internal loan as the reserve is currently overdrawn. The forecast movements in the airport reserve, as per the latest review of Council's long term financial plan, are as follows.

Item	2014/15 (\$)	2015/16 (\$)	2016/17 (\$)	2017/18 (\$)
Operating Revenues	4,911,100	4,998,700	5,023,000	5,393,300
Operating Exps (exc depreciation)	3,493,500	3,507,500	3,527,600	3,501,100
<b>Net Cash Operating Result</b>	<b>1,417,600</b>	<b>1,491,200</b>	<b>1,495,400</b>	<b>1,892,200</b>
Add Loan Income	725,000	0	0	8,000,000
Less Loan Principal	845,500	1,141,700	1,192,200	1,222,100
Less Capital Expenditure	995,000	330,000	208,000	8,218,000
<b>Net Cash Movement</b>	<b>302,100</b>	<b>19,500</b>	<b>95,200</b>	<b>452,100</b>
<b>Reserve Closing Balance</b>	<b>(290,400)</b>	<b>(270,900)</b>	<b>(175,700)</b>	<b>276,400</b>

As per these figures Council is forecasting a positive cash result for each of the financial years, with the 2014/15 estimate reducing the existing reserve overdraft, which was \$592,500 as at 30 June 2014, to a revised overdraft of \$290,400 as at 30 June 2015,

This assumes all the income and expenditure forecasts will remain on budget and in recent years the final operating result for the airport has traditionally been worse than forecast as per the following table:

## 10.8 Ballina Byron Gateway Airport - Car Rental Car Park Overlay

Item	2012/13 (\$)		2013/14 (\$)	
	Estimate	Actual	Estimate	Actual
Operating Revenues	4,100,000	4,005,400	4,689,300	4,617,800
Operating Exps (exc depreciation)	3,099,800	3,223,600	3,436,900	3,568,300
<b>Net Cash Operating Result</b>	<b>1,000,200</b>	<b>781,800</b>	<b>1,252,400</b>	<b>1,049,500</b>

Generally all capital works have been completed on time and on budget and the major difficulty has been in ensuring that the operating budget remains on track.

The variances have been significant and this is why the recommendation earlier in the year was to transfer the rental car park overlay project to 2015/16, as it then ensured that Council had a reasonable budget buffer for 2014/15, with the forecast predicting a net cash increase of \$302,100 as per the earlier table.

The provision of an internal loan effectively increases the overdraft for the airport and due to the current state of the reserve further drawdowns are not recommended. Council would also need to finance the internal loan repayments from the operating result for the airport. This again reduces the amount of funding available to be transferred back to the reserve.

In respect to option two the contract for construction of the new car park and the shade structure has been signed and the advice is that Council is unable to vary this contract.

In respect to option three this results in increased operating costs due to the lease payments and with Council budgeting to cash fund the proposed works in 2015/16, it does not make financial sense to incur lease financing costs over the five year period.

The final alternative would be to reinstate the rental overlay back into 2014/15 and accept that the airport reserve would be further overdrawn at the end of this financial year, however the same closing balance would still be forecast by 30 June 2016. This is outlined in the following table.

Item	Current Estimates		Reinstate Works	
	2014/15 (\$)	2015/16 (\$)	2014/15 (\$)	2015/16 (\$)
Operating Revenues	4,911,100	4,998,700	4,911,100	4,998,700
Operating Exps (exc depreciation)	3,493,500	3,507,500	3,493,500	3,507,500
<b>Net Cash Operating Result</b>	<b>1,417,600</b>	<b>1,491,200</b>	<b>1,417,600</b>	<b>1,491,200</b>
Add Loan Income	725,000	0	725,000	0
Less Loan Principal	845,500	1,141,700	845,500	1,141,700
Less Capital Expenditure	995,000	330,000	1,170,000	155,000
<b>Net Cash Movement</b>	<b>302,100</b>	<b>19,500</b>	<b>127,100</b>	<b>194,500</b>
<b>Reserve Closing Balance</b>	<b>(290,400)</b>	<b>(270,900)</b>	<b>(465,400)</b>	<b>(270,900)</b>

This revised forecast still has a cash surplus of \$127,100 for the 2014/15 financial year, which means the current reserve overdraft reduces from \$592,500 to \$465,400.

## **10.8 Ballina Byron Gateway Airport - Car Rental Car Park Overlay**

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However again the concern is if the operating results for the year are not achieved and the actual result is around \$200,000 less than forecast, as has occurred in recent years, Council will be looking at an overdrawn reserve in the vicinity of \$700,000.

This type of overdraft has to be funded from other cash reserves and as per the recent report on the 2013/14 financial statements, Council's overall liquidity is getting very restricted as we continue to roll out a range of capital infrastructure projects.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
The airport is a major contributor to the economic development of the region. The income derived from the car rental companies is approximately \$250,000 pa and the income from the shuttle bus operators is approximately \$135,000 pa.

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

The information section of this report provides details on the financial implications of the works proposed.

### **Consultation**

Consultation undertaken to date includes:

- On-airport car rental operators
- Asphalt companies
- Airport staff
- Shade structure leasing company

All of the car rental operators are very keen to see these works proceed immediately to minimise any negative impacts on their business.

### **Options**

The two valid options are:

1. No change to the current financial plan – It is just over six months to the new financial year and even though there are concerns with the existing surface it is important for Council to manage its overall cash effectively and not over commit with expenditure.
2. Council reduce the 2015/16 forecast capital expenditure budget by \$175,000 and reinstate the funding for this project back in the 2014/15 budget.

## **10.8 Ballina Byron Gateway Airport - Car Rental Car Park Overlay**

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On balance, purely from a financial management perspective, option one is the preferred approach. The airport reserve is well overdrawn and recent trends have been for the final result to be worse than forecast. The September 2014 review also saw a deterioration in the original 2014/15 estimates.

The airport staff still have opportunities to make savings in their operating expenditure, or identify additional revenues during the year and this decision not to reinstate the works can be reviewed on a month to month basis.

If there is a higher level of confidence later in the financial year that the operating result will be achieved Council could be in a position to carry this expenditure for a few months between the financial years. However until there is more certainty over the airport budget for 2014/15 the recommendation is not to reinstate the car park overlay project.

### **RECOMMENDATIONS**

1. That Council notes the contents of this report in respect to funding options for the car rental car park overlay project.
2. That Council confirms that due to the current overdraft for the airport reserve, and the uncertainty over the forecast operating result for 2014/15, that it is not in a financial position to reinstate the car rental car park overlay project, in the 2014/15 budget.
3. That Council also confirms that as the financial year progresses it is prepared to review this decision, subject to their being improvements in the forecast operating budget, or greater certainty with respect to the forecast results for 2014/15.

### **Attachment(s)**

1. Car Rental Car Park Overlay Project - Sketch plan

## 10.9 Land Sale - North Creek Road, Ballina

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### 10.9 Land Sale - North Creek Road, Ballina

**Delivery Program** Commercial Services

**Objective** To determine if Council wishes to sell a portion of operational land described as 7 North Creek Road (Part Lot 2 DP 1172175), North Ballina.

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#### **Background**

This matter was last reported to Council in a confidential report to the Commercial Services meeting held on 9 December, 2013. Council had negotiated the sale of a portion of operational land to an adjoining owner. The portion of operational land comprises an area of 1,375m<sup>2</sup> and is described as 7 North Creek Road (Part Lot 2 DP 1172175), North Ballina. The site plan attached outlines the land parcel in red.

The resolution arising from that meeting is noted below:

1. *That Council confirms the sale of Part Lot 2 DP 1172175, as per option one of this report and authorises the General Manager to finalise the contract variations required for the sale as per the report.*
2. *That the use of Council's Common Seal be approved to be affixed to the contract for sale, transfer, plan of subdivision, 88B Instrument and any other documentation required to complete the sale of the land.*
3. *Points one and two are subject to any action that Council may take in relation to any other relevant land purchases that could impact on the sale proposed in point one.*

Council agreed to revise the purchase price of the site. This was due to the estimated costs to comply with the development consent conditions imposed to undertake a subdivision to create the proposed lot (part Lot 2 DP 1172175).

The sale failed to proceed after the parties failed to agree on other conditions.

In August, 2014 the adjoining owner advised they wished to reopen negotiations and subsequently submitted an offer to acquire 7 North Creek Road (Part Lot 2 DP 1172175). Council advised that any sale would be conditional upon a subdivision by boundary adjustment with the purchaser to pay all fees and charges associated with same. Etoska agreed to these conditions.

Given that a reasonable period of time had passed since other adjoining owners had been given the opportunity to purchase 7 North Creek Road (Part Lot 2 DP 1172175) it was considered prudent to approach these owners to determine if there was any interest in purchasing the site. The outcome of this course of action forms the subject of this report.

#### **Key Issues**

- Sale of operational land and price



**Information**

In October 2014, staff wrote to the five adjoining owners seeking their interest in acquiring 7 North Creek Road (Part Lot 2 DP 1172175), and if so they were to submit their offers in writing by 5pm 20 November 2014. The adjoining owners were advised that any sale would be conditional upon a subdivision by way of boundary adjustment with the purchaser to pay all fees and charges associated with same.

Only two of the adjoining owners submitted offers to purchase the subject site, the details of which are contained in the confidential report on this matter included later in the agenda for this meeting.

**Sustainability Considerations**

- **Environment**  
Not Applicable
  
- **Social**  
Not Applicable
  
- **Economic**  
The revised offers received are considered fair and reasonable in the current market.

**Legal / Resource / Financial Implications**

The subject land is classified as operational land pursuant to the Local Government Act 1993. There is no impediment to the sale of the land as proposed.

**Consultation**

This report has been listed in open Council to inform the community of the proposed sale and to seek approval for the sale, subject to an agreed sale price. The sale price is listed in the confidential report to allow Council to negotiate a commercial sale price.

**Options**

The purpose of this report is to obtain Council approval to sell the subject site. The proposed selling price is subject to a separate report.

In respect of the sale of the land the options are to approve or not approve the sale. The recommendation is to approve the sale.

**RECOMMENDATION**

That Council again confirms its approval for the sale of 7 North Creek Road (Part Lot 2 DP 1172175), as detailed within this report, with the sale price to be determined as per the confidential report elsewhere in this agenda.

**Attachment(s)**

1. Site Plan

## 11.1 Lake Ainsworth - South Eastern Precinct - Consultation

### 11. Civil Services Group Reports

#### 11.1 Lake Ainsworth - South Eastern Precinct - Consultation

**Delivery Program**      Asset Management

**Objective**              To report on the outcomes from the recent public consultation process in relation to the recommendations contained in the Lake Ainsworth Masterplan compiled by Complete Urban, 2014.

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#### **Background**

Council considered a report on a proposed plan, as prepared by Complete Urban Pty. Ltd, for improvements to the south eastern precinct of Lake Ainsworth, at the Facilities Committee meeting held on 19 June 2014.

The Committee subsequently recommended as follows:

**Item 4D:** *That Council authorises for public exhibition the Complete Urban report and recommendations including:*

**A. Precinct Plan:** *That the strategic direction for the renewal and upgrade of the Lennox Head Surf Club, be the demolition of the current facility and construction of a new facility on the site to the south of the current facility.*

**B. Eastern road Options:** *Council supported option to redesign the Eastern road as an access only road as per Option 2 of the Complete Urban concept plans for the eastern road.*

At the 26 June 2014 Ordinary meeting Council then resolved (Item 4.1 Community Consultation options) to support the Facilities Committee recommendations, with the following addition.

*Include within the public exhibition material, the preferred road layout for the Lake Ainsworth Precinct (including the eastern road) as per the endorsed 2005 Lake Ainsworth Master Plan.*

The public consultation process has now been completed and this report provides an overview of the submissions received, along with identifying any other matters raised during the exhibition period.

The Complete Urban report, as exhibited, is available on Councillor's IPADs and hard copies can be obtained by contacting the General Manager's office.

The first attachment to this report is a summary document that was produced to assist with the exhibition process.

## 11.1 Lake Ainsworth - South Eastern Precinct - Consultation

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### Key Issues

- Feedback from the consultation process
- Road network
- Facilities
- Car parking
- Options available

### Information

The consultation process included Council's standard forms of community consultation such as media releases, information on the Council website, advertising, Ward Committees etc.

Other activities included direct correspondence to key stakeholders including Crown Lands and NSW Sport and Recreation, along with staff attending a meeting of the Lennox Head Residents Association (LHRA) on 3 November 2014.

The LHRA also set up stalls outside the Lennox Head IGA store and at Lake Ainsworth itself on the morning of 8 November 2014, with staff in attendance, to help distribute the exhibition material and respond to resident questions.

