



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 28 May 2015 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
 2. Acknowledgement of Country
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 6. Deputations
 7. Mayoral Minutes
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1. Australian National Anthem

The National Anthem will be performed by Richmond Christian College.

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 23 April 2015 were distributed with the business paper.

RECOMMENDATION

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 23 April 2015.

5. Declarations of Interest and Reportable Political Donations

6. Deputations

7. Mayoral Minutes

Nil Items

8.1 DA 2014/553 - 12 Shelly Beach Road - Strata Title Subdivision

8. Development and Environmental Health Group Reports

8.1 DA 2014/553 - 12 Shelly Beach Road - Strata Title Subdivision

Applicant	Mr M Mittag
Property	Lot 3 Section 96 DP 758047 - 12 Shelly Beach Road, East Ballina
Proposal	Proposed Strata Title Subdivision of an Existing Two Storey Residential Building containing Four Residential Units and a Ground Floor Non-Residential Unit consisting of an existing General Store/Takeaway/Café.
Effect of Planning Instrument	The land is zoned R3 Medium Density under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

DA 2014/553 was lodged 28 October 2014 for the Strata Title subdivision of an existing two storey residential building containing four residential units and a ground floor non-residential unit consisting of an existing General Store/Takeaway/Café. A strata plan is included as an attachment to this report.

The subject site is known as Lot 3 Section 96 in Deposited Plan 758047 and is commonly known as No. 12 Shelly Beach Road, East Ballina

Council is also currently in receipt of another application (DA 2015/27) on the site to undertake a change of use of part of the existing General Store/Takeaway/Café area to include additional café area and to modify the hours of operation. This subject application, which is also in this business paper, should be considered in conjunction with the DA 2015/27 due to the interrelated issues, particularly in relation to vehicular access, car parking, and waste storage/collection.

DA 2014/553 is being reported to Council for the following reasons:

- due to the number of public submissions received during the exhibition period and
- the outcome of this application has implications with regard to DA 2015/27, which Council is currently considering for the expansion of the general store/takeaway/café on the ground floor of the subject premises.

The key issues arising from the assessment of the application are:

- lack of car parking spaces on-site for the future owners of the proposed strata units
- the closure of the driveway accessing the rear of the units

8.1 DA 2014/553 - 12 Shelly Beach Road - Strata Title Subdivision

- the use of the Crown land at the rear of the property for the purposes of vehicular access
- fire rating issues and
- noise issues created by the café.

History

Building Permit No.14/48 dated 11 March 1948 was issued for the construction of a three bedroom dwelling on the subject land.

Building Permit No. 94/58 dated 13 November 1958 was issued for alterations and additions to the existing dwelling house to create a shop and residential building containing one x one bedroom unit, one x two bedroom unit on the first floor and one x three bedroom unit and a shop on the ground floor.

Building Permit No. 134/87 dated 29 April 1987 approved proposed extensions to the residences (three first floor flats, one ground floor dwelling and a shop) and construction of a new garage and three carports at the rear of the property.

Development Application 2010/490 approved the partial change of use of the existing general store to a café with footpath/alfresco dining. The use of the café was restricted to fourteen seats within the café and six seats on the footpath immediately adjacent to the approved café area.

In relation to the takeaway food outlet associated with the General Store, the seating was not to exceed eight seats immediately adjacent to the General Store/Takeaway food component of the premises.

Proposal

The application that is the subject of this report for Council determination seeks consent for the Strata Title subdivision of the approved two storey building containing four units and a shop into five Strata Title lots consisting of two x one bedroom units, one x two bedroom units, one x three bedroom unit and a general store/takeaway/café. The application also proposes to reconfigure the approved four on-site car parking spaces and to provide a new bin storage area.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The proposed Strata Title subdivision was not required to be placed on public exhibition as it is for a subdivision of an existing approved development.

During the processing of the application Council received five submissions raising objections to the proposed Strata Title subdivision. A copy of each submission is included in the attachments to this report.

8.1 DA 2014/553 - 12 Shelly Beach Road - Strata Title Subdivision

The following issues of concern were raised within the submissions.

- No other properties in the vicinity have more than three units and it is considered that this development should be limited to three strata units.
- The operators of the café generally reside in the ground floor residence and hence this should be one strata unit.

Comment: The proposed development is for the Strata Title subdivision of four residential units and one shop that were lawfully created under BA 134/87. The fact that the shop and residence have been used in association with each other is not a determining factor to either reduce the number of approved residential units from four to three or to only approve three Strata Title units.

- The property should provide car parking on site for the use of the residents of the units.

Comment: The proponent has submitted a revised Strata Plan that identifies the provision of four car parking spaces within the rear yard area which is accessed via the driveway located on the northern side of the building.

- Council should restrict the use of the reserve at the rear of the lot as access to the properties that front Shelly Beach Road.

Comment: The land at the rear of the properties fronting Shelly Beach Road is owned by the Crown. The application currently before Council does not identify any form of vehicular access to the site from the Crown Land. Council raises no objection to the provision of pedestrian access to the Crown land at the rear of the site as proposed.

- The strata titling of the units will need substantial upgrading to comply with fire and health requirements to comply with current standards.

Comment: The proponent has submitted acoustic and fire engineering assessment reports prepared by suitably qualified consultants. Council's Environmental Health and Building Services Sections have assessed and commented on the reports and other documents associated with the proposed Strata Title subdivision and raise no objections, subject to compliance with a number of conditions of consent.

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

Ballina Local Environmental Plan 2012

Clause 2.3 - Zoning

8.1 DA 2014/553 - 12 Shelly Beach Road - Strata Title Subdivision

Under the provisions of the Ballina Local Environmental Plan (BLEP) 2012, the proposed development is for the Strata Title subdivision of an approved two storey building containing four residential units and a general store/takeaway/café into five Strata Titled units.

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.*

Comment: The above stated zone objectives have been considered during the assessment of this application. It is concluded that the proposed Strata Title subdivision is not at odds with the zone objectives subject to compliance with a number of conditions of consent.

Clause 5.5 - Development within the coastal zone

Clause 5.5 relates to development within the coastal zone, and states as follows:

(1) *The objectives of this clause are as follows:*

- (a) *to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,*
- (b) *to implement the principles in the NSW Coastal Policy, and in particular to:*
 - (i) *protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*
 - (ii) *protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*
 - (iii) *provide opportunities for pedestrian public access to and along the coastal foreshore, and*
 - (iv) *recognise and accommodate coastal processes and climate change, and*
 - (v) *protect amenity and scenic quality, and*
 - (vi) *protect and preserve rock platforms, beach environments and beach amenity, and*
 - (vii) *protect and preserve native coastal vegetation, and*
 - (viii) *protect and preserve the marine environment, and*

- (ix) ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
- (x) ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and*
- (xi) protect Aboriginal cultural places, values and customs, and*
- (xii) protect and preserve items of heritage, archaeological or historical significance.*

Comment: The proposed development is generally considered to have had regard for the above objectives.

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

- (a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
 - (i) maintaining existing public access and, where possible, improving that access, and*
 - (ii) identifying opportunities for new public access, and*

Comment: The subject site is adjacent to Shelly Beach (separated by Shelly Beach Road).

There is no public access to the beach from this development other than via the existing public road and associated public carparks, and hence there is no impact upon public access to the coastal foreshore.

- (b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
 - (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
 - (ii) the location, and*
 - (iii) the bulk, scale, size and overall built form design of any building or work involved, and*

Comment: The proposed Strata Title subdivision of the existing building is considered satisfactory in relation to the subject site and the surrounding locality.

- (c) the impact of the proposed development on the amenity of the coastal foreshore including:*
 - (i) any significant overshadowing of the coastal foreshore, and*
 - (ii) any loss of views from a public place to the coastal foreshore, and*

Comment: The subject building is not immediately adjacent to the Shelly Beach foreshore as it is separated by Shelly Beach Road, and hence issues of overshadowing are not relevant.

The subject building backs onto a Crown Reserve and hence there are no issues in relation to loss of views from a public place. It should also be

mentioned that the development relates only to the Strata Title subdivision of an existing building.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

Comment: The site is separated from the coast by Shelly Beach Road and the existing building is consistent in size with other residential buildings in the locality, and hence the proposed Strata Title subdivision will not have any impact upon the visual amenity and scenic qualities of the coast and associated headlands.

(e) how biodiversity and ecosystems, including:

(i) native coastal vegetation and existing wildlife corridors, and

(ii) rock platforms, and

(iii) water quality of coastal waterbodies, and

(iv) native fauna and native flora, and their habitats, can be conserved, and

Comment: The proposal does not involve any loss of vegetation, and therefore does not have any impact upon the above mentioned features.

(f) the cumulative impacts of the proposed development and other development on the coastal catchment.

Comment: As mentioned, the Strata Title subdivision of an existing building will not have a cumulative impact due to the nature of the development.

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

(a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and

(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and

(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and

(d) the proposed development will not:

(i) be significantly affected by coastal hazards, or

(ii) have a significant impact on coastal hazards, or

(iii) increase the risk of coastal hazards in relation to any other land.

Comment: Refer previous comments above regarding public access.

Effluent disposal will not change as a result of this development proposal as it is currently disposed of via Council's reticulated system.

All waste water from the bunded/covered waste bin storage area at the rear of the site will be required to be piped and directed to Council's waste water system via the grease trap.

Stormwater management will not change as a result of this development.

In terms of coastal hazards, no significant impacts have been identified.

Clause 7.7 - Essential Services

Council must be satisfied that the services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

The current situation in relation to the approved use of the building has a number of matters that need to be resolved prior to the release of any Subdivision Certificate for the proposed Strata Title subdivision and relate to the following:

- Reinstatement of the driveway on the northern boundary that has been closed as a result of the construction of an unauthorized carport and fence structures;
- The reinstatement of four carparking spaces as approved under BA 134/87; and
- The provision of a suitable waste storage area at the rear of the lot that is accessed via the driveway.

The proponent has submitted revised plans addressing the above matters by providing for four carparking spaces for the owners of the residential units. The plans do, however, show the unauthorized carport within the driveway. This can be addressed via the imposition of a condition of consent requiring the removal of the unauthorised structures prior to the release of the Subdivision Certificate.

The re-establishment of the driveway as shown on numerous approved plans is, however, likely to have a level of amenity impact for the residents of the adjoining northern property.

Subject to compliance with the recommended conditions of consent, the development is supplied with adequate and appropriate levels of infrastructure servicing, and suitable vehicular access can be provided by compliance with the conditions of consent relating to this application (DA 2014/553).

State Environmental Planning Policy 71 (Coastal Protection)

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

It is considered that there will not be any detrimental impacts to the NSW coast/land in the coastal zone. The proposed development is for the Strata Title subdivision of an approved and constructed two storey building containing four units and a shop into five Strata Title lots consisting of two x one bedroom units, one x two bedroom units, one x three bedroom unit and a general store/takeaway/café that will not be significantly affected by coastal

hazards, nor have a significant impact on coastal hazards nor increase the risk of coastal hazards on any other land.

The proposed development is generally consistent with the aims and objectives of SEPP 71 and the matters for consideration set out in Clause 8 of the Plan.

Ballina Shire Development Control Plan 2012

Chapter 2

Clause 3.7 – Waste Management

Council has raised concerns in relation to the removal of waste generated by the café. Currently the waste is being stored in a number of wheelie bins and commercial bulk waste storage bins within the access driveway (adjacent to the café).

The proponent proposes to establish a waste storage area adjacent to the nominated car parking area at the rear of the property.

Council will be requiring the waste to be collected by a private contractor (as is the current situation) and for the waste storage area to be roofed, bunded, and a basket arrestor sump installed and drained to sewer via the grease trap.

It is considered with the relocation of the waste storage area to the rear yard area as shown on the proposed strata plan, and compliance with conditions of consent, that the waste storage area is satisfactory for the residential units and the approved general store/takeaway/café.

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.*

BA 134/87 identified the establishment of four car parking spaces within the rear yard of the site; these spaces were accessed via the existing driveway of Shelly Beach Road. The application currently before Council identifies the establishment of the four car parking spaces adjacent to the rear boundary and access thereto by a driveway from Shelly Beach Road.

As mentioned previously, the driveway access to the rear of the lot existed until recently (post 2010/490 approval) when the unauthorised structures were discovered as a result of site inspections for this development application.

As part of the application, the proponent has submitted plans to address the proposed car parking layout.

Council's Civil Services Group have commented on the proposed layout of the parking area and are satisfied that subject to minor changes, as required by conditions of consent, the configuration is satisfactory.

Chapter 8

Part 4 Provisions for Other Development in Residential, Business, and Industrial Zones

4.1.1 Development other than residential accommodation or tourist accommodation in R3 zone:

4.1.2

Planning Objectives

- a. Provide for a range of land uses within zones that are compatible with local amenity and character
- b. Minimise conflict between land uses
- c. Maintain consistency in development standards between land uses and ensure that buildings are similar in height, bulk and scale to surrounding buildings
- d. Avoid concentrations of uses that do not comprise the core purpose of a zone to minimise cumulative adverse impacts on adjoining properties.

Shelly Beach Road contains a mix of residential dwellings, medium density residential accommodation, general store/takeaway/café, surf lifesaving club and a restaurant. The proposed Strata Title subdivision of a lawfully established building containing four units and a general store/takeaway/café is not inconsistent with the character of the surrounding development.

The proposed Strata Title subdivision will not adversely impact on the amenity of the adjoining properties and the surrounding areas as it results in the provision of on-site parking for the residents and the provision of a garbage storage compound at the rear of the property.

The proposed re-establishment of the driveway access to the rear of the site may impact upon the amenity of the units that are adjacent to the driveway however it should be mentioned that this driveway has historically been used as access to the rear of the subject premises, and was in existence when Council approved DA 2010/490 that approved the adjacent residential building.

Options

In considering the current proposal, Council has the following options in relation to determining the application:

Option One - Approval

That Council resolves to issue development consent to the Strata Titled subdivision application, subject to the recommended conditions. It should be noted that this option will have implications on the determination of DA 2015/27 in relation to the provision of a disabled access to the proposed disabled toilet facilities and the existing waste enclosure associated with the ground floor café.

Option Two - Refusal

That Council resolves to refuse the Strata Titled subdivision application. This is not the recommended option, as the application is relatively straight forward and there is a reasonable expectation that the Strata Title subdivision of the lawfully created building can occur.

Conclusion

The proposed Strata Plan originally submitted with the application identified the approved driveway that provides access to the rear of the land being blocked by a fence and an unauthorised carport and the subject portion of the site being allocated as part of the ground floor unit entitlement. The proponent, at the request of Council, proposes to reinstate the driveway and will be required as a condition of consent to remove the unauthorised carport and fence structures to enable the residents of the building to access the four carparking spaces and the bin storage area. This will alleviate some on-street parking demand.

It should be mentioned that Council is currently considering an application (DA 2015/27) for the expansion of the existing café. This development application and its associated impacts are the subject of a separate report being presented to Council at this meeting.

The resultant approval, should Council resolve to support this application, will have a significant impact upon the application to expand the café, as the removal of the unauthorised carport and fence structures within the driveway and the reinstatement of the access driveway, will result in the relocation of the waste bin storage area currently within the driveway, and impact upon the proposed provision of access to the disabled toilet required as part of the proposed expansion of the café (DA 2015/27).

As discussed within the body of the report, it is considered that the proposed Strata Title subdivision of the existing approved mixed use building warrants consent subject to the imposition of a number of conditions of consent.

RECOMMENDATION

That DA 2014/553 to undertake the Strata Title subdivision of an existing two storey residential building containing four residential units and a ground floor General Store/Takeaway/Café be **APPROVED** subject to standard planning, building, environmental and engineering conditions of consent.

Attachment(s)

1. Locality Plan
2. Proposed Strata Plan
3. Submissions

8.2 DA 2015/27 - 12 Shelly Beach Road - Change of Operational Use

8.2 DA 2015/27 - 12 Shelly Beach Road - Change of Operational Use

Applicant	Ardill Payne & Partners
Property	Belle General Café Lot 3 Section 96 DP 758047 & Adjacent Public Footpath 12 Shelly Beach Road, East Ballina
Proposal	To Undertake a Change in Operational Use of Part of the Existing General Store/Takeaway/Café to Include Additional Cafe Area and to Modify the Hours of Operation.
Effect of Planning Instrument	The land is zoned R3 Medium Density Residential under the provisions of the Ballina LEP 2012.
Locality Plan	The subject land is depicted on the locality plan attached.

Introduction

The subject site is Lot 3 Section 96 in Deposited Plan 758047 and is commonly known as No. 12 Shelly Beach Road, East Ballina and adjacent public footpath.

The land contains a mixed use building comprising four residential units (one at the rear on the ground floor and three on the first floor) and a General Store/Takeaway/Café on the ground floor fronting the street.

The applicant seeks consent from Council to increase the size, number of seats and hours of operation of the existing café component of the ground floor commercial tenancy and associated footpath dining area.

The application was prepared and submitted to Council in response to investigations by Council that the business was operating outside the current conditions of consent (DA 2010/490).

Council is also in receipt of another application on the site for a five lot Strata Title subdivision of the existing building (DA 2014/553). This subject application, which is also included in this business paper, should be considered in conjunction with the DA 2014/553 due to the interrelated issues; particularly those in relation to vehicular access, car parking, disabled access and waste storage/collection.

This application is reported to Council for determination due to the number of public submissions received and issues that arise from the application.

The key issues arising from the assessment of the application are:

- Suitability of the premises and site for the size and nature of the proposal and impact on neighbouring residents;

8.2 DA 2015/27 - 12 Shelly Beach Road - Change of Operational Use

- The increased demand for parking due to the intensification of use and inability to provide sufficient parking onsite;
- The proposed location of the disabled access ramp to the disabled WC being within the northern driveway and hence denying vehicular access to the rear of the property, and thereby eliminating any potential for providing any car parking spaces onsite;
- Inconsistencies with DA 2014/533 in relation to the above;
- Noise issues created by the operation of the café and footpath dining and traffic movements; and
- The location and design of the waste storage area and impact on neighbours in terms of noise and odour.

History

Building Permit No.14/48 dated 11 March 1948 was issued for the construction of a three bedroom dwelling on the subject land.

Building Permit No. 94/58 dated 13 November 1958 was issued for alterations and additions to the existing dwelling house to create a shop and residential building containing one x one bedroom unit, one x two bedroom unit on the first floor and one x three bedroom unit and a shop on the ground floor.

Building Permit No. 134/87 dated 29 April 1987 was approved for proposed extensions to the residences (three first floor flats, one ground floor dwelling and a shop) and construction of a new garage and carports at the rear of the property.

Development Application 2010/490 approved the change of use of a portion of the existing general store to a café with footpath /alfresco dining (refer to Attachment 3 Approved Plan – DA 2010/490).

The use of the café was restricted to fourteen seats within the café and six seats on the footpath immediately adjacent to the approved café area. In relation to the takeaway food outlet associated with the general store, the seating was not to exceed eight seats immediately adjacent to the general store/takeaway food component of the premises (refer to condition 1.2).

The hours of operation were restricted by condition 1.5 of the consent as follows:

- 1.5. *Prescribed hours of operation*
Activities carried out on the land pursuant to this consent shall only be undertaken between the hours of:

8:00 am and 4:00 pm, Monday to Sunday – Takeaway & General Store

8:00 am and 7:00 pm, Monday to Sunday (Summer Trading) - Takeaway & General Store

8:00 am and 4:00 pm, Monday to Sunday – Café

Proposal

A development application has been received from Ardill Payne & Partners for the following:

8.2 DA 2015/27 - 12 Shelly Beach Road - Change of Operational Use

- Change to part of the approved general store/takeaway component of the business by increasing the size and capacity of the approved café component;
- Increase the total number of seats from 28 (comprising 14 internal seats and six footpath dining seats associated with the café, and eight footpath dining seats associated with the general store/takeaway) to 57 seats (comprising 40 internal seats and 17 footpath dining seats associated with the café). This constitutes an increase in the total number of seats by 29;
- Extend the hours of operation by 1 hour, such that the premises (including general store/takeaway and café) can open at 7.00am rather than 8.00am; and
- The provision of disabled toilet facilities and associated disabled access ramp to comply with the Building Code of Australia requirements.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition from 30 January 2015 to 19 February 2015. During the exhibition period a total of 71 submissions were received.