As a result of this process Council has received a total of 65 written submissions and a copy of those submissions is included as a separate attachment to this report.

The consultation process has given rise to an array of responses from individuals, families and community / special interest groups. Five main themes have been identified as part of the submission process and they are summarised as follows:

#### 1. *Eastern road*

That Council should either:

- a. Support the closure of the Eastern road entirely (with emergency/maintenance provisions). Those in support of this strongly support the Council endorsed Lake Ainsworth Master Plan from 2005:

or

- b. Maintain access along the eastern road for the entire community and not limit it solely for the use of the NSW Lake Ainsworth Sport and Recreational Centre.

#### 2. *Environment*

Maximising improvements to the health of the Lake should be considered the number one priority.

#### 3. *Car Parking*

Concerns raised over the lack of adequate parking, particularly by people who are not supportive of the eastern road closure.

## 11.1 Lake Ainsworth - South Eastern Precinct - Consultation

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### 4. Recreational Facilities and Boardwalk

Not supported by the majority of submissions. An alternative minimalistic approach was identified with support for additional BBQ facilities and picnic tables.

### 5. Off Leash Dog Walkers

People not supportive of the eastern road closure expressed concerns over the mixing of dogs and people in the eastern precinct along with the extended access to the off leash dog beach. This was also raised by several people who attended the information session outside the IGA and Lake Ainsworth.

These issues are now expanded upon in the comments that follow.

#### 1. Eastern road – close or not too close?

Whether or not the eastern road should be closed or not is an issue that invokes strong opinions, whether supportive or not supportive of the closure. Of the 65 written submissions 55 made direct reference to the eastern road with 33 calling for the complete closure of the road (allowing access for emergency and maintenance vehicles only).

The majority of the 33 responses that supported the closure of the eastern road, including the Ballina Environment Society (BES) and the LHRA have strongly indicated that Council is obligated to adopt the endorsed Lake Ainsworth Master Plan, 2005 (Road Option Two). This option not only recommended the eastern road closure but also a new road through the existing road reserve (through the middle of the caravan park) joining Ross Street in the south through to Camp Drewe Road in the north. That road reserve is highlighted in the following diagram (Figure 1) with the Lake Ainsworth Caravan Park being the salmon coloured precinct at the bottom of the diagram.

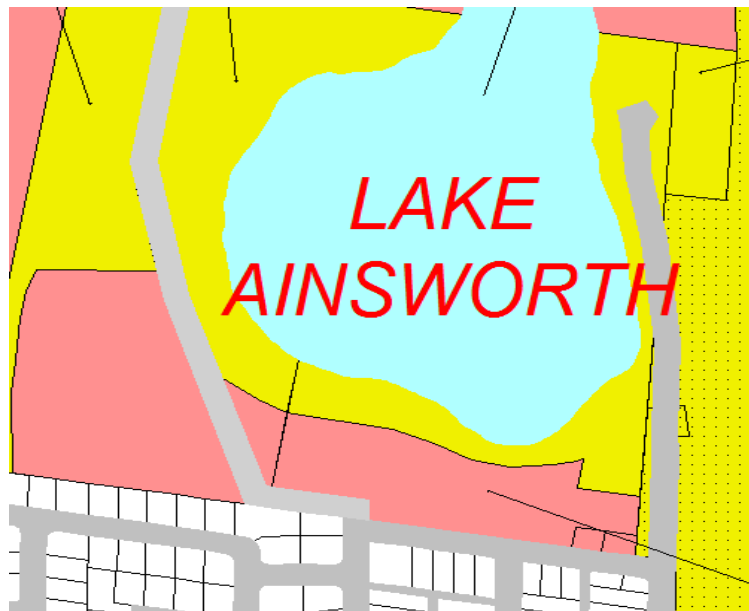


Figure 1 – Land layout for Lake Ainsworth Southern Precinct

## 11.1 Lake Ainsworth - South Eastern Precinct - Consultation

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Further details will be provided later in this report which explores the relevance of the Master Plan 2005 to the contemporary issues of the present.

The remaining 22 respondents that referred directly to the eastern road were opposed to the closure of the road. Some of the reasons and concerns raised in those 22 submissions included:

- Loss of amenity and reduced access to a unique community asset
- The potential for greater conflict between beach goers and dog walkers with the need to take dogs on leashes to the approved off leash area located at 7 Mile Beach
- The potential for more conflict between dog walkers and people picnicking or accessing the eastern foreshore of the Lake
- Greater potential for faecal pollution with dogs in and around the lake surrounds
- The removal and reduction of car parking facilities (despite additional ones being proposed) through the road closure. Some have questioned the Complete Urban car parking numbers
- Lack of direct access to the eastern side of the Lake by families with young children including some elderly folk needing to walk much further with a lack of car parking in the vicinity
- The general concentration of people and visitors at the south eastern corner of the precinct
- Increased concerns with safety, traffic congestion and pedestrians in and around the south eastern corner
- Increased interaction of people with and without dogs in the south eastern corner
- Greater future car parking pressure with increased popularity and improved surf club facilities
- Future concerns with spill over parking into local streets
- Concern that closure of the road is based on a lack of evidence to support the environmental view that the road has a direct impact on the water quality and health of the Lake.

Also irrespective of support given to the closure of the road, or not, it was clear that limiting access solely for access to the NSW Sport and Recreational Centre was not supported by the majority of the respondents.

### 2. Environment and Health of the Lake

Of the 65 submissions 32 made direct reference, or suggestions in relation to maintaining or improving the health of Lake Ainsworth.

There are those who are of the view that the only way to ensure the Lake remains healthy is through the complete closure of the eastern road.

The Ballina Environment Society for example has stated that "*maximising the health of the lake is through complete road removal such that the riparian zone can be repaired*".

Those in the community who would prefer to see the road left open to all of the community either hold the view that:

## **11.1 Lake Ainsworth - South Eastern Precinct - Consultation**

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- The eastern road has had no detrimental impact on the Lake and there is no evidence to suggest the alternate view or
- Those who believe there are alternative ways to secure the health of the Lake without necessarily closing the road entirely.

### **3. Car Parking Concerns**

There were 19 submissions that made reference or raised concerns with the proposed and future car parking initiatives, with some questioning the number of car parks required to offset the actual loss of car parking through the closure of the eastern road.

Interestingly those most concerned with the current status of car parking, including the proposed car parking arrangements, were those generally not supportive of the road closure citing safety concerns, increased traffic congestion, lack of direct access to the designated off leash area and overall concern with a decrease in access opportunity for families in particular on the eastern foreshore.

### **4. Recreational Facilities and Boardwalk**

Whilst there were a few submissions that were in support of unobtrusive exercise stations, the vast majority of submissions did not support the recreational facilities proposed, which included the children's play area and boardwalk. The common feedback received was that Council should "*keep the area as natural as possible*".

### **5. Off Leash Dog Walkers**

There were 13 submissions received on this issue with a number of people also raising this concern to Council staff at the information sessions conducted in Lennox Head.

The inability to directly access the designated off leash dog area conveniently, via the existing car park provisions on the eastern side of the Lake was opposed. In raising this issue most were also concerned that the south eastern area would become very congested with the potential for greater conflict to occur between dog walkers and non-dog walkers.

## **Lake Ainsworth Master Plan 2005**

In considering the submissions it is important to have a clear understanding of the Master Plan, 2005. This document, referred to as the *Lake Ainsworth Crown Reserve Master Plan, 2005 (Connell Wagner)* is available on Council's website at the following location:

[www.ballina.nsw.gov.au](http://www.ballina.nsw.gov.au) / Your Council / Council Documents

Some of the key elements of this document are:

- a) Supports the closure of the eastern road (apart from emergency/maintenance provisions)

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- b) Rehabilitates the existing road with a shared path suitable for emergency access provisions to the NSW Sport and Recreational Centre and maintenance access from Council
- c) Provides for a new road through the middle of the caravan park (through the existing road reserve) connecting Ross Street to Camp Drewe Road (the western road).

It is important to acknowledge that this option, which is referred to as Option Two in the Master Plan 2005, is inconsistent with the preferred option exhibited, as endorsed by the current Council, as part of the Complete Urban report.

In keeping with the 26 June 2014 Council resolution, the exhibition material also displayed included Option Two of the 2005 Master Plan. This has allowed the community to review the Complete Urban documentation together with the recommendation from the Master Plan 2005.

In respect to the road through the middle of the caravan park, there has been some commentary from individuals and community interest groups that Council does not recognise or accept that the Crown were indeed supportive of the Master Plan 2005.

It is correct to state that when Council was considering its resignation as Reserve Trust Manger for the Crown Reserve Caravan Parks, during 2009/10, the Crown included in their correspondence a commitment that they would review the Plan of Management for the Lake Ainsworth Caravan Park and “*a fundamental premise of the plan will be the option 2, central road corridor as provided in the Master Plan*”.

A copy of that correspondence from the then Department of Lands, dated 26 February 2010, is included as the second attachment to this report (the community submissions are included as a separate attachment).

It is Council's understanding that a specific Plan of Management for the Lake Ainsworth caravan park has not been completed, albeit that the North Coast Holiday Parks Trust, as current managers of this facility may well have completed long term development plans for the park.

It remains the opinion of Council staff that even though the Department of Lands correspondence dated 26 February 2010 makes some reference to Departmental support for the road through the caravan park, this was not an option that had total support in Crown Lands, primarily due to the impact the road would have on the operation of the caravan park. The third attachment to this report is the latest correspondence from NSW Trade & Investment (Crown Lands), dated 21 November 2014, which states that:

*“Crown Lands confirms it does not support the development of the existing unconstructed public road reserve within the Holiday precinct. Crown Lands concurs with the proposed design improvements to the southern road corridor separating the Holiday Park Precinct from the lake foreshores. In this regard the Crown Lands preference is that a continuity of public road is established from the end of Pacific Parade through to the existing Camp Drewe. This would facilitate closure of the unconstructed and unnecessary section of Public Road within the Holiday Precinct”.*



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Another important point with this comment is that Crown Lands is highlighting that there is actually no formal public road reserve currently connecting Pacific Parade to Camp Drewe Road at the southern end of Lake Ainsworth. This is highlighted in Figure 1 earlier in this report. Therefore if the southern road is to be retained one important action that needs to be taken is to formalise this access through the creation of a road reserve.

This could be conducted in conjunction with closing the road reserve through the caravan park, assuming Council does not wish to amend its preferred option and construct the road through the caravan park.

If the proposal to close the road reserve is supported in principle by Council, one issue that potentially needs further consideration is whether or not some form of pedestrian access through the park should be retained.

From an amenity perspective this would be preferred as it would provide convenient access to the adjoining residents and those visitors who need to park at the western end of the precinct.

However this may be a concern to the park operators who have responsibilities for the security and amenity of their guests and it may create operational issues.

Whilst addressing a range of issues considered in the Lake Ainsworth Management Plan, 2002 the Crown Reserve Master Plan, 2005 whilst adopted by Council, was never formally adopted by the State Government as a statutory crown reserve management plan.

The Council resolution to exhibit the Complete Urban report with the preferred option being the reduction of the eastern road to an access road to the Department of Sport and Recreation has to some extent also superseded the Master Plan 2005.

The closing paragraph of the Master Plan, 2005 also recognised this by stating the following:

*“The Master Plan that is the subject of this report is essentially a guide for planning action only and much of the detail of these planning initiatives including road design and any related water sensitive design will be required to be developed during the design phase work associated with implementation”.*

NSW Trade & Investment in their submission also reinforce their support for the *“Ballina Coastal Reserve Plan of Management (PoM) adopted by the Minister 2003 (updated 2011). The PoM supports implementation of the **Management Plan for Lake Ainsworth** prepared by Ballina Council”.*

This terminology is important as NSW Trade & Investment is confirming their support for the Management Plan for Lake Ainsworth, which was completed in 2002, as distinct from the Master Plan 2005.

### **Lake Ainsworth Management Plan 2002**

In the context of reviewing the obligations to Council in relation to the Crown Reserve Master Plan, 2005 it is important to understand the context and recommendations contained in the *Lake Ainsworth Management Plan, 2002*.

This document is available on Council's website at the following location:

[www.ballina.nsw.gov.au](http://www.ballina.nsw.gov.au) / Your Council / Council Documents

The premise of the Lake Ainsworth Management Plan 2002 was to outline the "management strategies and actions that should be implemented to help preserve and enhance Lake Ainsworth". This document had a very strong focus on improving the water quality at the Lake. Some of the key strategies underlining the Management Plan included:

- Management Structure
- Water Quality
- Coastal Dune Stability
- Traffic Management
- Recreation
- Ecology
- Planning and Development
- Erosion and Sedimentation
- Education
- Water Level and Flooding
- Aboriginal Heritage

Some of the main recommendations arising from the Management Plan have been reproduced below.