Fifty of the submissions were received in support of the proposal. The general basis for this support is summarised as follows:

- The café is of a high quality in relation to the standard of customer service, the atmosphere, and quality and range of food available
- It generates tourism by attracting many visitors to Shelly Beach and Ballina Shire in general
- It has strengthened the Ballina community
- There is a lack of comparable/suitable alternative cafés in the area; and
- Council should encourage and assist this type of business in the area.

Twenty-one objections were received against the proposal, in addition to numerous complaints relating to the current operation of the business. The matters raised in these objections are summarised as follows:

1. *The café has not been operating in accordance with the current consent.*

Comment: Council has investigated complaints that the business is operating outside the terms of the current consent (DA 2010/490). This application has been lodged with Council to rectify this issue, particularly in relation to the size of the café, number of seats and hours of operation. Should this application be refused by Council then appropriate action will need to be taken by Council to ensure the continued operation of the General Store/Takeaway/Café occurs in accordance with the conditions of the current consent (DA2010/490).

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2. *The residents would not have supported the previous application (DA 2010/490) to change from a general store to a café if the seating numbers and hours of operations could be changed.*

Comment: DA 2010/490 was assessed by Council on the merits of the proposal, as submitted at that time. The scale and impacts of the proposal were deemed acceptable and the application was therefore approved. The applicant has the right to apply to Council to seek changes to the size of the café, as well as the hours of operation and seating numbers.

3. *The general store is being diminished and is much needed in the area. The business will be exclusively a café/restaurant.*

Comment: The size of the general store/takeaway component of the business is proposed to be reduced to accommodate a larger café. The size and nature of the general store is a financial consideration for the operators of the business rather than an economic consideration for the Council.

4. *The operators of the business are likely to seek a further extension of trading hours in the future to include night time dining or a liquor licence.*

Comment: Further consent from Council is required for any extension in the approved hours of operation. Council is not the responsible authority for the issuing of liquor licences and it cannot be assumed that a liquor licence will be sought in the future. This is a jurisdiction of the NSW Office of Liquor, Gaming and Racing.

5. *Insufficient parking is to be provided for staff, customers and residents of the units.*

Comment: Under DA 2014/553 for the Strata Title subdivision of the building, Council is seeking to require the reinstatement of the northern driveway and four residential parking spaces at the rear of the site. The site does not and cannot accommodate parking for staff and customers of the general store/takeaway and café.

Furthermore, under Council's car parking requirements the proposal will generate an additional demand for car parking which can only be accommodated by on-street parking. Refer to commentary below in relation to car parking and access.

6. *Vehicles are parking across residential driveways and blocking access to private property, reducing sight distances for vehicles exiting properties and also preventing garbage collection. Vehicles are also parking within no parking areas. The intensification will mean the Australia Post Office Box and hail and ride bus stop located outside the shop is almost unusable due to the cars that are constantly in front.*

Comment: Council's Parking Officer has been regularly monitoring the site to detect any illegal parking occurring in this vicinity. Very few infringement notices have been issued in the vicinity during 2015.

If vehicles are legally parked there is no action the Parking Officer can take.

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The manner in which customers park vehicles is not the responsibility of the operators of the business. However, it is acknowledged that the proposed increase in capacity of the café will increase demand for on-street parking and the concentration of parking within the immediate vicinity of the site.

This is likely to exacerbate the potential for parking conflicts.

7. The driveway located on the northern side of the building has been blocked off therefore vehicular access cannot be provided to the rear of the subject property.

Comment: The existing driveway located on the northern side of the building has been blocked by an unauthorised structure and services. DA 2014/553 for the Strata Title subdivision of the building recommends reinstatement of the northern driveway and four residential car parking spaces at the rear of the site.

However, the proposed disabled access ramp to the disabled WC of the café is also proposed to be positioned along this northern driveway and as designed, will itself deny vehicular access to the rear of the site and the four residential spaces.

Accordingly, the current application is contrary to the assessed requirements of DA 2014/553 and, if approved in the manner proposed, will result in the loss of four residential parking spaces and further increase demand for on-street parking within the vicinity of the site.

8. The proposed increase in the seating within the café/general store and on the footpath is having a detrimental impact on parking.

An accurate assessment of the increase in traffic and parking needs to be undertaken to reflect the current conditions. The assessment undertaken in 2010 is now of historic value and does not accurately reflect the true increase/volume of traffic and parking.

The applicant's reliance on previously approved development for justification of car parking has no relevance to the current application as Pelican 181 (now the Wharf) is in a commercial/business zone and therefore does not impact on residential homes, and Ballina Surf Club has no adjoining homes.

Comment: Refer to car parking assessment below.

9. People are using the rear reserve for access and parking.

Comment: The land at the rear of the properties fronting Shelly Beach Road is Crown land. This application does not propose to use the reserve for access or parking.

10. There will be an increase in waste generated by the increase to the number of customers. The current location of the waste bins, being in the driveway and directly adjacent to neighbouring residential units, is inappropriate due to the impacts from the smell and noise from the bins.

Comment: Refer to comments below on waste management.

11. Waste is collected before 7.00a.m. in the mornings which is extremely noisy and unacceptable in a residential area.

Comment: This issue could be addressed by way of condition.

12. At present the shop and all residents of 12 Shelly Beach Road are using the road reserve in front of the neighbouring property to place their garbage bins for collection.

Comment: The garbage bins for the four residential units are placed on the road reserve for collection and then returned to private property following collection. The road reserve is public land and Council cannot specify the exact location bins are presented for collection. The waste collection arrangement for the residential units has been considered in the assessment of DA 2014/553.

An assessment on the waste arrangements for the café is detailed below.

13. The kitchen is located within close proximity to the bedrooms of the neighbouring units which creates noise impacts.

Comment: The location of the kitchen is not proposed to change. The current development application seeks to extend the hours the café can operate from 7.00am daily rather than 8.00am. Conditions could be imposed on the development to regulate the noise emitted from the use, including restrictions on hours of use and prohibiting offensive noise.

14. Noise impacts from ventilation exhaust.

Comment: An acoustic report has been submitted with the development application which looks at the impact of noise levels from the mechanical plant on the residential units within the subject premises. This in turn provides an indication of the noise impacts to the adjoining residential units.

The acoustic report concludes that the noise emissions for mechanical plant, including the kitchen ventilation, can currently comply with the relevant noise regulations.

Further controls could be applied through conditions prohibiting offensive noise, specifying no more than 5 dBA above background levels at affected properties and restricting noise that can be audible between 12.00am and 7.00am and requiring maintenance to plant and equipment over time.

If any compliance issues arise in relation to this issue, Council can regulate this through the use of the *Protection of the Environment Operations Act 1997* (NSW).

15. The owners are regularly hosing their black grease mats from the kitchen on the footpath with the run-off going into public drainage.

Comment: This matter relates to the current operations and has been investigated by Council's Compliance Officer.

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The operators of the café have confirmed that they will now be washing down the mats in the rear grassed area. The upgraded waste storage area, as required under DA 2014/553), will provide a suitable location for this activity in the long-term.

16. There are potential cumulative impacts resulting from other restaurants challenging zoning controls.

Comment: Each application is assessed on the individual merits of the proposal. In this case the applicant is relying on the existing use provisions in the *Environmental Planning and Assessment Act 1979* (NSW) which allows the development (with the consent of Council), despite the land use not being permissible within the R3 zone.

17. The café should be required to comply with all current Council requirements.

Comment: Notwithstanding the existing operations, this application must be assessed on the merits of the proposal.

18. Given the proposed intensification of the café/general store, upgrades should be required to the kitchen, grease trap, disabled exhaust, toilet facilities, disabled access, and fire, health and safety requirements. The building does not comply with the BCA.

Comment: The amended plan shows the provision for disabled toilet facilities in accordance with the Building Code of Australia requirements. An associated disabled access ramp is also proposed, albeit within the northern driveway. Any other upgrades required to be undertaken could be addressed by way of conditions.

19. The proposed increase in the size and capacity of the café is impacting on the amenity of local residents in terms of noise. The business would be more suited to a commercial area.

Comment: It is clear that, in terms of residential amenity impacts, developments such as that proposed are better located outside of residential areas. Refer to assessment below in relation to intensification of the use.

20. Pedestrian access along the Council footpath is restricted due to the location of footpath dining chairs and tables.

Comment: Council's Commercial Use of Footpaths Policy provides controls in relation to ensuring unimpeded pedestrian access along footpaths, such that sufficient clearance for pedestrians is provided to make normal use of the footpath without unreasonable encumbrance.

Conditions could be applied to ensure compliance with these controls.

21. Neighbouring property prices have been devalued.

Comment: No evidence has been provided to Council to support this claim.

22. The increase in the summer trading hours of the café to 7.00pm is unacceptable.

Comment: Condition 1.5 of the current application (DA 2010/490) states that activities carried out on the land pursuant to the consent shall only be undertaken between the hours of:

8:00 am and 4:00 pm, Monday to Sunday – Takeaway & General Store

8:00 am and 7:00 pm, Monday to Sunday (Summer Trading) - Takeaway & General Store

8:00 am and 4:00 pm, Monday to Sunday – Café

The current application only seeks to extend the hours in which the business can commence by one hour from 8.00am to 7.00am. The application does not seek to extend the closing time as indicated in the submission.

23. The proposed hours of operation do not include setup and wash-down times.

Comment: Discussions held with the operator of the business confirm that the proposed extension of the hours of operation includes setup and wash-down times. This issue could be clarified by a condition of consent similar to that of condition 1.5 in the current approval (DA 2010/490) which restricts the time 'activities' relating to the operation of the business may take place, rather than specifying general opening hours.

24. The proposed floor plans will make it difficult for Council to distinguish between the use of the site as a takeaway and general store and purely as a café. It will therefore be difficult for Council to police the operating hours of the café.

Comment: The amended floor plan clearly identifies the intended use of each area of the premises.

25. The proposal does not comply with Clause 41(2)e of the regulations in relation to existing use as it involves a significant intensification of the existing use and increase of more than 10% in the floor space of the premises associated with the existing use.

Comment: Refer to existing use assessment below.

26. The strata subdivision of the building will create land use conflict between strata owners and compound the issues associated with noise attenuation or fire prevention measures, safety issues and on-site parking.

Comment: These issues have been considered and addressed in the assessment of DA 2014/553.

27. The café does not provide parking for bicycles therefore patrons use the fence of neighbouring residence as a bicycle stand.

Comment: The applicant has acknowledged that a portion of the customers travel to the café by bicycle. However, the application does not provide for parking of bicycles on-site and there appears to be limited space available in an accessible location.

28. Concerns over delivery and service vehicles (delivery of goods, trade waste, garbage collection). Issues relate to service times, noise, odour and blocking of driveway access for neighbouring dwellings.

Comment: Service and delivery vehicles for the café cannot access the subject property due to the location of structures (existing and proposed) in the northern driveway.

It is understood that currently these vehicles park for short periods on the street for servicing or loading/unloading purposes.

Whilst the applicant does not propose to change this current arrangement, conditions of consent could be applied to limit the hours in which the café could be serviced so as to manage impacts on neighbouring residents.

29. The existing bench seating for footpath dining can accommodate more than four people.

Comment: The bench seating can accommodate greater than four people and is contrary to the current approved plan. A condition could be included to require the replacement of the bench seating with individual seating that is more typical of cafés.

This would limit the number of footpath diners to that permitted under the approval and ensure consistency with Council Policy F07 – Commercial Use of Footpaths.

This would include, that tables and chairs are to be removed from the footpath at the close of business each day.

30. The seats are bolted to the Council footpath. This creates a nuisance and safety issue for pedestrians, even when the business is not operating.

Comment: Council Policy F07 – Commercial Use of Footpaths outlines the main requirements for footpath dining.

Under the policy permanent structures are not permitted and sufficient clearance is required for pedestrians to make normal use of the footpath without unreasonable encumbrance.

In this case the minimum unimpeded pedestrian thoroughfare is required to be 1.5 metres.

Whilst compliance with this requirement is not shown on the proposed plan, this issue could be addressed by way of conditions of consent.

Report

The proposed development has been assessed under the heads of consideration in s 79(C) of the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act).

The following matters are of particular relevance in Council's determination of the application.

Applicable Planning Instruments

Ballina Local Environmental Plan (BLEP 2012)

Clause 2.3 - Zoning

The subject site is zoned R3 Medium Density Residential under the BLEP 2012. The existing and proposed uses associated with the front unit include a 'neighbourhood shop' (previously described as a General Store/takeaway, and a 'food and drink premises' (being the café component) under the BLEP 2012.

'Neighbourhood shop' means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises. A 'neighbourhood shop' is a permissible land use within the R3 zone.

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

- (a) a restaurant or cafe,*
- (b) take away food and drink premises,*
- (c) a pub,*
- (d) a small bar.*

A food and drink premises includes a café and is not a permissible land use within the R3 zone. Refer to commentary below on existing use provisions.

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.*

For the reasons outlined in this report in relation to lack of car parking, noise and waste issues, the size and intensity of the proposed development is not considered to be compatible with the character and amenity of the surrounding neighbourhood. Accordingly, the proposal does not have adequate regard for the objectives of the R3 Medium Density Residential zone or aims of the BLEP 2012.

Clause 5.5 - Development within the coastal zone

Clause 5.5 relates to development within the coastal zone, and states as follows:

- (1) *The objectives of this clause are as follows:*
- (a) *to provide for the protection of the coastal environment of the State for the benefit of both present and future generations through promoting the principles of ecologically sustainable development,*
 - (b) *to implement the principles in the NSW Coastal Policy, and in particular to:*
 - (i) *protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality, and*
 - (ii) *protect and preserve the natural, cultural, recreational and economic attributes of the NSW coast, and*
 - (iii) *provide opportunities for pedestrian public access to and along the coastal foreshore, and*
 - (iv) *recognise and accommodate coastal processes and climate change, and*
 - (v) *protect amenity and scenic quality, and*
 - (vi) *protect and preserve rock platforms, beach environments and beach amenity, and*
 - (vii) *protect and preserve native coastal vegetation, and*
 - (viii) *protect and preserve the marine environment, and*
 - (ix) *ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*
 - (x) *ensure that decisions in relation to new development consider the broader and cumulative impacts on the catchment, and*
 - (xi) *protect Aboriginal cultural places, values and customs, and*
 - (xii) *protect and preserve items of heritage, archaeological or historical significance.*

Comment: The proposed development is generally considered to have regard for the above objectives.

- (2) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:*
- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
 - (i) *maintaining existing public access and, where possible, improving that access, and*
 - (ii) *identifying opportunities for new public access, and*

Comment: The subject site is adjacent to Shelly Beach (separated by Shelly Beach Road). There is no public access to the beach from this development other than via the existing public road and associated public carparks, and hence, there is no impact upon public access to the coastal foreshore.

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(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

- (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
- (ii) the location, and*
- (iii) the bulk, scale, size and overall built form design of any building or work involved, and*

Comment: The proposed development will not impact on the natural scenic quality of the surrounding area and, in relation to the coastal environment, is considered to be suitable.

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

- (i) any significant overshadowing of the coastal foreshore, and*
- (ii) any loss of views from a public place to the coastal foreshore, and*

Comment: The proposed works are only minor and will not impact on the amenity of the coastal foreshore.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

Comment: The proposed works are only minor and will not impact on the visual amenity or scenic qualities of the coast.

(e) how biodiversity and ecosystems, including:

- (i) native coastal vegetation and existing wildlife corridors, and*
- (ii) rock platforms, and*
- (iii) water quality of coastal waterbodies, and*
- (iv) native fauna and native flora, and their habitats, can be conserved, and*

Comment: The proposal does not involve any loss of vegetation, and therefore does not have any impact upon the above mentioned features.

(f) the cumulative impacts of the proposed development and other development on the coastal catchment.

Comment: The proposed development will not result in cumulative impacts on the coastal catchment.

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

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

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

Comment: The proposal does not conflict with the above mentioned considerations.

Clause 7.7 - Essential Services

Council must be satisfied that the services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

In this case the development is supplied with adequate and appropriate levels of infrastructure servicing, and suitable vehicular access can be provided by compliance with the conditions of consent relating to DA 2014/533.

State Environmental Planning Policy 71 (Coastal Protection)

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

It is considered that there will not be any detrimental impacts to the NSW coast/land in the coastal zone. The proposed development is for the expansion of the existing café within the ground floor commercial premises and only involves minor building works.

The development shall not be significantly affected by coastal processes or coastal hazards, and will not increase the risk of coastal hazards in relation to any other land.

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

Existing Use Provisions under the *Environmental Planning and Assessment Act 1979 (NSW) & Environmental Planning and Assessment Regulations 2000 (NSW)*

At the time of assessment of DA 2010/490 (To Undertake a Change of Use of an Existing General Store/Takeaway food outlet to incorporate a Café with footpath/alfresco dining), the uses were permissible on the land under the Ballina Local Environmental Plan 1987 (BLEP 1987). Upon gazettal of the BLEP 2012 the café component of the business became a prohibited land use within the R3 zone. Accordingly, existing use rights under Sections 106 - 108 of the EP&A Act apply in this instance.

Concern has been raised in a number of submissions that the proposal does not comply with Clause 41(2) of the *Environmental Planning & Assessment Regulations 2000* (NSW) in relation to existing use rights as it is claimed it involves a significant intensification of the existing use and increase of more than 10% in the floor space of the premises associated with the existing use.

For the purposes of Clause 41 of the Regulation the proposal does not involve a change from the existing use (being a café) to another commercial use, such as an office. Instead the proposal involves the enlargement, expansion intensification and alterations to the non-conforming use which is allowed under clause 41(1) (a) and (b) of the Regulations. Therefore, the proposed expansion of the café area is not limited to a maximum of 10% in floor area.

This limitation applies if the proposal involved a change to another commercial use. Council may if it sees fit, issue development consent for the proposal pursuant to Division 10 of the EP&A Act and Part 5 of the Regulations despite the use being prohibited within the R3 zone. Notwithstanding this, consideration needs to be given to the matters contained in s79C of the EP&A Act.

Ballina Shire Development Control Plan 2012

Chapter 2

Clause 3.7 – Waste Management

Council has raised concerns in relation to the storage and removal of waste associated with the operation of the café. Currently the waste from the café is being stored in a number of wheelie bins and commercial bulk waste bins and is collected by a private contractor.

The waste storage area is located within the access driveway on the northern side of the building, and the applicant does not propose to change the current arrangement under this application.

The location of the waste storage area will therefore deny vehicular access to the rear residential car parking spaces which are required under DA 2014/553 and therefore is considered inappropriate.

Furthermore, the proposed disabled access ramp will also restrict vehicular access along this driveway.

The proposed intensification of the café is expected to increase the extent of waste generated by the business.

Council requires the waste storage area to be roofed, bunded, and a basket arrestor sump installed and drained to sewer via the grease trap.

Furthermore, it is evident from the concerns raised in the public submissions that the location of the existing waste area, being directly adjacent to neighbouring residential units, is having a detrimental impact on residents in terms of noise and odour.

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The grease trap (1,000L capacity) for the business is also located within the access driveway. This grease trap is pumped out on a 12 week cycle and the current size appears to be adequate for the proposed increase in patrons.

However, the application does not demonstrate whether the proposed disabled access ramp will impede access to the grease trap for servicing.

The applicant has failed to demonstrate compliance with above trade waste requirements or to address concerns raised in relation to impacts such as offensive noise and odours, and restriction to the use of the driveway.

Therefore the application is not supported.

Clause 3.19 – Car Parking and Access

The current application seeks to extend the area of the café and increase the number of seats provided for customers. Under Council Policy F07 – Commercial Use of Footpaths there is no additional car parking requirements for the commercial use of footpaths where such an activity is undertaken in accordance with the requirements of the policy.

As specified in the Ballina DCP 2012 the on-site car parking rate applicable to cafés is one space per three seats.