### ***Lake and Groundwater Quality (page 28)***

- Construct Water quality improvement systems such as mini wetlands at the outlets of the existing stormwater systems
- Cultivation of reed beds around the lake foreshore. While they have the potential to reduce nutrients from the lake, they may also provide additional benefits such as reducing foreshore erosion and providing habitat aquatic fauna.
- Treatment of runoff from road/parking areas through filter swales
- Tighter controls and policing of controls, to reduce the amount of faecal contamination from domestic dogs. In this regard no animals should be allowed in the lake at all and dogs should only be allowed in the immediate area if leashed.
- Encourage swimmers and sun bathers to 'cover up' as a means of sun protection rather than using excessive amounts of sunscreen.

*Note: The management of algal blooms is a separate issue (and ongoing) to the general water quality improvement initiatives being considered as part of this consultation review and report.*

### ***Coastal Dune Stability***

The aim of coastal dune management was to establish an effective buffer with coastal dunes to protect the lake. Apart from continuing to implement dune rehabilitation in accordance with established management strategies two of the recommendations are worthy of comment;

- Relocate/close the 4WD access – This action has been completed.
- Remove and relocate the existing power line along the eastern road and locate underground.

There were a number of public submissions calling for the removal of the overhead power lines. This would mitigate the need for Essential Energy to prune around the overhead powerlines as is currently the case.

*Note: Preliminary discussions with a local Level 1 Electrical contractor have indicated that replacing the overhead electrical powerlines with underground lines is feasible.*

### ***Traffic Management***

In addressing the traffic management issues the Management Plan proposed the southern foreshore road, which currently connects to the existing unsealed road (Camp Drewe Road) was to terminate at a cul-de-sac, with a new connection road to western access being provided off Ross Street and aligned around the western end of the caravan park.

Importantly this recommended realignment (in conjunction with removal of the 4WD access) was seen as a way of removing traffic not directly associated with the Lake. This recommended option of the Management Plan was documented as Option One in the Master Plan, 2005. However this option was then not supported by Council as the preferred option in 2005, due to a number of reasons including objections from residents in Barrett Drive and the overall cost of the works.

In relation to the eastern road the Management Plan 2002, recommended that (page 42):

- *...as far as practical, picnic facilities be located to the west, between the road and the lake, so there is no need for children to cross the road. Although limited it is also suggested that the road be slightly realigned so as to introduce gentle curves. Such realignment can be achieved in limited spaces by a very slight shift to the east. No trees are to be removed for this, and no excavation into the base of the dune is proposed".*
- *In the vicinity of the existing amenities and 4WD track, the turnaround area is to be reconfigured to provide a minimum sized cul-de-sac with parking optimized. The entrance into the Sports and Recreation Centre is also to be reconfigured and sign posted so that it is clear that access is to that facility only*

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- *In reconfiguring the eastern road, drainage measures can be implemented such that run-off from the road can be discharged to the eastern side, collected and treated prior to discharge.*
- *By implementing management measures shown in illustration 5, the issues of safety, erosion and continual access to the various facilities around the lake can be addressed. By formalising the access roads and carparking, the erosion caused from vehicles parking into the dunes and driving off the roads can be minimized or avoided*
- *The movement of the majority of the picnic tables to the western side of the eastern road will reduce the problems with safety as people will no longer need to continually cross the road.*
- *Access will be continued to the Sports and Recreation Centre to the east and west therefore there will not be a problem associated with access during times of flooding.*

It is important to highlight that at no stage has this Ministerial endorsed Plan of Management, 2002 for Lake Ainsworth suggested that closure of the eastern road was necessary to achieve the desired outcomes of the Management Plan. In fact it goes on to say (page 43):

*This management option will improve safety and increase pedestrian amenity and recreational facilities in the area east of Lake Ainsworth. Further safety and pedestrian amenity will be achieved by reducing vehicle and pedestrian conflicts through the introduction of formalised car parking.....*

### ***Erosion and Sedimentation***

The Management Plan states that the erosion observed at the Lake is mostly related to (page 75):

- *Vehicular traffic driving on the fringes of the roads beyond the sealed surface*
- *Runoff from the sealed roads; and*
- *High pedestrian traffic, particularly in the south eastern corner of the lake reserve*

*Aerial photographs of Lake Ainsworth over a period of time suggest that significant foreshore erosion has not occurred, even though the location of the road has remained the same since the late 1940's.*

The fourth attachment to this report provides copies of the map layouts from the Management Plan 2002 that highlight the major actions proposed in that Plan.

### **Current Issues with Compliance / Conflict / Regulation**

Weekends at Lake Ainsworth in peak summer have reached the point where traffic management and parking are extremely difficult to manage, particularly when the Lennox Head Surf Club has scheduled nipper mornings on a Sunday and even more so when they host surf carnivals and additional events in the area.

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The Council rangers in recent years have identified an increase in the patronage of the area surrounding the Lake and the limited parking areas to deal with the influx of vehicles into this area, particularly on weekends and holiday periods.

The rangers have also reported congestion of vehicles in the area with vehicles parked in dangerous positions, restricting roads to single traffic lanes in places, double parking, blocking driveways and access ways and concerns with vehicles being parked in, for extended periods of time.

Council rangers have also been verbally abused on a number of occasions as they try to enforce the parking regulations on busy weekends.

Safety concerns have also been raised, in particular young children walking between vehicles and moving backwards and forwards between the Lake and beach.

Council needs to seriously consider providing better traffic and parking management and more parking capacity in this area for locals and tourists to the area; particularly on nipper days and during surf club events.

Given the recent concerns regarding parking and dog management the rangers have been rostered to undertake additional patrols and have incorporated an educational stall at the lake on Sundays from the end of November through to the Sunday before Christmas.

A meeting for staff to consult further with the Lennox Head Surf Club in respect to managing this location on peak days is currently proposed for 17 December 2014.

### **Water Quality**

In considering this report it is also prudent to provide some background information from Council's perspective in relation to water quality in and around the Lake Ainsworth Precinct.

Council has been a proactive participant in the Beachwatch Partnership Program with the Office of Environment and Heritage since 2002 for the reporting and monitoring of recreational waters and this includes sampling at Lake Ainsworth.

During the most recent sampling year, being 2013/14, sample points being Lake Ainsworth South was provisionally graded as 'Good', Lake Ainsworth East and Lake Ainsworth West were graded as 'Poor'.

Water quality at the sites graded 'Poor' were mostly suitable for swimming during dry weather conditions, however the elevated enterococci levels were recorded after rainfall.

Swimming at these sites should be avoided during and for up to three days following rainfall and or if there are signs of stormwater pollution such as discolored water or floating debris.

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The results identified in the 2013/14 Report are similar to previous years when rainfall is higher than average during the sampling period. Various swimming areas are affected by rainfall and subsequent contamination from stormwater discharges and this has been reported to the Council regularly in previous years.

Overall swimming areas are acceptable most of the time occasionally posing an increased risk of illness to swimmers resulting from rainfall, poor dilution and minimal flushing.

Parameters including dissolved oxygen, ph, temperature, conductivity and turbidity are generally compliant during the sampling period.

Visual and odour observations undertaken during sampling have identified minimal impacts from other pollutants such as litter and oils and greases which could be road related.

### **Response from Sport and Recreation**

The final attachment to this report is the response from Sport and Recreation in respect to the exhibition process. This response is important as Council specifically asked Sport and Recreation for a financial contribution to the proposed eastern road works as the works are designed solely for access to the Centre.

The response has not confirmed a specific financial contribution but rather they will finance items such as a boom gate and assistance with the maintenance works.

The correspondence has also highlighted a number of concerns that Sport and Recreation have in respect to the proposed design. These issues will need to be worked through if Council resolves to proceed with the realignment of the eastern road.

Mention is also made of funding being provided by Crown Lands, however it is the understanding of staff that Crown Lands will not be offering any monies for these works.

### **Sustainability Considerations**

- **Environment**  
All options currently under consideration for the Lake Ainsworth Precinct will incorporate environmentally sustainable initiatives.
- **Social**  
Council should be mindful that there are possibly a range of social implications on large sections community dependent upon the preferred direction of Council for the Lake Ainsworth Precinct.
- **Economic**  
Ensuring that the long term viability of Lake Ainsworth is secured for the community will assist in promoting Ballina as a visitor or tourist destination.

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### Legal / Resource / Financial Implications

Council has funding available for some works and the allocation of those funds will be dependent on the overall direction Council takes with respect to this south eastern precinct. The recommended allocation of the funding as per the exhibition materials was as follows:

Description	Amount (\$)
Planning approvals and detailed design	40,000
Paths	222,000
Landscaping	74,000
Playground equipment, exercise stations and picnic shelters, BBQs	264,000
Road works, car parks, drainage	600,000
Design and development consent for Lennox Head Surf Club	100,000
<b>Total</b>	<b>1,300,000</b>

Council also sought a financial contribution from NSW Sport and Recreation or the Crown to the proposed eastern road works. Sport and Recreation has offered monies for specific works, whereas the Crown has not offered any financial contribution.

### Consultation

A community consultation process has been completed.

### Options

The difficulty now facing Council is the wide range of options available in respect to the materials exhibited. This options section seeks to distinguish the options into the key elements of the exhibited material.

#### Recreational Facilities and Boardwalk

The submissions generally were not supportive of these facilities.

Council can support the submissions or alternatively Council could be of the opinion that the submissions do not reflect the broader feeling of the community and support the inclusion of the recreational facilities, possibly without the boardwalk, as Councillors did originally express some concerns with that proposal.

#### Car Parking

Generally there were not strong objections to the new car parking proposed, albeit that some people were concerned over the loss of the existing car parking if the eastern road is relocated or closed. In attempt to support the natural environment the Council's current preferred option was prepared on the basis that the total number of car parks remain unchanged.

However, as noted in the report, the peak demands are causing significant issues and therefore there is a case that more car parks and improved traffic management arrangements are required.

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### Lennox Head Surf Club - Redevelopment

Again there was not any strong objection to this proposal, albeit that the Lennox Head Surf Club correspondence in the submissions states that the seven members present do not support the management model Council has introduced at the Ballina Surf Club.

Council therefore needs to determine whether it wishes to confirm the allocation of funding towards the redevelopment of the surf club, whilst acknowledging there is no funding for the actual building redevelopment and there may well be further issues to resolve with Council and the Surf Club in respect to the preferred management model.

### Preferred Road Network

This remains the most contentious issue. The main options available appear to be:

- a) Support the option exhibited – This reduces the eastern road to access only and relocates the road to the east. It is fair to say that limited submissions supported this proposal with people either wanting the road closed in full or to remain open in full to provide car parking, access to the off leash dog area etc.
- b) Support the closure of the eastern road and construct the road through the caravan park - This option is not supported by NSW Trade & Investment and despite the contents of a number of submissions, and the contents of the Master Plan, 2005, Council staff concur with the position of NSW Trade & Investment.

It is considered that the impacts on Ross Street residents, the operations of the caravan park, the loss of access to the Sport and Recreation Centre and the need to possibly provide some form of reconstruction works for the Camp Drewe Road do not justify this realignment of roads.

A very preliminary figure to provide an appropriate pavement suitable for a bitumen seal on the road to Camp Drewe has been estimated in the vicinity of \$800,000 to \$1m. Even if the road to Camp Drewe was not improved, or sealed, Council would incur higher ongoing maintenance costs associated with more frequent and heavier traffic loading.

Council's Engineering Works Section report higher maintenance costs as a result of it being the sole access point to the NSW Sport and Recreation when the eastern road is out of service due to flooding.

- c) Support the closure of the eastern road and upgrade and formalise the southern foreshore road linking Pacific Parade to the Camp Drewe Road – As per option b) the key concern with this issue is the management of the Camp Drewe Road, along with loss of access to the Sport and Recreation Centre.

Despite these concerns Councillors may be of the opinion that the Camp Drewe Road could be maintained in its existing state and the loss of access to the Sport and Recreation Centre is acceptable.



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- d) Support the road configuration as per the 2002 Lake Ainsworth Management Plan – This option improves the existing eastern road and it would also include formalising the southern road access as per the submission from NSW Trade & Investment.

In reviewing the submissions and supporting documentation such as the 2002 Lake Ainsworth Management Plan, along with advice regarding water quality etc, there appears to be limited evidence that the existing eastern road is impacting directly on the health of the Lake. As mentioned earlier Council's Environmental Health Officers are reporting minimal water quality issues related to the road.