The car parking assessment for the proposed development is as follows:

- There is an increase in the number of seats (internal) of 26 seats which generates a need for nine spaces (at a rate of one space per three seats).
- A one space credit is provided for the existing General Store (26m² GFA at a rate of one space per 40m² GFA = One space).
- The approved plan in DA 134/89 illustrates four car parking spaces at the rear of the property to service the residential units. Whilst the car parking spaces are not currently in operation they are proposed to be reinstated under DA 2014/553 (five lot Strata Title subdivision of the development). Due to the location of the proposed disabled access ramp, waste storage area and other services being within the driveway along the northern boundary, vehicular access to these four residential car parking spaces at the rear of the site will be prevented. Therefore, the development will result in a loss of a further four spaces from the site.

The proposed development results in a shortfall of 12 car parking spaces on-site (eight for the café and four for the residential units). This calculation excludes the car parking generated by the 17 footpath dining seats (which equates to six spaces) as parking is not required for this under Council Policy F07 – Commercial Use of Footpaths.

The existing development is not capable of providing any car parking spaces on-site in relation to the operation of the café.

As the site is not affected by a car parking contribution plan, Council cannot levy car parking contributions in lieu of the shortfall in spaces.

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The applicant's justification for the non-compliance with the car parking requirements of Ballina DCP 2012 and the proposed development's reliance on car parking in the public street system is summarized and is commented on as follows:

- *Council's previous assessment of DA 2010/490 indicated that the change of use of a portion of the existing general store to a café did not increase traffic generated to the site.*

Comment: In the assessment of DA 2010/490 (To Undertake a Change of Use of an Existing General Store/Takeaway food outlet to incorporate a Café with footpath/alfresco dining) Council indicated that there would be no increase in traffic generated to the site as a result of the minor change of use.

Accordingly no additional requirements in relation to access and parking were required under DA 2010/490.

- *The change of use of the takeaway aspect of the business to a café does not generate any additional demand for car parking and traffic under the Ballina DCP 2012 as both uses are classified as a 'food and drink premises' and therefore have the same car parking rate.*
- *There is an existing credit of 19 spaces for the current use.*

Comment: The above car parking assessment gives consideration to the current approved operations and calculates the additional demand for on-street parking resulting from the current proposal.

- *There is a significant amount of public parking in the local area comprising on-street parking and nearby public car parks.*

Comment: There are 94 carparks available within 100m of the café, 67 of which do not have a residential frontage. There is also an additional 20 carparks within 150m of the café which do not have a residential frontage.

The car parks without a residential frontage are generally utilised by users of the beach, however there is a large amount of car parking available around the Shelly Beach Surf Life Saving Club which also caters for these people.

It is reasonable to suggest that the car park demand generated by the development can be accommodated by the current street network. However, it is acknowledged that this has an impact on residents in the immediate vicinity of the café as customers will park as close as possible to the café, meaning that car parks may not be available directly in front of residential dwellings during business hours.

There is generally an expectation that on-street parking in residential areas is available for residents, visitors, or the like.

- *There are a number of examples of Council approving restaurants and cafés without any off-street parking, specifically the re-development of the Shelly Beach Café (DA 2012/348), redevelopment of Pelican 181 (DA 2010/640), Ballina Surf Club (DA 2011/540) and 50 Pacific Parade, Lennox Head (DA 1992/333) now known as Bombora Café.*

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Comment:

Shelly Beach Café (DA 2012/348), Ballina Surf Club (DA 2011/540) and Redevelopment of Pelican 181 (DA 2010/640)

The Shelly Beach Café, Ballina Surf Club and Pelican 181 (now known as The Wharf Bar and Restaurant) developments are all located on public land, therefore it is reasonable for these developments to rely on public car parking to accommodate the development.

In relation to Shelly Beach Café, car parking for the previous café was provided in the adjacent public car park to the immediate north of the site.

The assessment of DA 2012/348 indicated that the seating capacity of the proposed development was similar to the existing café.

Based on the previous development, it was considered that traffic generation was not likely to be an issue at the site and sufficient parking was available.

As part of the Ballina Surf Club redevelopment (DA 2011/540) 16 car parking spaces were provided on the subject site.

Council has also constructed a separate public car park in the vicinity for the site which accommodates 78 car parking spaces (DA 2011/541).

DA 2010/640 involved alterations and additions to Pelican 181. As this proposal did not increase the seating capacity associated with the café/takeaway establishment, the development did not increase demand for car parking.

Notwithstanding this, the original application for the development (DA 2003/657) involved a significant shortfall in parking, as spaces could not reasonably be provided on-site.

This was considered acceptable at the time of assessment for the following reasons:

- The development was located within the Ballina Central Business District (CBD), and as such, trips to the restaurant were likely to be incidental to other activities within the CBD (ie the restaurant is unlikely to sole destination for many of its customers)
- The development was consistent with the waterfront master plan and provided broader public benefits
- Car parking contributions were paid in lieu of five existing on-street car parking spaces occupied by the development and
- Deferred commencement condition 1. of DA 2003/657 required that:

The CBD timed parking zones be reviewed and assessed as to the applicability of the existing time zones and/or their modification to accommodate the necessary short to medium term parking in Fawcett Street. This consent can be enacted pending the adopted parking review identifying that parking opportunities in Fawcett Street be short to medium term zones (ie all day parking prohibited).

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50 Pacific Parade, Lennox Head (DA 1992/333) now known as Bombora Café

The application for a refreshment room at the above address was approved by Council in 1992. It is noted that the required ten spaces are located within the road reserve. Irrespective, this consideration of car parking demand is not comparable to the current application due to the age of the assessment.

- *Due to the location of the site (adjacent to the beach and nearby residences), a number of patrons also walk or ride bicycles to the café which do not create any demand for car parking.*

Comment: It is acknowledged that not all patrons of the café will arrive via cars. However Council's car parking rates, as specified in Ballina DCP 2012, give general consideration to alternative means of transport.

In summary of the car parking issues, the proposed development generates significant additional car parking demand which cannot be accommodated on-site and will also result in the loss of four residential car parking spaces at the rear of the site.

It is considered that there is sufficient on-street car parking available within the vicinity of the property to accommodate adequate parking, however due to the proposed intensification of the business this reliance on on-street parking is having an unreasonable impact on the neighbouring residents in terms of reduced availability of spaces at peak times, and restricted access and visibility to and from private driveways, as evidenced in the public submissions.

Approval of this application and acceptance of the proposed deficiency in on-site parking may set a precedent for similar developments which will undermine the requirements of the Ballina DCP in terms of car parking.

The application is not supported as the development generates significant additional demand for car parking which cannot be provided on-site, and it is therefore inconsistent with the Development Controls of Chapter 2 clause 3.19 - Car Parking and Access of Ballina DCP 2012.

Part 4 Provisions for Other Development in Residential, Business and Industrial Zones

4.1.2 Planning Objectives

- a. Provide for a range of land uses within zones that are compatible with local amenity and character;
- b. Minimise conflict between land uses;
- c. Maintain consistency in development standards between land uses and ensure that buildings are similar in height, bulk and scale to surrounding buildings; and
- d. Avoid concentrations of uses that do not comprise the core purpose of a zone to minimise cumulative adverse impacts on adjoining properties.

Relevant Development Controls

- Car parking will be assessed in relation to standards for comparable land uses where specified in the DCP or based on relevant guidelines

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published by NSW Roads and Maritime Services. Car parking must be sufficient to meet demand generated by staff and visitors;

- Development must demonstrate it will not adversely impact on the amenity of adjoining properties and the surrounding area, particularly in relation to noise, traffic movement and lighting and having regard for cumulative impacts.

As indicated the proposed development does not provide sufficient on-site car parking and, as discussed below, will have adverse impact on the amenity of the adjoining properties and surrounding area in relation to noise, odour, and traffic movement.

Impact of intensification

An assessment of impact of intensification of the café requires consideration of the Planning Principles established by the Land and Environment Court in *Randall Pty Ltd v Leichhardt Council* [2004] NSWLEC 277.

First, is the impact of the operation of the existing use on residential amenity acceptable?

The use of the premises for the operation of a café (being the current approved existing use) in accordance with the conditions of DA 2010/490 is not considered to have unreasonable impacts on the residential amenity of the area, with the exception of the location and design of the waste storage area.

Second, if the answer is yes, is the impact of the proposed extension or intensification still acceptable?

The proposal involves an intensification of the approved café, including an increase in the number of overall seats from 28 to 57 and an expansion of the area allocated for the café. This proposed intensification is likely to result in unacceptable impacts on residential amenity due to the lack of car parking (and heavy reliance on on-street parking), noise and waste collection issues. It is considered that the café as proposed is of a size and intensity that is no longer suitable for the subject premises or the residential locality; therefore the application is recommended for refusal.

Options

In considering the current proposal, Council has the following options in determining the application:

Option One - Approval

That Council issues development consent to the application on the basis that the development is suitable for the site, the impacts on the amenity of the neighbouring residents are acceptable, and the loss of on-site parking for the residents of the units and the increased demand for car parking generated by the intensification of the café can be reasonably accommodated by on-street parking within the vicinity of the site. This is not the favoured option for the reasons detailed throughout this report including that approval of this application would also have implications for DA 2014/553 for the Strata Title subdivision of the subject building.

Option Two - Deferral

That Council defers determination of the application to allow the applicant to explore alternative options for the provision of disabled access to the proposed disabled toilet facilities and location of the waste storage area. It should be noted that this issue has been well canvassed with the applicants and sufficient time has been provided during the assessment of the application to consider options.

Option Three - Refusal

That Council refuses the development application. This is the preferred option for the reasons discussed in this report and outlined in the recommendation. The applicant will have the opportunity to lodge a new application or seek a review of the determination under s 82A of the EP&A Act. Alternatively, the applicant will have a right to appeal the determination in the Land and Environment Court of NSW.

Conclusion

Consent of Council is sought to increase the size, number of seats and hours of operation of the existing café component of the ground floor commercial tenancy at No. 12 Shelly Beach Road, East Ballina.

This application has attracted numerous public submissions, both for and against the development. The matters raised in the submissions have been considered in this report. Some of the concerns raised can be addressed by way of conditions, however other issues cannot be adequately resolved in this way.

The proposed expansion and intensification of the café will have unreasonable impacts on the amenity of neighbouring residents in terms of noise, odour and car parking. Furthermore, this application is inconsistent with that proposed under DA 2014/553 due to the proposed location of the disabled access ramp to the disabled WC and waste storage area, being within the northern driveway restricting vehicular access to the rear of the property, and thereby further reducing the number of car parking spaces onsite.

After consideration of the relevant matters under s 79C and Division 10 of the *Environmental Planning and Assessment Act 1979*, s 89 of the *Local Government Act 1993*, the objectives of the zoning and the principles of sustainable development it is recommended that the application be refused.

RECOMMENDATION

That Development Application 2015/27 'To Undertake a Change in Operational Use of Part of the Existing General Store/Takeaway and Café Area to Include Additional Café Area and to Modify the Hours of Operation' on Lot 3 Section 96 DP 758047 No. 12 Shelly Beach Road and adjacent public footpath, East Ballina be **REFUSED** for the following reasons:

1. The proposal generates significant additional demand for car parking which cannot be provided on-site. The proposal is therefore inconsistent with the Planning Objectives and Development Controls of Chapter 2,

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Clause 3.19 - Car Parking and Access of Ballina DCP 2012.

2. The proposed location of the disabled access ramp, waste bins and services will prevent vehicular access to, and car parking at the rear of the site. This will further increase demand for car parking in the street and impact on neighbouring residents.
3. The waste storage area does not meet Council design requirements and the location, being within the driveway directly adjacent to residential units, is unsuitable and will result in unreasonable impacts on the amenity of the neighbouring residents in terms of odour and noise.
4. The size and intensification of the development is not considered to be compatible with the character and amenity of the surrounding neighbourhood. Accordingly the proposal does not have adequate regard for the objectives of the R3 Medium Density Residential zone and the aims of the Ballina Local Environmental Plan 2012.

Attachment(s)

1. Locality Plan
2. Proposed Plans
3. Approved Plan - DA 2010/490
4. Submissions (Public)
5. Submissions (Confidential) (Under separate cover)

8.3 DA 2014/387 -11 Dees Lane Lynwood - Telecommunications Tower

8.3 DA 2014/387 -11 Dees Lane Lynwood - Telecommunications Tower

Applicant	Visionstream Pty Ltd
Property	Lot 5 DP 245043, 11 Dees Lane LYNWOOD
Proposal	To Erect a Telecommunications Facility Comprising a 45 metre High Lattice Tower and Ancillary Equipment
Effect of Planning Instrument	The land is zoned RU1 – Primary Production under the provisions of the Ballina LEP 2012
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

The application is for the erection of a telecommunications facility comprising a 45 metre high lattice tower with compound area, equipment and associated works as a part of the National Broadband Network (NBN). This application is reported to Council for determination given the issues raised in the public submissions, objection by the Ballina Byron Gateway Airport, and the proposed tower being a part of the NBN initiative.

This report recommends a determination based on issues raised by from the Ballina Byron Gateway Airport (BBGA) and the Civil Aviation Safety Authority (CASA) regarding aeronautical safety considerations.

Plans of the proposed telecommunications facility are **attached**.

The Site

The proposed site is approximately 2.9ha in size and located in a rural area in Lynwood. The immediate locality is configured in a small rural lot subdivision pattern containing a cluster of eight properties with dwellings within 500 metres of the proposed facility.

Four of the smaller allotments have dwellings within 300 metres of the proposed site.

The subject site slopes moderately from north-west to south-east with the location of the proposed tower in the south eastern corner.

The southern boundary has a row of trees approximately 25m in height, the property to the east contains a macadamia plantation and other scattered vegetation is established to the north/north east of the proposed site.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

On the 18 August 2014 all adjoining land owners and occupants were notified of the proposed development with the exhibition period ending on the 11 September 2014. 22 submissions were received, 10 in support of the proposed development and 12 of which were objections.

A petition was also received in opposition to the proposed tower containing 86 signatures; seven signatories subsequently requested that their names be removed from the petition. A copy of each submission that has not requested confidentiality is **attached**.

Confidential submissions will be provided to each Councillor under separate cover.

The main objection(s) received concerned visual impact and how the proposed tower would impact on local amenity and property value. These concerns were further exacerbated after a letter from CASA recommended that if the tower was to be approved the structure be lit by a medium intensity flashing red light at the highest point of the structure and that the structure be marked in alternating red and white bands.

There were also a significant number of submissions that opposed the proposed facility questioning the effectiveness of the technology and preferring fibre optic delivery of the NBN. There was criticism from some also concerning lack of community consultation. Noise generated from a proposed air-conditioning unit was raised as were concerns regarding the potential impacts on the local Koala population.

The submissions of support were in favour of the improved internet access the infrastructure would provide, with some commenting on the current internet service being unreliable and slow. Many voiced their concerns that without the NBN technology, Uralba would be "left behind" with residents, home businesses, doctors and students suffering the consequences of not having the same level of access to technology as the rest of Australia.

An additional late submission by the 'Lynwood Residents Group Incorporated' submitting photomontages of their perspective of the proposed tower in situ and requesting Councillor inspection has been received.

This has also been separately sent to Councillors by the group and is not attached to, nor specifically assessed by, this report.

The applicants, Visionstream, have submitted a point summary of their proposed presentation to the Council meeting.

This will be separately distributed to Councillors.

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.

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

Clause 115 permits any person to undertake a development for the purposes of telecommunication facilities on any land with consent. Clause 115 of the ISEPP states:

(1) Development for the purposes of telecommunications facilities, other than development in clause 114 or development that is exempt development under clause 20 or 116, may be carried out by any person with consent on any land.

(2) (Repealed)

(3) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines concerning site selection, design, construction or operating principles for telecommunications facilities that are issued by the Director-General for the purposes of this clause and published in the Gazette.

In this regard the NSW Telecommunications Facilities Guideline including Broadband 2010 has been issued by the Director-General and is addressed accordingly.

NSW Telecommunications Facilities Guideline including Broadband 2010

When considering a development application for a telecommunications facility, Council is to consider the following Principles contained within this Guideline:

Principle One: A telecommunications facility is to be designed and sited to minimise visual impact.

Specific Principle	Comment
(a) As far as practical, a telecommunications facility that is to be mounted on an existing building or structure should be integrated with the design and appearance of the building or structure.	N/A
(b) The visual impact of telecommunications facilities should be minimised, visual clutter is to be reduced particularly on tops of buildings, and their physical dimensions (including support mounts) should be sympathetic to the scale and height of the building to which it is to be attached, and sympathetic to adjacent buildings.	N/A
(c) Where telecommunications facilities protrude from a building or structure and are predominantly backgrounded against the sky, the facility and their support mounts should be either the same as the prevailing colour of the host building or structure, or a neutral colour such as grey should be used.	N/A
(d) Ancillary facilities associated with the telecommunications facility should be screened or housed, using the same colour as the prevailing background to reduce its	The associated equipment is proposed to be housed within two small sheds and is considered to comply with this principle.

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Specific Principle	Comment
visibility, including the use of existing vegetation where available, or new landscaping where possible and practical.	
(e) A telecommunications facility should be located and designed to respond appropriately to its rural landscape setting.	The facility has been located to provide maximum coverage for the network; the design is a lattice tower similar to others found in rural localities in the Shire. The proposed tower would be visually prominent from some properties within the surrounding locality however this would be alleviated to some extent by existing vegetation providing some screening.
(f) A telecommunications facility located on, or adjacent to, a State or local heritage item or within a heritage conservation area, should be sited and designed with external colours, finishes and scale sympathetic to those of the heritage item or conservation area.	N/A
(g) A telecommunications facility should be located so as to minimise or avoid the obstruction of a significant view of a heritage item or place, a landmark, a streetscape, vista or a panorama, whether viewed from public or private land.	No heritage items existing in surrounding locality
(h) The relevant local government authority must be consulted where the pruning, lopping, or removal of any tree or other vegetation would contravene a Tree Preservation Order applying to the land or where a permit or development consent is required.	N/A
(i) A telecommunications facility that is no longer required is to be removed and the site restored, to a condition that is similar to its condition before the facility was constructed.	N/A
(j) The siting and design of telecommunications facilities should be in accordance with any relevant Industry Design Guides.	<p>The proposed development is to comply with Australian Communications and Media Authority (ACMA) regulatory arrangements. The applicant has provided the following justification regarding visual impacts:</p> <p><i>...it is considered that the proposed 45 m lattice tower:</i></p> <ul style="list-style-type: none"> • <i>Will not be excessively visible, or intrusive or dominate the surrounding locality.</i> • <i>Will not result in adverse impacts on the amenity of the area.</i> • <i>The height of the proposed tower is considered by the NBN to be the minimum required to achieve reasonable Radio Frequency (RF) objectives at this location.</i>

Principle Two: Telecommunications facilities should be co-located wherever practical.

Specific Principle	Comment
(a) Telecommunications lines are to be located, as far as practical, underground or within an existing underground conduit or duct.	N/A
(b) Overhead lines, antennas and ancillary telecommunications facilities should, where practical, be co-located or attached to existing structures such as buildings, public utility structures, poles, towers or other radio communications equipment to minimise the proliferation of telecommunication facilities and unnecessary clutter.	<p>There are no existing structures in the vicinity with the required height and location that are suitable. The closest telecommunications facility to the subject site is approximately 1 kilometre at the Summerland House with no Steps. However, the owners of this property have not agreed to proceed with a fixed wireless facility on their land. The Applicant's justification for the selection of the subject site is as follows:</p> <ul style="list-style-type: none"> • The location allows for maximum coverage while enabling NBN Co to propose the smallest structure to do so. • The site provides sufficient spatial separation from sensitive land uses with the closest dwelling approximately 210m from the proposed site • The location has established trees that will screen the facility.
(c) Towers may be extended for the purposes of co-location.	No standalone tower(s) are present in the locality.
(d) The extension of an existing tower must be considered as a practical co-location solution prior to building new towers.	No standalone tower(s) are present in the locality.
(e) If a facility is proposed not to be co-located the proponent must demonstrate that co-location is not practicable.	No standalone tower(s) are present in the locality.
(f) If the development is for a co-location purpose, then any new telecommunications facility must be designed, installed and operated so that the resultant cumulative levels of radio frequency emissions of the co-located telecommunications facilities are within the maximum human exposure levels set out in the Radiation Protection Standard.	N/A

Principle Three: Health standards for exposure to radio emissions will be met.