The exhibited proposal to move the road east still results in traffic movements and there will be a significant loss of vegetation to provide that infrastructure for limited use. Also, even with the road moved to the east, there is still a very limited buffer between the Lake and the traffic.

Therefore, as per the 2002 Management Plan and as per the submission from NSW Trade & Investment, a more cost effective and even possibly more environmentally effective outcome due to limited tree loss and minimal road works, could be to improve the existing road alignment, along with the supporting drainage and car parking infrastructure. This also results in a significantly higher number of car parks in this location to assist with the management of traffic.

This overcomes concerns raised by a range of parties, albeit that it will not satisfy the supporters of the eastern road closure option.

If this option was supported Council would also look at then formalising the southern road in conjunction with Crown Lands. If Council does not proceed with the construction of the road through the caravan park, the negotiations with Crown Lands could evaluate the closure of that road reserve and the opening of a road reserve at the southern end of the Lake. It is understood that the road reserve in the caravan park is Council owned road reserve therefore there is the option to negotiate the sale of that land and purchase of that another area of crown land that may be needed to formalise the road accesses.

These discussions should occur if Council decides to support any option other than the road through the caravan park.

The one concern with any closure of the road reserve through the caravan park is that the public do, at times, access the Lake through the caravan park. There could be some risk of this access being lost if the road reserve was removed and that may well need to be an issue considered as part of any negotiations.

In summary the recommendations that follow are structured based on what are considered to be the preferred options for the various elements of this report. Unfortunately there is often no one ideal situation for all the various elements listed and this has meant that some of the recommendations provide an option a) or b) for Councillor determination.

**RECOMMENDATIONS**

1. That Council notes the contents of this report in respect to the consultation process for the south eastern precinct of Lake Ainsworth.
2. That in respect to the provision of recreational facilities and boardwalk Council's preferred option is confirmed as the:
  - a) Removal of the boardwalk and retention of the other facilities such as BBQ, picnic facilities and playground equipment

OR

  - b) Removal of the boardwalk and playground equipment, with the retention of limited BBQ and picnic facilities.
3. That in respect to car parking facilities, Council confirms its support for the additional car parking spaces as per the exhibited document, with these spaces subject to further detailed design and investigation.
4. That in respect to the Lennox Head Surf Club redevelopment Council endorses the redevelopment of the Surf Club as the preferred option for the long term future of this building.
5. That in respect to the preferred road layout Council confirms its preferred layout is:
  - a) The retention of the existing eastern road solely for access to the Sport and Recreation Centre, as per the exhibited documents, subject to further detailed design and investigation.

OR

  - b) The retention of the existing road network, with the eastern road to be improved as per the 2002 Lake Ainsworth Management Plan, subject to Council receiving a further report on the estimated costs needed to improve this road through an upgraded surface, improved drainage and car parking, along with consideration of the environmental improvements.
6. That subject to point five Council authorises negotiations with Crown Lands in respect to formalising the southern access around the Lake, along with the possible closure of the Council road reserve through the Lake Ainsworth Caravan Park, with these negotiations to examine pedestrian access through the Caravan Park. The outcomes from these negotiations are to be reported back to Council before finalisation.
7. That Council supports the replacement of the overhead electrical power lines with underground conduits to eliminate the need for maintenance (pruning by the Electrical authorities) and that Council approach Essential Energy to have these works undertaken as a priority.

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8. That subject to the above mentioned points, Council receive a further report providing updated estimates for the various works identified, along with a preferred allocation of the available funds, to allow Council to then determine the priority order of works and an implementation program.

### **Attachment(s)**

1. Exhibition Summary Document
2. Letter - Department of Lands - Transfer of Management
3. Letter - Crown Lands Lake Ainsworth Submission 2014
4. Extract from Lake Ainsworth Management Plan 2002
5. NSW Government - Office of Sport Submission - Lake Ainsworth
6. Submissions (Under separate cover)

## **11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights**

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### **11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights**

**Delivery Program**      Asset Management

**Objective**              To seek Council's direction regarding a proposed road surface strategy and to represent a report regarding the project to rehabilitate The Ridgeway at Ballina Heights.

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#### **Background**

This report gives consideration to two matters involving the resurfacing of sealed urban roads. The first issue is to seek Council's review of a proposal to formally establish a strategic approach to the management of the Shire's sealed road network. The second issue is to re-present the report from the last meeting regarding the project to rehabilitate the Ridgeway at Ballina Heights.

#### **Key Issues**

- Levels of service
- Stewardship of our road assets, including financial sustainability

#### **Information**

##### *The Ridgeway, Ballina Heights Road Rehabilitation Project*

A copy of the report regarding this project presented to the previous meeting of Council is attached. The Council's response to this report was to convene a workshop which was held 8 December 2014.

The workshop examined the technical aspects of this project and the proposed road surfacing strategy discussed below. Some supplementary information is provided below to be read in conjunction with the previous report.

In summary, the previous report advised that the Ridgeway project is a rehabilitation project for a section of failed road which is currently sealed with an asphaltic concrete (AC) surface. The issue for Council to determine is a subjective cost/benefit question. A saving of \$69,000 is forecast if the Council elects to change the surface type from the AC surface to a bitumen seal with further savings generated over time on a whole of life cost basis for the 80 year life of the pavement that the seal services.

For further analysis of the difference in service level between an AC surface and a bitumen surface, Council is referred to the information in the previous report and in the further information below which discusses the proposed road surface strategy.

## **11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights**

The recommendation to this report follows the recommendation to the previous report. The reasons for this recommendation include that many of our urban roads are sealed with bitumen and therefore this surface type is considered to provide an acceptable level of service elsewhere in the network.

Furthermore, it is essential Council continues to look to generate savings in its roads program so that these funds can be invested in increasing the scope of the road rehabilitation, maintenance and resurfacing programs. While it can be argued that the bitumen seal approach is a more equitable method for the consistent Shire application of scarce Council funds, it is also the case the Council may wish to acknowledge that the early failure of the road pavement at the Ridgeway is an exceptional circumstance that justifies the additional expense even if Council adopts the strategic approach recommended below.

### **Sealed Road Resurfacing Strategy**

Attached to this report is a copy of the information presented to Council at the workshop to consider this issue.

In summary, the information is a model derived from the data in Council's Asset Register. The model aggregates the information in respect of the age and surface type for all of the road segments and makes predictions based on the classes of roads for the total cost for the resurfacing of the network over an eighty year period.

The data shows that 45% of the sealed urban roads are surfaced with a sprayed bitumen seal and that for the whole of our sealed road network, 71% currently has a bitumen surface. These figures are calculated on the basis of length of segments.

If area is used to complete the calculations the result is that 40% of the urban network is bitumen sealed and 63% of the whole of the network is bitumen sealed. The reason for the difference in outcomes when comparing length to area is because typically the AC streets are newer and therefore they are wider and the shoulders are sealed.

The following three scenarios were modelled in the attached information.

- Scenario One - Replace all surfaces on a like for like basis
- Scenario Two – Convert all surfaces to a bitumen seal
- Scenario Three – Convert all surfaces to a bitumen seal with the exception of some higher order roads (as listed in the attachment).

The model reviewed the expected costs for each scenario and the expected impact on roughness across an 80 year period. Roughness is used as a guide for road condition as perceived by the user as a level of service. It is considered a good indicator for a whole of network analysis such as this, although it is noted that a range of indicators can be used, particularly for less strategic purposes.

While the expected costs were calculated for the 80 year period, the information presented only shows the next 10 years as this is considered to be the period of most relevance for this term of Council having regard to the uncertainties of modelling over a very long term and subsequent reviews of any strategies that might be adopted.

## **11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights**

The tables on the last page of the attachment report the findings including the following cost information.

<u>Model</u>	<u>10 year total cost</u>	<u>10 year average cost</u>
Scenario 1	\$12,868,160	\$1,286,816
Scenario 2	\$7,580,157	\$758,016
Scenario 3	\$8,525,873	\$852,587

The cost saving between scenario 1 and 2 is \$528,800 and scenario 1 and 3 is \$434,229. Clearly over the 80 year period these savings become a considerable aggregate.

The models also show a minimal impact to the effect on roughness by adopting Scenario 2 compared to Scenario 1. The figures supporting this are shown in red in the last table in the attachment.

As for the individual case of the Ridgeway, the determination to be made by Council is a question of cost versus benefit.

In terms of the level of service associated with road noise, at the traffic volumes experienced on our local urban roads, while the difference in noise levels can be measured, it is suggested to Council that within property boundaries there is no impact in respect of any reduced amenity from the use of bitumen seals. To support this, it is noted that Council does not receive complaints in respect of road noise for those existing streets that have a sprayed bitumen surface and over the last few years the application of a change from AC to bitumen has only generated complaints that can be described as isolated having regard to the amount of work that has been done.

The recent community research undertaken to report on the levels of satisfaction in relation to Council's services reported the following in respect of roads.

Of all of Council's services, roads were ranked with the highest performance gap. The performance gap compares the importance mean to the satisfaction mean. The figures were;

- Importance Mean 4.65
- Satisfaction Mean 3.12
- Performance Gap 1.55

Road were identified as the service of highest importance to the community in the 2014 survey, with one of the lower level of satisfactions, resulting in this performance gap. Importantly the gap had improved significantly from the 2012 survey when it was 2.01.

Achieving improvements in the level of service is one very important component of any strategy to further improve this performance gap. From one perspective it can be argued that the perception of the superior level of service provided by maintaining the AC approach is the preferred way to improve satisfaction levels.

## **11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights**

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The alternate view is that the savings derived from the sprayed seal approach enable the Council to comparatively expand its works program and in particular increase its ability to undertake asset renewal activities as close as possible to when they are due.

That is, the spray seal approach will provide the best opportunity for more works to be delivered across the Shire each year and for more works to be in place before road condition complaints from old or failing surfaces are received.

The Council also needs to be mindful of the current Fit for the Future local government reform program. We face significant challenges in regards to developing a strategy that is capable of meeting the financial and asset renewal ratios established as benchmarks in the reform program. The savings possible under the sprayed seal strategy will make a contribution towards the changes needed to meet these targets.

Further to the above, the Council also needs to be mindful of a fourth scenario. If the Council prefers the service level provide by scenario one, then it follows that the Council should also give consideration, for equity of service reasons and consistent satisfaction, to the scenario where the existing bitumen seals are converted to AC. The cost estimate for this scenario, with a comparison to scenario one is as follows.

<u>Model</u>	<u>10 year total</u>	<u>10 year average</u>
Scenario 4	\$30,320,630	\$3,032,063

Compared to Scenario 1 this is a cost increase (on average per year) of \$1,733,247 and compared to Scenario 2 it is an increase of \$2,274,047.

### Scenario Three – Higher Order Roads Retained as AC

If the Council is inclined to support the suggested approach to convert the existing AC seals to spray seals at the time of their next renewal, it is acknowledged that certain roads, by virtue of their traffic volume and function, justify the continued use of AC within the strategy. If the Council supports this suggestion, then the following information is provided to determine which roads should be included. This information meets the requirements from the second part of the resolution made at the last meeting.

The following is a list of roads, ranked are all the roads in the road register classified as NAASRA N6. While it is open to the Council to add, or subtract from this list if this scenario 3 is preferred, it is noted that the major proportion of our urban roads are classified as N7 and N8. Therefore the advantage, from a communication and policy perspective to the N6 class is that it provides a clear delineation point.

If the Council was inclined to add to the list from the N7 class, it could do that subjectively or it Council establish another delineation point such as traffic volumes. However it is noted that by virtue of the classification system criteria (reproduced below) the roads in each class all have similar characteristics.

The NAASRA (National Association of Australian State Road Authorities) has developed a 9 level road hierarchy that is used throughout Australia.

## 11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights

- Class 1: Generally reserved for Highway / Motorways  
 Class 2 to 5: Defines Rural Road Networks  
 Classes 6 to 9: Defines Urban Road Networks

At Ballina, we have adopted the NAASRA Classes (2 to 9) to define our road networks. Classes 6 and 7 are described below.

### Class 6

*“Those roads whose main function is to form the principal avenue of communication for massive traffic movements.”*

These Roads consists of the primary ‘through’ roads connecting urban localities.

### Class 7

*“Those roads, not being Class 6, whose main function is to supplement the Class 6 roads in providing for traffic movements or which distribute traffic to local street systems”*

These Roads consists of the roads that linking the primary avenues to the local residential street networks.