Specific Principle	Comment
(a) A telecommunications facility must be designed, installed and operated so that the maximum human exposure levels to	The proposed installation is to comply with Australian Communications and Media

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Specific Principle	Comment
radiofrequency emissions comply with Radiation Protection Standard.	Authority (ACMA) regulatory arrangements with respect to electromagnetic radiation exposure levels.
(b) An EME Environmental Report shall be produced by the proponent of development to which the Mobile Phone Network Code applies in terms of design, siting of facilities and notifications. The Report is to be in the format required by the Australian Radiation Protection Nuclear Safety Agency. It is to show the predicted levels of electromagnetic energy surrounding the development comply with the safety limits imposed by the Australian Communications and Media Authority and the Electromagnetic Radiation Standard, and demonstrate compliance with the Mobile Phone Networks Code.	<p>The applicant has provided the following in relation to this principle:</p> <p><i>“EME exposure limits from this site have been calculated in accordance with the ARPANSA prediction methodology and report format....The maximum EME level calculated for the proposed systems at this site is 0.012% of the public exposure limit”</i></p> <p>The report is attached for Council's consideration.</p>

Principle Four: Minimise disturbance and risk, and maximise compliance

Specific Principle	Comment
(a) The siting and height of any telecommunications facility must comply with any relevant site and height requirements specified by the <i>Civil Aviation Regulations 1988</i> and the <i>Airports (Protection of Airspace) Regulations 1996</i> of the Commonwealth. It must not penetrate any obstacle limitation surface shown on any relevant Obstacle Limitation Surface Plan that has been prepared by the operator of an aerodrome or airport operating within 30 kilometres of the proposed development and reported to the Civil Aviation Safety Authority Australia.	The application was referred to Civil Aviation Safety Authority Australia, Airservices Australia and Ballina Byron Gateway Airport. Ballina Airport in particular have concerns regarding the height and proposed location of the tower. The proposed 45m high tower is approximately 11.5 kilometres (direct distance) from the BBGA and would penetrate the horizontal section of the Runway 06 Approach Slope of this OLS by 14.3 metres. Airport Management are opposed to the erection of any permanent structure (particularly man made) that would impede either the Approach or Take Off Slopes to the Airport and have recommended refusal.
(b) The telecommunications facility is not to cause adverse radio frequency interference with any airport, port or Commonwealth Defence navigational or communications equipment, including the Morundah Communication Facility, Riverina.	<p>The applicant has provided the following response in relation to this principle:</p> <p><i>“The facility is designed to create no electrical interference problems with other radio based systems and complies with the relevant Australian Standards”</i></p>
(c) The telecommunications facility and ancillary facilities are to be carried out in accordance with the applicable specifications (if any) of the manufacturers for the installation of such equipment.	Conditions of consent can address this principle.
(d) The telecommunications facility is not to affect the structural integrity of any building on which it is erected.	The proposed facility is not located on or near an existing structure.
(e) The telecommunications facility is to be erected wholly within the boundaries of a property where the landowner has	The proposed facility is located entirely within one property.

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Specific Principle	Comment
agreed to the facility being located on the land.	
(f) The carrying out of construction of the telecommunications facilities must be in accordance with all relevant regulations of the Blue Book – ‘Managing Urban Stormwater: Soils and Construction’ (Landcom 2004), or its replacement.	Conditions of consent are able to address this principle.
(g) Obstruction or risks to pedestrians or vehicles caused by the location of the facility, construction activity or materials used in construction are to be mitigated.	Conditions of consent are able to address this principle in relation to construction activity. The site will not cause obstruction or risks to pedestrians or vehicles.
(h) Where practical, work is to be carried out during times that cause minimum disruption to adjoining properties and public access. Hours of work are to be restricted to between 7.00am and 5.00pm, Mondays to Saturdays, with no work on Sundays and public holidays.	Conditions of consent are able to address this principle.
(i) Traffic control measures are to be taken during construction in accordance with <i>Australian Standard AS1742.3-2002 Manual of uniform traffic control devices – Traffic control devices on roads.</i>	Conditions of consent are able to address this principle.
(j) Open trenching should be guarded in accordance with <i>Australian Standard Section 93.080 – Road Engineering AS1165 – 1982 – Traffic hazard warning lamps.</i>	Conditions of consent are able to address this principle.
(k) Disturbance to flora and fauna should be minimised and the land is to be restored to a condition that is similar to its condition before the work was carried out.	Concerns were raised by means of submission regarding the local Koala population. There would be minimal disturbance to flora and fauna. The land has been used for horticulture and the construction site is free of significant native flora.
(l) The likelihood of impacting on threatened species and communities should be identified in consultation with relevant state or local government authorities and disturbance to identified species and communities avoided wherever possible.	
(m) The likelihood of harming an Aboriginal Place and / or Aboriginal object should be identified. Approvals from the Department of Environment, Climate Change and Water (DECCW) must be obtained where impact is likely, or Aboriginal objects are found.	No aboriginal sites have been identified in the vicinity of the site.
(n) Street furniture, paving or other existing facilities removed or damaged during construction should be reinstated (at the telecommunications carrier’s expense) to at least the same condition as that which existed prior to the telecommunications facility being installed.	There are no public facilities in the site’s location that are vulnerable to damage during the construction activities.

Ballina Local Environmental Plan 2012 (BLEP 2012)

Permissibility and zone objectives

The subject land upon which the tower is located is zoned RU1 Primary Production under the provisions of BLEP 2012. Telecommunication facilities are prohibited in the zone. However, as provided for by Clause 115 of the Infrastructure SEPP telecommunication facilities are permissible on any land with consent.

The zone objectives are as follows:

- *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.*

Comment: The proposal does not adversely impact on the primary industry production use of the surrounding land nor does it cause fragmentation or alienation of resource lands. Whilst the proposal is not necessarily compatible with the rural character of the land, telecommunication facilities in rural locations are not uncommon. The proposal is not considered to create unreasonable or uneconomic demands on public amenities and services and would assist in providing important infrastructure to the broader community.

7.5 Airspace operations

Clause 7.5 of BLEP 2012 contains additional provisions for applications that will penetrate the Ballina Byron Gateway Aerodrome's Limitation or Operations Surface:

- (1) *The objectives of this clause are as follows:*
 - a) *to provide for the effective and ongoing operation of the Ballina Byron Gateway Airport by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,*
 - b) *to protect the community from undue risk from that operation.*
- (2) *If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.*

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- (3) *The consent authority may grant development consent for the development if the relevant Commonwealth body advises that:*
- a) *the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or*
 - b) *the development will not penetrate the Limitation or Operations Surface.*
- (4) *The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be constructed.*

(5) *In this clause:*

“Limitation or Operations Surface” *means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Ballina Byron Gateway Airport.*

“relevant Commonwealth body” *means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Ballina Byron Gateway Airport.*

The Civil Aviation Safety Authority (CASA) is the relevant Commonwealth body under Commonwealth legislation for development approvals for development that penetrates the Limitation or Operations Surface for the Ballina Byron Gateway Airport. CASA's primary function is to conduct the safety regulation of civil air operations in Australia and the operation of Australian aircraft overseas.

Airservices Australia was formed in July 1995 when the Civil Aviation Authority was split into two separate government bodies: Airservices Australia and CASA. Airservices have responsibility for, airspace management, aeronautical information, aviation communications, radio navigation aids, aviation rescue, and firefighting services.

As the proposed tower would infringe the Ballina Byron Gateway Aerodrome (BBGA) Obstacle Limitation Surface (OLS) Operations Surface the application was referred to the BBGA Manager, CASA and Airservices Australia.

On 16 of December 2014, BBGA advised as follows (copy **attached**):

The airport's Take-Off/Climb Slope and Approach Slope are obvious critical areas for aircraft activity and safety; and any infringement of these surfaces pose an inherent risk to aviation operations. The aerodrome operator should take all reasonable measures to ensure the full margin of safety for aircraft in these areas and oppose any development that would be likely to infringe the Take-Off/Approach surfaces.

Airport Management must also protect the current and future operational integrity of the airport.

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- *An infringement in the Approach Slope could result in the installation of a displaced threshold (essentially shortening the runway) which could restrict the current size jet aircraft from using the airport, and in turn would seriously affect the airport business, its financial viability and the flow-on affect to the community as a major attractant for tourism and transport infrastructure.*
- *Similarly, any plans for the possible lengthening of the runway to cater for larger aircraft in the future, would be severely hampered by such infringement.*
- *Required Navigational Performance procedures now in place at Ballina Airport and for aircraft carrying the capability have lowered the approach minima to 350ft. It is anticipated with technological advancement the minima could be reduced to 250ft in the future, but this could be jeopardised by the presence of such an obstacle.*

*Having regard to the above, **IT IS RECOMMENDED** by Airport Management that:*

1. *Approval for the installation of the Telecommunications Tower as proposed at 11 Dees Lane, Lynwood, NSW, 2477 (Lot 5 DP245043) **BE REFUSED.***
2. *Should the proponent wish to install a tower in the general locality, the site be clear of the Take-Off/Approach paths for the Ballina Aerodrome.*
3. *Should the proponent wish to install a tower at the same site, the height of the tower must be below and not penetrate the Approach Slope for the Ballina Aerodrome.*

CASA responded by letter dated 19 December 2014 (**attached**) that:

the structure will be a hazardous object under regulation 139.370(1) of the Civil Aviation Safety Regulations 1998, because of its height and location within the approach surface.

CASA also supports the assessment that the airport's Take-Off/Climb and Approach Slopes are critical areas for aircraft activity and safety; and any infringement of these surfaces pose an inherent risk to aviation operations.

The aerodrome operator must take all reasonable measures to ensure the full margin of safety for aircraft in these areas, and seriously consider any development that would be likely to infringe the Take-Off/Approach surfaces.