### Ballina Shire Council Class 6 Road List

Road	Suburb	Origin	Terminus	ADT / lane
Ballina Road (40:016)	Alstonville	Bruxner Highway	Green Street	4,501
Bangalow Road (20:050)	Ballina Island	Cherry Street	MR 545 - Angels Beach Drive	6,678
Bentinck Street (20:018)	Ballina Island	MR 695 - Kerr Street	Kingsford Smith Drive	3,313
Bugden Avenue (40:031)	Alstonville	Main Street	Lismore Road (40:016)	6,311
Cherry Street (20:004)	Ballina Island	Richmond River	Florence Price Place	2,929
Hill Street (23:001)	Ballina East	Kerr Street	Pine Avenue	2,841
Kerr Street (20:007)	Ballina Island	Richmond River	MR 695 - River Street	8,981
Kingsford Smith Drive (20:085)	Ballina Island	Bentinck Street	River Street	2,986
Lismore Road (40:016)	Alstonville	Pacific Highway	Lismore Road	2,106
Lismore Road (41:016)	Wollongbar	Pacific Highway	MR 7734 - Rifle Range Road	2,106
MR 545 - Angels Beach Drive (MR 545)	Ballina East	MR 695 - Kerr Street	MR 545 - The Coast Road	6,386
MR 545 - Bangalow Road (MR 545)	Ballina Island	MR 695 - Kerr Street	MR 545 - Angels Beach Drive	6,634
MR 695 - Kerr Street (MR 695)	Ballina Island	MR 695 - River Street	MR 695 - Tamarind Drive	8,981
MR 695 - Tamarind Drive (MR 695)	Rural - Cumbalum	MR 695 - Kerr Street	Pacific Highway (SH10)	9,490
MR 7734 - Lismore Road (MR 7734)	Wollongbar	Pacific Highway	Sneaths Road	6,678
River Street (20:013)	Ballina Island	Kingsford Smith Drive	MR 695 - Kerr Street	3,331
River Street (50:014)	Wardell	Byron Street	Owens Lane -west	791
The Coast Road (10:545)	Ballina East	Kerr Street	MR 545 - Angels Beach Drive	1,787



## **11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights**

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### **Sustainability Considerations**

- **Environment**  
The maintenance of a sealed road network at its design level of service reduces the impacts on the environment.
- **Social**  
Levels of service are important for the wellbeing and satisfaction of the community.
- **Economic**  
The road network is essential for the economic development of a community. Providing and maintaining an affordable level of service is the key stewardship role of the Council in respect of this asset.

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

The purpose of this report is to provide a strategic analysis of the financial sustainability of the options to maintain our road assets.

### **Consultation**

The Council's Road Asset Management Plan is currently being updated. The recommendation to this report is for the direction of Council to be determined and included in the update plan. Following its update, the Asset Management Plan will be placed on public exhibition.

### **Options**

For the Ridgeway, Ballina Heights, the options from the previous report are reproduced below.

#### Option One

The Ridgeway pavement renewal project is completed with a bitumen seal at an estimated cost of \$296,000.

#### Option Two

The Ridgeway pavement renewal project is completed with an asphaltic concrete seal at an estimated cost of \$365,000.

The recommendation to this report is Option One, being the same as the previous recommendation on this matter and for the reasons in the early report and the information discussed above.

For the proposed Urban Roads Resurfacing Strategy, there are three options.

#### Option One

Retain AC as the preferred surface at existing locations.

## **11.2 Sealed Road Surfacing Strategy and The Ridgeway, Ballina Heights**

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### Option Two

Conversion of existing AC surfaces, at planned renewal, to a spray seal, except for the roads classed as NAASRA N6 in Council's Road Asset Register.

### Option Three

Conversion of existing AC surfaces, at planned renewal, to a spray seal, except for the roads classed as NAASRA N6 in Council's Road Asset Register and other roads as selected by the Council.

For the overall financial sustainability of the Council, Option Two is preferred. Under Option Three the Council can additional roads if that is its preference, however the advantage of Option Two is that provides a clear delineation point to communicate to the community in response to requests for information.

From the perspective of staff, Option Two is preferred over Option One on the basis of equity and that improvements to the overall satisfaction are likely as the Council will be able to meet its resurfacing requirements closer to the preferred time of renewal. However, ultimately questions regarding affordability and level of service are for the Council to determine and the Council may wish to select Option One as it represents a status quo position (like for like resurfacing into the future).

### **RECOMMENDATIONS**

1. That Council endorses a two coat seal as the road wearing surface for The Ridgeway rehabilitation project on the basis that this change will provide significant financial savings to Council, is consistent with Council's current practice, and it is a surface type that provides a reasonable level of service.
2. That Council amends its Road Asset Management to include a Urban Road Resurfacing Strategy that follows a direction, all existing asphaltic concrete surfaces are to be converted to a bitumen spray seal at the time of their next renewal, except for the roads classed as NAASRA N6, and above, in Council's Road Asset Register. The Strategy will note that the application of this strategy is subject to technical assessment for each individual and the application of asphaltic concrete may be applied in certain circumstances.
3. That the amendments to the Council's Road Asset Management Plan proposed in point two above be placed on public exhibition.

### **Attachment(s)**

1. Sealed Road Surfacing Strategy Report
2. Report from November Council Meeting - The Ridgeway

### **11.3 Alstonville Memorial - Request for Approval**

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#### **11.3 Alstonville Memorial - Request for Approval**

**Delivery Program**      Engineering Works

**Objective**              For Council to approve the placement of a historical monument at Alstonville.

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#### **Background**

Alstonville Plateau Historical Society has requested permission for a memorial rock to be placed to commemorate the 150<sup>th</sup> anniversary of Alstonville.

The proposal is to place the rock at the entrance to the Fairfield Estate which was settled in 1865 by Andrew and Thomas Freeborn. The preferred location in this area is in the road reserve adjacent to Parkland Drive, Alstonville.

This report has been prepared to meet the requirements of the Council's Monuments and Memorials on Public Land Policy. Relevantly the policy requires memorials will not be permitted on public land unless the person, event or location is of historical significance and the memorial is approved by resolution of Council.

#### **Key Issues**

- Assess a proposal for a public memorial.
- Determine a donation request.

#### **Information**

The proposal is for the rock to stand two and half meters high with a width of nearly one metre. Two locations have been identified within the road reserve that meet the Austroads design guide which established the clear zone distance from the travel lane for this type of urban road. The Parkland Drive island reserve is already well vegetated with mature trees and the installation of the proposed memorial rock in the selected locations is not considered to provide any change to the road related risks.

The historical data information presented on the rock will be prepared by the determined by the Alstonville Plateau Historical Society. The preparation of the plaque and its fixing to the rock will also be undertaken by the Society.

The Society has arranged for the procurement and delivery of the rock to the site. The Society has request Council to install the monument into position. As well as providing technical skills, the use of Council systems will assist in ensuring compliance with work health and safety requirements.

The cost of the Council assistance is estimated to be approximately \$450.

## 11.3 Alstonville Memorial - Request for Approval

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### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
A memorial rock displaying a plaque detailing local historical information provides important information for residents and visitors to the Alstonville.
- **Economic**  
Not Applicable

### Legal / Resource / Financial Implications

There are no legal or resource financial implications associated with the recommendations to this report. As per the above information, the Society is requesting financial assistance of \$450 from Council.

The current status of the donations budgets for 2014/15 is as follows:

<b>Items</b>	<b>Budget</b>	<b>Allocated</b>	<b>Balance</b>
Donations (General)	50,000	39,676	10,324
Donations (Public Halls)	41,000	39,802	1,198
Donations (Planning Fees)	2,000	2,439	(439)
<b>Net Amount Available</b>			<b>11,083</b>

There are also further requests for donations assistance later in this agenda.

### Consultation

No community consultation has been undertaken in the preparation of this report.

### Options

The options for Council are to approve, or decline to approve, the installation of the proposed memorial rock at this location in Parkland Drive. The Council also has an option to support the installation at a cost of \$450.

The recommendation to this report is to support both requests having regard to the community outcomes associated with this project and based on the advice of staff that selected location meets current road safety design standards.

### **11.3 Alstonville Memorial - Request for Approval**

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#### **RECOMMENDATIONS**

1. That Council approve the request from the Alstonville Plateau Historical Society for the installation of a memorial rock in Parkland Drive, Alstonville as per the contents of this report.
2. That the Council allocate \$450 from the 2014/15 Donations Budget to cover the Council's costs to assist in the installation of the project in point one above.

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

1. Parkland Drive Memorial Rock Proposed Locations Map
2. Request from Alstonville Plateau Historical Society for Memorial Rock
3. Example of Memorial Rock Proposed for Parkland Drive
4. Monuments & Memorials on Public Land Policy 2011

## **11.4 E-Waste Recycling Scheme**

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### **11.4 E-Waste Recycling Scheme**

**Delivery Program** Waste Management

**Objective** To determine a response to the expiry of the Federal Government E-Waste recycling scheme.

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#### **Background**

The National Television and Computer Recycling Scheme involved a combination of government regulation and industry action to take responsibility for the collection and recycling of waste televisions, computers, printers and computer products (E-Waste). Under the Scheme, householders and small business could drop-off these items for free at the Ballina Waste Management Facility.

The scheme prevented millions of old TVs and computers from being sent to landfill by providing opportunities for the community to recycle their unwanted E-Waste and was progressively rolled out nationally over 18 months from 1 July 2012.

The roll out of the scheme had significant benefits to the local community as the timing was aligned with the changeover of analogue to digital television reception and provided an incentive for the community to recycle their unwanted televisions and computer peripherals preventing these from disposal to landfill.

The purpose of this report is review the options now that the Federal arrangements are due to expire.

#### **Key Issues**

- Promotion of effective recycling
- Management of costs

#### **Information**

From 7 January 2015 the recycling of E-Waste received at the waste facility will no longer be free of charge. Since the commencement of the scheme a total of 250 tonnes of hazardous E-Waste materials have been diverted from landfill. Based on this history it is estimated that it will cost Council an estimated \$18,000 in recycling fees per year once the current scheme is closed. To landfill these materials it is expected to cost around \$3,800 per annum.

Assuming Council elects to continue the recycling service, in considering whether or not to seek cost recovery for these items, it is arguable that one of the reasons that the scheme was so successful was the service was free of charge.

## 11.4 E-Waste Recycling Scheme

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In addition to the benefits of the landfill diversion, the scheme assisted Council in respect of illegal dumping as typically the televisions and other units can be large items and as such they can often be found in illegally dumped waste.

The following table provides a comparison of recycling costs to land fill costs for the more common items received under the scheme. Two types of televisions are listed in the table. The first type noted as CRT televisions is for Cathode Ray televisions and the second reference is for LCD televisions or Liquid Crystal Display type televisions.

Item	Cost to Recycle	Cost to Landfill
CRT televisions	\$21.95	\$2.39
Desktop computer	\$5.35	\$0.75
LCD television	\$4.35	\$0.35
Printer	\$3.60	\$0.49

On a per tonnage rate, the cost per E-Waste item for landfill disposal is significantly higher than the rate for the disposal of general mixed waste.

The options section of this report reviews the different fee structure options for these materials.

### Sustainability Considerations

- **Environment**

E-waste is the most rapidly growing waste type within the municipal waste Stream. E-waste contains toxic and hazardous materials including mercury, lead, cadmium, beryllium, chromium, and chemical flame retardants, which have the potential to leach into the soil and water if landfill barriers fail.

- **Social**

Safe recycling of outdated electronics promotes sound management of toxic chemicals such as lead and mercury. This program reduces illegal E-waste dumping incidents.

- **Economic**

Recycling of E-waste without government funding is costly, although environmentally sustainable practices can also have economic benefits in the long run.

### Legal / Resource / Financial Implications

The NSW Environmental Protection Authority's "NSW Waste Avoidance and Resource Recovery Strategy 2013-21(WARR Strategy)" which underpins the objectives of the Waste Avoidance and Resource Recovery Act 2001, states;

*"effective waste management is a fundamental responsibility for the community" and therefore Councils consideration in waste management solutions should be driven by the waste hierarchy contained within the strategy."*

## **11.4 E-Waste Recycling Scheme**

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Recycling of problematic wastes is costly and consideration should be given to sharing the costs so that incentives are in place to support residents to dispose of their hazardous waste responsibly.

In 2013/14, Council responded to in excess of 200 illegal waste dumping incidents with a cost of \$14,000 in disposal fees. This figure would be higher in the absence of a subsidised scheme.

In considering the merits of subsidies, it is noted that some of the collected E-waste is generated from outside of the Shire.

### **Consultation**

No consultation has been undertaken in the preparation of this report. If Council elects to apply a charge it is a requirement that this be advertised.

### **Options**

The current 2014/15 fees and charges do not have a specific charge for E-waste. This means that from 7 January, 2015, without any amendment to the fees and charges, all incoming e-waste entering the facility will be allocated a bulky inert waste charge of \$250 per tonne.

The following options are therefore presented to Council to enable it to consider whether or not a subsidy is appropriate in the circumstances for this waste type.

#### **Option One – Full Subsidy**

Under this option Council would in effect extend the current scheme arrangements by the continued acceptance of E Waste free of charge. An E-Waste recycling budget of \$18,000 would need to be created under this option. Council could require proof of residency for access to this free service.

#### **Option Two – Partial Subsidy**

Under this option Council could recover some of its costs. For example a 50% subsidy would cost \$9,000.

This option requires an amendment to the fees and charges to establish a class of E-waste with a recycling rate charged per tonne. For example domestic recycling is currently charged at \$86/tonne. (Legislation requires the per tonne rate and prevents individual item rates).

#### **Option Three – Full Cost Recovery**

As per option two, a charge is required by an amendment to our fees and charges. The disadvantage of this option is that the incentive to recycle this waste is removed and this can lead to an increase in illegal dumping.

The recommendation to this report is option one, to provide the full subsidy. The reason for this is that the cost can be accommodated in the waste budget with no material impact on the overall budget and the subsidy assists to promote the benefits of the scheme, in particular the reduction in illegal dumping.



## **11.4 E-Waste Recycling Scheme**

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The report notes that some waste is received from outside the Shire. At this point in time, to avoid confusion and service issues at the centre, it is not proposed to require proof of residency. However the amount of services provided will be monitored and this position reviewed if necessary. It is however an option for Council to establish a charge for those from outside the Shire using the service.

### **RECOMMENDATION**

That Council continue to accept, without charge, E Waste at the Ballina Waste Management Facility and a \$20,000 budget in the waste program be established to accommodate the expense of recycling E-Waste.

### **Attachment(s)**

Nil

## **11.5 Tender - Resource Recovery Centre Management**

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### **11.5 Tender - Resource Recovery Centre Management**

**Delivery Program** Waste Management

**Objective** To determine a response to the tender process for the management of the Resource Recovery Centre.

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#### **Background**

A request for tender was advertised on 28 June 2014 for the management and operation of the Resource Recovery Centre at the Southern Cross Drive Waste Management Facility for a five year period.

Currently an operator is provided certain rights in regards to the functions of the Resource Recovery Centre, however a tender was issued to the market to enable Council to improve the performance of the Centre and to address a need to ensure the formalities between Council and an operator meet current business standards.

At the close of the tender period no tenders were received, however as discussed in this report there is an opportunity to consider an alternative option. The purpose of this report is to finalise the tender process and consider the alternative option.

#### **Key Issues**

- To ensure compliance with Part 7 of the Local Government (General) Regulations 2005
- To determine future options for the management of the resource recovery centre

#### **Information**

The Resource Recovery Centre enables reusable goods to be removed from the waste stream and is therefore an important component of Council's integrated approach to waste management.

As noted no tenders were received in response to Council's advertisement. The Local Government (General) Regulations 2005 Clause 178 provides options for Council for this situation when no tenders are received and these include the options of calling fresh tenders or entering direct negotiations with interested parties.

Although no tenders were received during the tender period, Council was contacted by an organisation interested in the possible management and operation of the Resource Recovery Centre. The interest was from On Track Community Programs Ltd and preliminary discussions have been held in regards to their future operation of the Centre on behalf of Council.

On Track Community Programs Ltd is a registered not for profit organisation and is a leading provider of community-based mental health, disability and community support services.

## 11.5 Tender - Resource Recovery Centre Management

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On Track currently manage the re-use yard at Stotts Creek Landfill at Tweed Heads and therefore have experience in the management of these types of facilities.

The new arrangements proposed for the facility are required to improve the resource recovery rates and to ensure compliance with contemporary standards, including Work Health and Safety requirements. The current operator of the facility has not submitted a tender and it is understood the proposed arrangements are not suitable to this operator's current business model. The options section of this report provides some further discussion regarding the opportunity to negotiate with On Track Community Programs Ltd.

### Sustainability Considerations

- **Environment**  
The changes proposed for the management and operation of the Resource Recovery Centre will increase the recovery rate and thereby reduce the amount of material being disposed of to landfill.
- **Social**  
The Resource Recovery Centre provides an opportunity for residents to access affordable products.
- **Economic**  
The efficient management of waste results in reduced costs to business and the community.

### Legal / Resource / Financial Implications

This report is provided to assist Council meet its statutory requirements in regard to tendering and procurement.

### Consultation

A public tender process was conducted.

### Options

In accordance with Clause 178 of the Local Government (General) Regulations 2005, Council has six options available in the event no tenders are received. This clause is reproduced below.

*A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

1. *postpone or cancel the proposal for the contract,*
2. *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*

## **11.5 Tender - Resource Recovery Centre Management**

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3. *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
4. *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
5. *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
6. *carry out the requirements of the proposed contract itself.*

Option One is not recommended at this point in time as the operation of the Resource Recovery Centre is considered to be an important community service and is an integral component of the strategy to achieve sustainable waste management outcomes.

Options Two, Three and Four are not recommended as it is unlikely, or at least uncertain, that any new tenders would be received. Further consideration of this option is suggested if the recommendation to this report is not accepted or a contract is not able to be executed to the satisfaction of Council following negotiation. Similarly, Option Six, to carry out the works ourselves, is a possible option to consider, however at this point in time it is not recommended as an externally sourced provider is considered to be a more efficient and effective method for this service.

As there is interest from a potentially suitable operator, Option Five, to negotiate with an interested party, is the preferred option. It is noted that this contract is not able to provide a commercial return to the Council. This means there is no specific need for market competition and the focus for the procurement is to find the most suitable operator. As there is no commercial element to the negotiations, there is no specific need, unless requested, for this matter to be referred back to Council and therefore the recommendation below seeks authorisation for the General Manager to negotiate and, if appropriate, execute a contract with the proposed service provider.

In respect to the term of the agreement, at this stage it is thought that five years would be the maximum term and it may well be that On Track will require less as they assess the viability of the business. If any term longer than five years is sought the preference would be to report the matter back to Council.

**RECOMMENDATIONS**

1. That in accordance with the provisions contained in Clause 178 of the Local Government (General) Regulations 2005, as no tenders were received for the Waste Resource Recovery contract, Council resolves, having regard to the information in the above report, to enter negotiations with On Track Community Programs Ltd in relation to a proposed contract.
2. Subject to a satisfactory outcome being achieved through the negotiation process in point one above, Council authorises the General Manager to execute a contract with On Track Community Programs Ltd to provide the services to operate the Council's Resource Recovery Centre.

**Attachment(s)**

Nil

## **11.6 Tender - Airport Lease Advisory Services (Scoping Study)**

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### **11.6 Tender - Airport Lease Advisory Services (Scoping Study)**

**Delivery Program** Commercial Services

**Objective** To obtain Council approval to award a contract to appoint a consultant to undertake a Scoping Study to allow Council to determine the merits of granting a long-term lease over the Ballina Byron Gateway Airport

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#### **Background**

At the July 2014 Ordinary meeting, Council adopted a recommendation from the July Commercial Services Committee Meeting to engage a consultant to advise Council on the various long term tenure options available and indicative financial returns for the lease of the Ballina Byron Gateway Airport.

A request for tender was advertised on 20 September 2014 for these works. At the close of the tender period on 30 October 2014, seven tenders were received.

This report details the outcome of the tender evaluation process.

#### **Key Issues**

- Engage suitably qualified and experienced consultant;
- Award the tender in accordance with the Local Government (General) Regulations 2005.

#### **Information**

Tender submissions were received from:

- Ernst & Young
- KPMG
- Pottinger Co Pty Limited
- The Ambidji Group Pty Ltd
- Price Waterhouse Coopers Au
- Strategic Energy Pty Ltd
- The Airport Group Pty Ltd

All tenders were initially assessed for conformity with the tender specification. From this assessment all tenders were deemed to be conforming.

The tender documentation defined three areas and their corresponding weightings, by which each tender would be assessed:

- Total Price – Stage 1 and 2 (30%)
- Capability and Experience (40%)
- Project Plan (30%)

The tender documentation was developed to allow Council to be provided proposals for the three separate stages for the consultancy services:

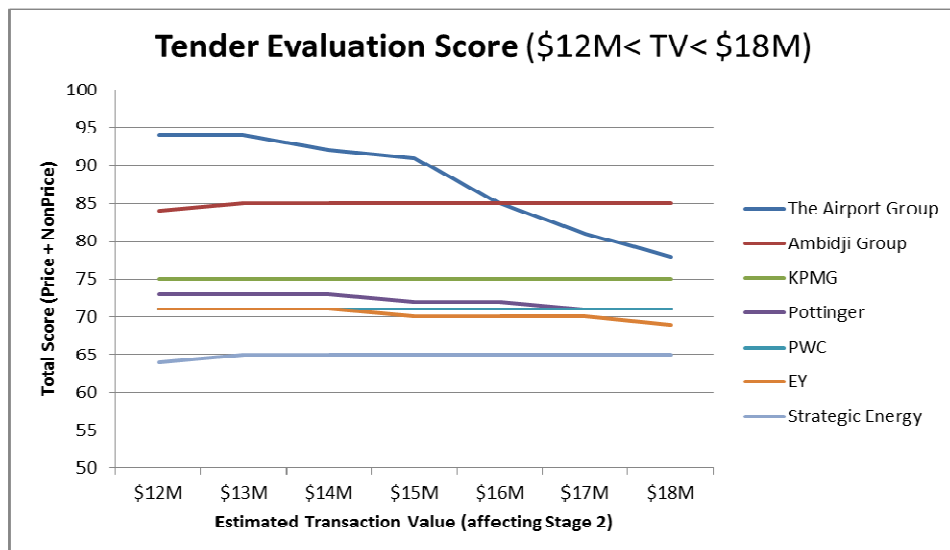
## 11.6 Tender - Airport Lease Advisory Services (Scoping Study)

- Stage 1 – Produce a Scoping Study that provides sufficient information for Council to assess the prospects for the long-term lease of the Airport and whether Council should or should not proceed with Stage 2
- Stage 2 – Advise and assist Council in establishing the leasing elements, calling tenders, review and award of the lease
- Stage 3 – Provision of supervisory and monitoring role over the Airport and the Lease on behalf of Council.

The tender and the proposed agreement with a consultant is structured so that Stages 2 and 3 are only to be undertaken should Council resolve to proceed with the lease of the Ballina Byron Gateway Airport based on the information provided in Stage 1. Council is not bound to proceed with Stage 2 following the completion of Stage 1.

A tender evaluation Panel, in accordance with Council's procedures, was established and the tenders were assessed against an approved tender evaluation plan.

All tenderers submitted a lump sum price for Stage 1 of the works, however pricing for Stage 2 differed based on a successful Transaction Value (TV) at financial close. For this reason a final score (including the fixed non-price score) was calculated for each tenderer on a scale of potential Transactional Values for the Airport. The scale for the Transaction Value was determined from averaging the estimates in the various submissions.



The two preferred suppliers from this evaluation are The Airport Group and Ambidji Group. The proposals for each stage from each of these tenderers are summarised below:

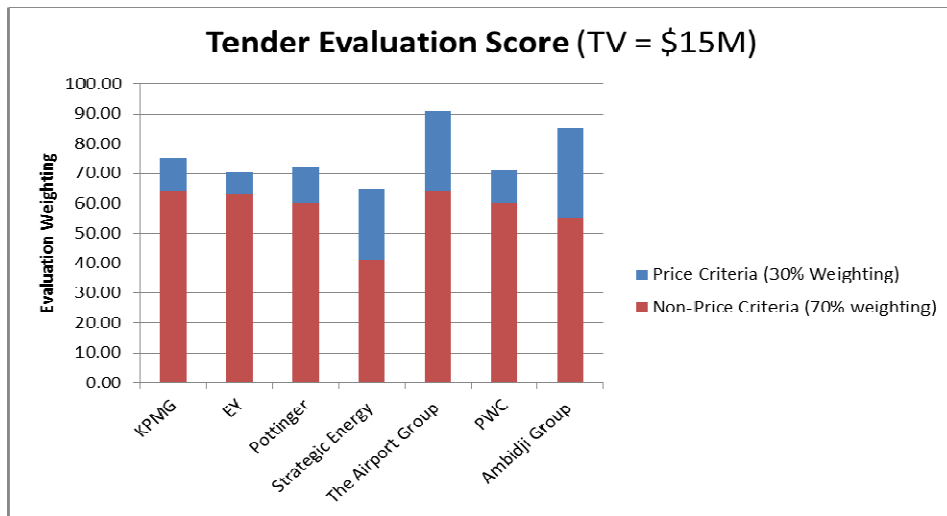
	The Airport Group	Ambidji Group
Stage 1	\$110,000	\$229,950
Stage 2	2% of Transaction Value (+ 10% Performance Fee > \$15M)	\$136,090
Stage 3	TBC end of Stage 1	\$46,280 / year

## 11.6 Tender - Airport Lease Advisory Services (Scoping Study)

Given the uncertainty of Council proceeding to Stages 2 and 3 until the Scoping Study has been completed (Stage 1), the Panel considered the potential risk of Council committing a large amount of funds to the Scoping Study and not proceeding into the later stages. For this reason, it was determined that the best value for money was for the lower of the lump sum value for Stage 1 (The Airport Group).

In comparing the price submissions for Stage 2, the Panel agreed that the pricing structures submitted based on the Transactional Value of the Airport Lease provided more incentive for the consultant to get the best value available. This would be in line with the interests of Council.

The following is the final evaluation scores of the six tender submissions, followed by the ranked order. Prices have been included for Stages 1 and 2 for each tenderer. The Stage 2 price is based on an assumed Transactional Value (TV) of \$15 million.



Ranking	Tenderer	Price (ex GST) (\$)
1	The Airport Group (Stage 2 - 2% plus negotiated bonus fee above an agreed transactional value)	Stage 1: 110,000 Stage 2: 300,000 Total: 410,000
2	Ambidji Group (Stage 2 – fixed fee payable)	Stage 1: 229,950 Stage 2: 136,090 Total: 366,040
3	KPMG (Stage 2 – 1.5% or \$750,000 whichever is the greater – Not paid if transaction does not proceed)	Stage 1: 237,500 Stage 2: 750,000 Total: 987,500
4	Pottinger (Stage 2 - fixed fee)	Stage 1: 373,000 Stage 2: 650,000 Total: 1,023,000
5	PWC (Stage 2 – \$180,000 fixed fee payable plus 4% success fee with minimum payment of \$500,000)	Stage 1: 180,000 Stage 2: 780,000 Total: 960,000
6	EY (Stage 2 - \$516,000 fixed fee payable plus \$690,000 if successful)	Stage 1: 350,000 Stage 2: 1,125,000 Total: 1,556,000
7	Strategic Energy Group (Stage 2 – fixed fee payable)	Stage 1: 189,000 Stage 2: 270,000 Total: 479,000



## 11.6 Tender - Airport Lease Advisory Services (Scoping Study)

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Based on the assessment criteria and reviewing various scenarios, The Airport Group ranked the highest in the evaluation. The Airport Group has completed a number of similar projects and proven themselves competent in undertaking the works required.

However it is important to understand that The Airport Group is seeking an additional bonus fee above an agreed transactional value, with that fee not defined in their tender documentation for Stage 2.

In discussions with representatives from The Airport Group one proposal mentioned was a 10% bonus fee above the \$15m transactional value identified in this report.

Under this scenario the Stage 2 fees payable to The Airport Group could potentially be:

Transaction Value	\$15M	\$18M	\$20M	\$25M	\$30M
2% Commission	300,000	300,000	300,000	300,000	300,000
10% Bonus	0	300,000	500,000	1,000,000	1,500,000
<b>Total</b>	<b>300,000</b>	<b>600,000</b>	<b>800,000</b>	<b>1,300,000</b>	<b>1,800,000</b>

Whether this level of transactional value is achievable appears unlikely however Council needs to ensure that we are prepared for any substantial variation in the final value.

Ambidgi ranks second when looking at transactional values around the \$15m mark, however their costs are payable even if the transaction does not proceed.

The third ranked tenderer, being KPMG is similar to The Airport Group in that they have a 1.5% percentage figure for Stage 2 however there is also a minimum fee of \$750,000 payable if the transaction proceeds, no matter the transaction value.

The actual 1.5% is largely irrelevant as the transactional value would need to be greater than \$50m for the 1.5% to outweigh the \$750,000 minimum fee.

Based on the Stage 2 transaction fee of \$750,000 plus their initial Stage 1 figure of \$237,500, KPMG would provide better value to Council than The Airport Group for any transaction value over approximately \$20.8m, due to the 10% bonus fee mentioned by The Airport Group.

The downside to the KPMG proposal is the \$237,500 estimate for Stage 1.

It is clear that The Airport Group has been able to use their knowledge of the operations of the Ballina- Byron Airport to minimise their stage one costs, with their proposal then creating a major incentive to achieve a higher transaction value.

### Sustainability Considerations

- **Environment**  
Not Applicable

## **11.6 Tender - Airport Lease Advisory Services (Scoping Study)**

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- **Social**

The airport provides important services for community members and visitors of Ballina Shire and this project is aimed to ensure that this continues into the future.

- **Economic**

The airport is a significant contributor to economic development. The purpose of this project is to evaluate options to provide an ongoing economic return for Council and financial security in respect of our management of this asset.

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

This report is provided to assist the Council meet its statutory requirements in regards to tendering and procurement.

### **Consultation**

A public tender process was undertaken. Correspondence was received from Ms Margaret Howes in respect to this proposal with that correspondence attached to this report for information.

### **Options**

Under the Local Government (General) Regulations 2005 Council must either accept the tender that “appears to be the most advantageous” or decline to accept any of the tenders.

1. Council may determine not to accept any of the tenders received and invite fresh tenders.
2. Council may award the contract for delivery of Stage 1 to the highest ranked tenderer, The Airport Group.

Option one is not recommended as Council has undertaken the tender process in accordance with the Local Government (General) Regulations 2005.

Option two is the preferred option.

In awarding Stage 1 to The Airport Group it also needs to be recorded that the fees for Stage 2 will need to be further negotiated, subject to Council resolving to proceed to Stage 2. The bonus fee sought by The Airport Group could have a major bearing on the final contract value and as Stage 1 progresses Council will be able to get a better handle on the more likely transactional value. If Council and The Airport Group are not able to reach agreement on this issue Stage 2 of the project may well need to be re-tendered, subject to Council agreeing to proceed to Stage 2.

Finally Council also needs to be certain it wishes to commence Stage 1. The acceptance of this tender for Stage 1 will incur significant costs of \$110,000 (inc GST), with their being no guarantee that any outcomes will eventuate from the process.

## 11.6 Tender - Airport Lease Advisory Services (Scoping Study)

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The tender specification defined Stage 1, being the Scoping Study, as the following range of services:

- a. *The Scoping Study is the information audit and analysis, which requires a higher level review of items and issues relevant to determine asset value and feasibility, comprising, as a minimum, the following elements:*
  - *Analyse the viability and feasibility of leasing the Airport*
  - *Examine how the Airport is positioned in the infrastructure market*
  - *Develop a base case model for the Lease*
  - *Conduct workshops with Council as required*
  - *Identify suitable Lease payment structures to satisfy Council's objectives, both financial and social*
  - *Analyse aeronautical revenue and forecasting*
  - *Assess landside development opportunities within the Airport precinct*
  - *Assess adjoining land development opportunities, along with associated road and services infrastructure (review of existing work available at Council – any new work will be the subject of a separate engagement)*
  - *Assess environmental and planning issues (review of existing work available at Council – any new work will be the subject of a separate engagement)*
  - *Analyse airside infrastructure and life cycle analysis (review of existing work available at Council – any new work will be the subject of a separate engagement)*
  - *Analyse terminal capacity and adequacy and the quantum and timing of capital expenditure requirements*
  - *Review the investor/partner market demand*
  - *Consider key leasing issues including lease structure, tax, legal, corporate governance arrangements and the timeline in the event Council chooses to implement a Lease;*
  - *Produce a comprehensive list of all costs required to undertake Stage 2;*
  - *Recommend a preferred Council governance structure;*
  - *Make recommendations to Council in relation to proceeding or not proceeding with Stage 2. These recommendations must identify the Council owned assets and any infrastructure delivery that should form part of Stage 2*
- b. *By the end of Stage 1, the Scoping Study report covering all the necessary elements listed is to be produced for reporting to Council.*
- c. *The Scoping Study must take into account:*
  - *Council's existing plans for the Airport, future development requirements and growth opportunities;*
  - *Australian airport ownership and operational strategies;*
  - *Responsibilities and relationships of the Airport and with other government entities at different levels;*
  - *Airport operational matters, including:*
    - *Non-commercial functions and assets/liabilities that should be separated from the commercial business, including the structure and timing thereof*
    - *The commercial activities and functions, assets, rights and liabilities suitable to be leased;*
    - *All Council employee related issues;*
    - *Any business restructuring, such as business separation tasks and key contracts that may need to be settled, restructured, terminated or renewed; and*
    - *Post-transaction arrangements for managing the Airport.*
  - *The Lease execution process;*
  - *The strategy, timing and marketing approach to potential investors;*
  - *Opportunities to add value to the Airport;*

## 11.6 Tender - Airport Lease Advisory Services (Scoping Study)

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- *How the underlying value of the Airport may be influenced by:*
  - *Proposed risk allocation to Council as compared to risk allocation to the Lessee*
  - *Lease term options*
  - *Stakeholder management, including regulators, users, communities, service providers and customers*
  - *Ownership restrictions, if any*
  - *The inclusion and justification of other related assets*
  - *The current state of the financial markets, including capital markets; and*
  - *Passenger demand.*

In considering this tender for \$110,000 (ex GST) Council needs to be convinced that works justify the expenditure proposed.

If accepted, this funding will need to be financed from Council's Property Development Reserve as that is the only reserve with this level of funding readily available and unallocated. This allocation of monies will not impact immediately on any identified programs, besides meaning that there is \$100,000 less available for other property development projects such as the next stages of the Wollongbar Residential Estate and the Russellton Industrial Estate.

### **RECOMMENDATIONS**

1. That Council accepts the tender from The Airport Group, Stage 1 to undertake a scoping study of the long term leasing options of the Ballina Byron Gateway Airport for the amount of \$110,000 (ex GST), with Council reserving the right to not proceed to Stage 2 of this contract, and retain the right to call for fresh tenders for Stage 2, subject to further negotiations with The Airport Group in respect to any bonus paid above an agreed transactional value for Stage 2.
2. That Council authorises the Council seal to be attached to the contract documents.
3. That Council authorises the funding of this tender from the Property Development Reserve.

### **Attachment(s)**

1. Margaret Howes - Submission re leasing Ballina Airport - RFT778

12. Public Question Time

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**12. Public Question Time**

### **13.1 Notice of Motion - Electric Vehicles**

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## **13. Notices of Motion**

### **13.1 Notice of Motion - Electric Vehicles**

**Councillor** Cr Jeff Johnson

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I move

1. That as part of Council's budget deliberations for 2015/2016 consideration is given to the purchase of electric vehicles as part of Council's car fleet renewal program.
2. That Council provide a report on the costs/benefits of electric cars as part of Council's fleet renewal program.
3. That Council investigate the costs/benefits of installing a public electric vehicle charging station at the Ballina Byron Gateway Airport, Council's depot/administration building or other locations.

#### **Councillor Comments**

Electric vehicle technology has come a long way over the last few years. The price of electric vehicles has dropped and the range increased.

Lismore Council recently purchased an electric car (Mitsubishi Leaf) which provides a highly visible symbol of its push to reduce its carbon footprint and reliance on fossil fuels.

Ballina Council unanimously resolved in 2009 to aim to become carbon neutral. Phasing in electric vehicles to our fleet would be another positive step towards achieving this goal.

#### **Staff Comment**

At this stage the notice of motion is focused largely on reporting the subject matter to Council and staff are in a position to investigate the proposal(s) further.

**COUNCILLOR RECOMMENDATIONS**

1. That as part of Council's budget deliberations for 2015/2016 consideration is given to the purchase of electric vehicles as part of Council's car fleet renewal program
2. That Council provide a report on the costs/benefits of electric cars as part of Council's fleet renewal program.
3. That Council investigate the costs/benefits of installing a public electric vehicle charging station at the Ballina Byron Gateway Airport, Council's depot/administration building or other locations.

**Attachment(s)**

Nil

## **13.2 Notice of Motion - Ocean Pool**

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### **13.2 Notice of Motion - Ocean Pool**

**Councillor**

Cr Jeff Johnson

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I move

1. The General Manager continue to liaise with Crown Lands and other relevant Government departments to gain in principal support for the construction of an ocean pool at the southern end of Shelly Beach.
2. That Council investigate different funding options including grants, sponsorship and community partners.

#### **Councillor Comments**

An ocean pool in East Ballina would provide a safe alternative swimming option for both residents and tourists. Ocean pools are relatively cheap to build, have minimal ongoing maintenance costs, are open all year round, and would be free to use.

Having grown up in the Eastern Suburbs of Sydney I have swum at many ocean pools that are up to 100 years old. Most beaches in Sydney have ocean pools, for example Long Bay (Malabar), Mahan Pool (Maroubra) Coogee Beach has one at each end of the beach, Bronte, Bondi to name just a few. An ocean pool would be a wonderful addition to our coastal reserve and would be another tourist attraction, which would be used by both young and old.

There are currently 56 Ocean Pools in NSW stretching from Eden to Yamba, they are all well patronized and much loved by their respective communities. I have attached photos of 3 ocean pools.

#### **Staff Comment**

Cr Johnson has previously raised this matter with staff and as a result preliminary discussions were held with Crown Lands to determine whether it was possible in today's planning environment to obtain approvals for ocean pools. At this stage there does not appear to be any legislation that rules out approvals for such facilities and if this motion was supported staff would investigate the approval process further, along with providing very preliminary expenses for the likely cost. That information would then be reported back to Council for further consideration.



**COUNCILLOR RECOMMENDATIONS**

1. The General Manager continue to liaise with Crown Lands and other relevant Government departments to gain in principal support for the construction of an ocean pool at the southern end of Shelly Beach.
2. That Council investigate different funding options including grants, sponsorship and community partners.

**Attachment(s)**

1. Photos of three ocean pools

### **13.3 Notice of Motion - Planning Proposal - Plateau Drive**

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### **13.3 Notice of Motion - Planning Proposal - Plateau Drive**

**Councillor** Cr Worth  
Cr Hordern  
Cr Johnston

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We move

That Council further consider the appropriateness of locating a skate park facility within the reconfigured RE1 zone during the preparation of a landscape masterplan for the proposed reserve.

#### **Councillor Comment**

At the November 2014 Ordinary meeting Council passed resolution 271114/5, which is as follows:

#### ***Planning Proposal – Rifle Range Road and Plateau Drive***

- 1. That Council endorses the reconfiguration of the RE1 and R3 zone boundaries, amend the minimum lot size map and rezone land designated for road widening from RE1 to R2 with respect to Lots 5 and 6 DP 1161720 and the adjoining road as indicated in the planning proposal (BSCPP 14/006).*
- 2. That the necessary documentation be forwarded to the Department of Planning and Environment to enable the Minister to finalise the planning proposal (BSCPP 14/006).*

As part of the debate on this resolution an amendment was moved which included points one and two of the resolution, along with a point three, which is the proposed notice of motion.

#### **Staff Comment**

Section 372 (4) of the Local Government Act allows a notice of motion, which has the same effect as a previously negated motion, to be considered by Council within three months, if it is signed by three Councillors. Once a motion is negated twice, it cannot be dealt with for another three months. As the proposed notice of motion was negated at the November meeting Councillors can debate the motion one more time within the three month period, subject to the signing of this notice of motion by three Councillors, which has occurred.

#### **COUNCILLOR RECOMMENDATIONS**

That Council further consider the appropriateness of locating a skate park facility within the reconfigured RE1 zone during the preparation of a landscape masterplan for the proposed reserve.

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

Nil

#### **13.4 Notice of Motion - Private Native Forestry**

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#### **13.4 Notice of Motion - Private Native Forestry**

**Councillor**

Cr Worth

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I move

1. That the Council endorse the preparation of a planning proposal to amend the Ballina Local Environmental Plan 1987 to establish a requirement for development consent to be obtained from Council for the undertaking of private native forestry activity in Ballina Shire.
2. That the Council authorise the submission of the planning proposal to the Department of Planning and Environment for review and Gateway determination.
3. That upon an affirmative Gateway determination being received, the procedural steps associated with the progression of the planning proposal, including public exhibition, be undertaken.
4. That a further report be presented to the Council in relation to this matter following the mandatory community consultation.

#### **Councillor Comment**

Private Native Forestry (PNF) is emerging as an activity in Ballina Shire that could result in the clearing of substantial areas of the remaining native vegetation in the shire. In particular, it is evident that there is interest from both landholders and timber companies in undertaking PNF in the Bagotville, Meerschaum Vale, Wardell, Coolgardie and broader Blackwall Range localities. A recent example of this is the clearing for PNF purposes on the western side of the Coolgardie escarpment along Wardell Road.

The problem with PNF is that there appears to be limited assessment of ecological and amenity impacts associated with approvals granted by the Environment Protection Authority. A concern is that much of the native vegetation that is potentially suited to PNF is not subject to forestry and clearing regulation by Council under the local environmental plan.

This is of concern as Council has consistently identified native vegetation in the Bagotville, Meerschaum Vale, Wardell, Coolgardie and broader Blackwall Range localities as ecologically significant and important from a scenic amenity perspective. More specifically, the Coolgardie Land Use Review, Council's vegetation mapping and Council's endorsed environmental protection zones under the Standard Instrument LEP indicate important environmental values are present in areas that may be subject to clearing via PNF without a Council approval process. These vegetated areas are also identified as being of importance in State Government documents including the Targeted Vegetation Survey of Floodplains and Lower Slopes on the Far North Coast (DECC 2008), the Far North Coast Regional Conservation Plan (OEH 2013), OEH regional corridors and habitat mapping, OEH flora and fauna habitat atlas records and assessment undertaken by the Roads and Maritime Authority in association with the Pacific Highway upgrade project.

## **13.4 Notice of Motion - Private Native Forestry**

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Further, the area between Bagotville and the Bruxner Highway, including the Blackwall Range is part of the area defined as supporting an important koala population under the Environment Protection and Biodiversity Conservation Act. PNF is identified as a significant threat to the local koala population as PNF often targets key koala feed trees such as Tallowwood.

In the absence of the ability to utilise E zones under Council's new LEP (Ballina LEP 2012) to identify areas of important native vegetation that are presently zoned for agricultural purposes (i.e. zone additional areas that are identified as being of ecological significance as endorsed by Council), it is proposed that Council amend Ballina LEP 1987 to address PNF. The purpose of such an amendment would be to improve the extent of checks and balances on PNF proposals by requiring Council's consent for such activities in addition to the approvals issued by other agencies such as the Environment Protection Authority. This is considered to be necessary because the key ecological and scenic amenity issues of importance to Council would benefit from a more detailed level of assessment that can be required by Council. This approach would establish a Council approval requirement for PNF under the 1987 LEP activity until such time as the E zone matter is resolved and associated PNF related provisions are incorporated into the new LEP. The proposal does not seek to change current requirements associated with agricultural activities.

### **Staff Comment**

Private Native Forestry has been identified as a catalyst for significant clearing activity to occur in Ballina Shire. In many circumstances under the current planning instruments, such clearing activity may not require development consent from Council. The impact of such clearing can have adverse environmental outcomes, especially from an ecological and scenic amenity standpoint. There are also considerations such as erosion and runoff, creation of associated infrastructure such as roads and truck movements associated with logging activity. It is the understanding of staff that the PNF approval process through the Environment Protection Authority is fairly narrow in terms of the factors taken into account and as such, there is concern that the process does not provide for an in depth or holistic assessment of the impact of the activity.

Other local government areas have sought to address PNF through their application of E zones. Unfortunately, due to continued delays and uncertainty in completion of the E zone review by the State Government, the approach taken by other councils is not available in Ballina Shire at present. It is unknown when or how the E zone matter will conclude.

Many areas of native vegetation that have been identified by Council as being of environmental significance are subject to the Ballina LEP 1987 at present. PNF activities can be complicated to categorise in terms of the need for development consent under the 1987 LEP and it is possible to form a view that such activities do not require development consent in certain rural (agricultural) zones. This puts substantial areas of native vegetation at a risk of clearing without any direct oversight by Council through a development application and approval process.

To be very clear about an intent to require development consent for PNF activity in the shire, Council could amend the Ballina LEP 1987 to clearly

### **13.4 Notice of Motion - Private Native Forestry**

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require development consent for such activities in all zones. There appear to be several options to achieve this and these would be refined in preparing a planning proposal. Such a planning proposal would seek to identify the simplest way of requiring development consent for PNF but not otherwise impact on the current framework for agricultural activities. Under this approach, Council can consider applications for PNF activity on merit and grant or refuse consent as considered appropriate.

If Council proceeds with a planning proposal as per the motion, staff would proceed to prepare the documentation and lodge it with the Department of Planning and Environment for Gateway determination.

A planning proposal of this nature is consistent with the information currently available to Council about the ecological and scenic amenity values of native vegetation stands that are not subject to environmental protection zones.

#### **COUNCILLOR RECOMMENDATIONS**

1. That the Council endorse the preparation of a planning proposal to amend the Ballina Local Environmental Plan 1987 to establish a requirement for development consent to be obtained from Council for the undertaking of private native forestry activity in Ballina Shire.
2. That the Council authorise the submission of the planning proposal to the Department of Planning and Environment for review and Gateway determination.
3. That upon an affirmative Gateway determination being received, the procedural steps associated with the progression of the planning proposal, including public exhibition, be undertaken.
4. That a further report be presented to the Council in relation to this matter following the mandatory community consultation.

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

Nil

14. Advisory Committee Minutes

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**14. Advisory Committee Minutes**

Nil Items

## 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 November 2014 Ordinary meeting:

<u>Date</u>	<u>Function</u>
1/12/14	John Weller/James Cowley Meeting
1/12/14	'Ability Links' Opening
1/12/14	Meeting with Airport Car Rentals
1/12/14	Koala Plan of Management Briefing
2/12/14	Annual General Meeting FSG
3/12/14	Briefing – Wastewater Productivity
3/12/14	Briefing - Large sheds and garages
3/12/14	Annual Meeting - NNSW LHD BOARD
3/12/14	Miss Sue – International Day for People with Disabilities
3/12/14	Wardell Light-Up Celebrations
4/12/14	Meeting Co-Operatives Alliance – Ballina RSL
4/12/14	Master Planning Steering Committee Meeting
4/12/14	GM 6 month Performance Review
4/12/14	Gallery Launch 'Summer Dayz'
5/12/14	Alstonville Wollongbar Chamber of Commerce
5/12/14	Creative Artisans Gallery Launch
5/12/14	Kidney Health Australia 2014 Operation Angel Award
7/12/14	Ballina Shire Concert Band – Richmond Room
7/12/14	Book Launch – Crawford House <i>Sawbones, Saddle Burns and Soothing Balms</i>
7/12/14	Lennox Head Carols
8/12/14	Reserve Trust Meeting
8/12/14	Councillor Briefing – Ridgeway
8/12/14	Councillor Briefing Floodplain Risk Management Study
10/12/14	Meeting – Lynn Walker
10/12/14	Traffic Committee
10/12/14	Emmanuel Anglican College Presentation at St Mary's Primary and Secondary
10/12/14	RSL LifeCare Afternoon Tea
11/12/14	Aboriginal Community Committee
11/12/14	Aboriginal and Torres Strait Islander Achievement Night
11/12/14	Twilight Markets
12/1/15	NSW Agriculture Teachers' Association Conference
12/12/14	Southern Cross K – 12 7-11 Assembly
14/12/14	Lennox Head Markets
14/12/14	Ballina Lighthouse & Lismore SLSC – Christmas Drinks

## **15.1 Mayoral Meetings**

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14/12/14	Riverside Carols – Seagulls
15/12/14	Distance Education Presentation Assembly
15/12/14	Southern Cross K-12 – K to 6 Assembly
16/12/14	Australia Day Nominations meeting
16/12/14	Briefing – Recycled water Project
16/12/14	150 Years Alstonville Committee
17/12/14	Meeting – Dr Elizabeth O'Brien
17/12/14	Wardell Progress Association
18/12/14	Council Meeting
19/12/14	Meeting Bob Higgins – Grafton
20/12/14	Fair Go Skateboarding Competition
31/12/14	New Year's Eve Celebrations - Alstonville

### **RECOMMENDATION**

That Council notes the contents of the report on Mayoral meetings.

### **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 Land Sale - North Creek Road Ballina

Refer to Item 10.9 of this agenda.

**RECOMMENDATION**

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

**17.1 Land Sale - North Creek Road Ballina**

**Reason for Confidentiality**

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

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

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as Council is in the process of negotiating a sale for the property in question and without the ability to have these discussions in confidential session Council may not be in a position to maximise the return on the sale of this land to the community.