However, if Council considers as part of your own safety and risk management approach that the application is to be approved, CASA recommends that that the structure be obstacle lit by a medium intensity flashing red lights at the highest point of the structure. Obstacle lights are to be arranged so as to at least indicate the points or edges of the object to ensure the object can be observed in a 360° radius as per subsection 9.4.3 of the Manual of Standards Part 139 - Aerodromes. Characteristics for medium intensity lights are stated in subsection 9.4.6.

http://www.comlaw.gov.au/Details/F2012C00280/Html/Volume_2;

CASA also recommends that the structure should be obstacle marked in alternating red and white bands of colour in accordance with subsection 8.10.2 of the Manual of Standards (MOS) – Part 139 Aerodromes.

http://www.comlaw.gov.au/Details/F2012C00280/Html/Volume_1#_Toc324153054).

This assessment does not include any crane activity required during construction if approved. Any such crane activity that exceeds the OLS height of 191.5 m AHD will require a separate assessment.

If obstacle lighting is undertaken as suggested above, then In accordance with regulation 139.350(1) of the CASR 1998 and subsection 7.1.4 and 9.4.10 of the Manual of Standards – Part 139 Aerodromes, Ballina/Byron Gateway Aerodrome is to monitor the ongoing availability of the obstacle lighting.

*For detailed requirements for the monitoring of obstacle lights within the aerodrome's OLS refer to subsection 9.4.10 of MOS Part 139. (letter dated 19 December 2014 **attached**)*

It can be concluded from the comments of CASA's letter dated 19 December 2014 that CASA has substantial reservations regarding the proposed development. CASA agrees with BBGA position that the tower would be a hazard to aircraft safety however does not go as far to say it objects to the tower's construction. CASA provides recommendations (such as the obstacle light) if the Council decides to approve the application.

The BBGA was more forthright in their position regarding the proposed development and advised that the installation of the Telecommunications Tower as proposed should be refused.

Airservices Australia commented in their email dated 25 November 2014 **attached** that the telecommunications tower would not affect any sector or circling altitude, nor any instrument approach or departure procedure at Ballina Airport. Airservices did go on to make the note, however, that procedures not designed by Airservices at Ballina Airport were not considered in their assessment.

In response to the recommendations made by BBGA and CASA the proponent engaged aviation consultants Aviation Projects to conduct an independent assessment of the potential impacts on the proposed development.

The Dees Lane Telecommunications Tower Aeronautical Study prepared by Aviation Projects (**attached**) contended that the tower need not be refused maintaining that:

Since there is at least one tree with an overall height equal to or greater than 205.8 m AHD (and other trees extending to a height of greater than 202 m AHD) within close proximity to the proposed tower, the proposed tower will not be the critical obstacle with respect to BBGA's OLS and the application should not be refused on the basis of aviation safety concerns. (Dees Lane Lynwood Telecommunications Tower Aeronautical Study p22)

The report claimed to have identified a number of objects which extend to a height of greater than 206 m AHD (i.e. greater than the height of the proposed tower) within the horizontal section of the runway 06 approach surface:

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Based on the results of an instrument survey, there is one tree with a height of 207.7 m AHD (1.9 m higher than the proposed tower) in close proximity to the proposed tower site. There are a number of other trees which extend above 202 m AHD, well above the height of the horizontal section of the runway 06 approach surface. (Dees Lane Lynwood Telecommunications Tower Aeronautical Study p20)

To date Council has not been made aware that these trees (or objects) have been acknowledged as hazardous objects by a federal or regional aviation authority. In their report Aviation Projects have cited the following response from BBGA in regards to a draft report presented to the airport for comment:

Having reviewed this additional information, Graeme Gordon provided further feedback in an email on 16 February 2015 as noted below:

I have spoken to Neil [Ballina Byron Gateway Airport Manager] and he has asked me to respond to your email and your draft recommendations to Visionstream, regarding the construction of the proposed telecommunications tower at Lynwood, as follows:

- 1. It is the opinion of Airport Management that the surrounding trees do not constitute a Permanent Obstacle.*
- 2. Regardless of the height of the surrounding trees and given the definitions of the Principles of Shielding (MOS Pt139 sec 7.4), they would not be deemed as shielding the proposed tower.*
- 3. The resolve of Airport Management to see no worsening of the OLS (particularly under the Take Off or Approach gradients), remains unchanged.*
- 4. As per the MOS and in terms of the Take-Off/Climb Slope, new objects should be limited to preserve an obstacle free surface or a surface down to a slope of 1.6%.*
- 5. Our overall recommendation is in concurrence with your Recommendation 4 that if the approved tower is less than RL 191.5m AHD than it will not be an obstacle with regard to BBGA's OLS; OR SIMILARLY the tower should be sited outside the lateral limits of the OLS. (Dees Lane Lynwood Telecommunications Tower Aeronautical Study p17)*

The Aviation Projects Aeronautical Study was forwarded to the BBGA Manager and CASA by Council for their further assessment and comment. The BBGA Manager subsequently advised in a letter dated 01 April 2015 as follows (copy **attached**):

The Obstacle Limitation Surface (OLS) for Ballina Byron Gateway Airport is designed to the requirements of the Manual of Standards, Civil Aviation Safety Regulations Part 139.

The crux of this issue is that the proposed 45m high tower would penetrate the horizontal section of the Runway 06 Approach Slope of this OLS by 14.3 metres. Airport Management are opposed to the erection of any permanent structure (particularly man made) that would impede either the Approach or Take Off Slopes to the Airport.

8.3 DA 2014/387 -11 Dees Lane Lynwood - Telecommunications Tower

Therefore, I wish to confirm our previous recommendation that “the installation of the Telecommunications Tower as proposed at 11 Dees Lane, Lynwood, NSW 2477 be refused”.

CASA subsequently advised in email dated 08 April 2015 as follows (copy **attached**):

CASA has already undertaken an assessment for the application to erect a communications tower at 11 Dees Lane Lynwood, and that assessment has not changed. CASA determined that the structure would be a hazardous object under regulation 139.370(1) of the Civil Aviation Safety Regulations 1998, because of its height and location within the approach surface.

Council as the building approving agency must take into account the information provided by the management of the Ballina/Byron Gateway aerodrome, who is responsible to take all reasonable measures to ensure the full margin of safety for aircraft in these areas, and seriously consider any development that would likely infringe the Take-Off/Approach surfaces.

Environmental Impacts and Suitability of the Site

The proposal would create some visual impact on surrounding properties due to the height of the structure. Infrastructure such as a 45 metre lattice tower is not unusual in a rural location and considering the available screening from existing vegetation this particular location, visual impact is not considered unacceptable.

The proponent maintains that the subject sight was selected as it was the most suitable location providing the maximum coverage while using the smallest structure to do so. The location was identified as having established vegetation that would screen the bulk of the structure from public and private viewpoints. The location was identified because it is in a rural locality with the closest dwellings located approximately 210m from the proposed site.

Co-location and alternate sites have been explored extensively by the proponent. In August 2014, NBN Co held a community information session regarding the application where alternative sites were canvassed. These locations were investigated by the proponent, however an alternate site that would achieve the desired function and with a willing land owner was not identified. The proposed development is low impact in regards to flora and fauna.

Options:

1. Approval

Council is satisfied that the mitigating provisions suggested by CASA are enough to enable approval to be granted, in recognition of the proposal being part of the NBN initiative. This would be against the recommendation of Ballina Byron Gateway Airport and this report that recommends the application be refused.

2. Refusal

The application be refused for reasons outlined in the report.

3. Deferral

The application be deferred for further consideration by the applicant to address the issues raised in this report. This is not recommended as these issues have been known by the applicant for some time and neither the applicant nor airport management can see that a deferral would be of benefit.

Conclusions

The application seeks consent for the erection of a telecommunications facility comprising a 45 metre high lattice tower and ancillary equipment.

The provision of high speed IT services to a substantial group of local residents is clearly an important public interest matter as these services are vital business and social infrastructure. In this case, the provision of the service also has serious implications for another important community asset and service; the Ballina-Byron Gateway Airport.

The key issue in relation to the proposal is the advice received from BBGA and CASA that the structure would be a hazardous object under Regulation 139.370(1) of the Civil Aviation Safety Regulations 1998, because of its height and location within the approach surface. The proposed 45m high tower would penetrate the outer horizontal section of the Runway 06 Approach Slope of this OLS by 14.3 metres and Airport Management are opposed to the erection of any permanent structure (particularly man made) that would impede either the Approach or Take Off Slopes to the Airport.

For this reason the application is not supported by this assessment.

RECOMMENDATION

That DA 2014/387 for the erection of a Telecommunications Facility comprising a 45 metre high lattice tower and ancillary equipment at 11 Dees Lane, Lynwood, NSW 2477 be **REFUSED** for the following reasons:

1. The proposed 45 metre high Telecommunications Facility will be a hazardous object under Regulation 139.370(1) of the Civil Aviation Safety Regulations 1998, because of its height and location within the approach surface. The assessment that the airport's Take-Off/Climb and Approach Slopes are critical areas for aircraft activity and safety and any infringement of these surfaces pose an inherent risk to aviation operations.
2. The proposed 45 metre high Telecommunications Facility has the potential to adversely impact the current and future operational integrity of the Ballina-Byron Gateway Airport.

Attachment(s)

1. Locality Map
2. Environmental EME Report
3. Plans

8.3 DA 2014/387 -11 Dees Lane Lynwood - Telecommunications Tower

4. Submissions from CASA, BBGA Manager and Airservices Australia
5. Letters of Support (Public)
6. Letters of Support (Confidential) (Under separate cover)
7. Letters of Objection (Public)
8. Letters of Objection (Confidential) (Under separate cover)
9. Dees Lane Lynwood Telecommunications Tower Aeronautical Study

8.4 DA 2014/585 - Friday Hut Road, Brooklet - Two Lot Subdivision

8.4 DA 2014/585 - Friday Hut Road, Brooklet - Two Lot Subdivision

Applicant	Northern Rivers Surveying Pty Ltd
Property	Lot 2 DP 594774 Friday Hut Road, Brooklet
Proposal	To Undertake a Two Lot Subdivision to create 1 x 3.9ha Lot (Lot 1 – Residue Lot) and 1 x 50.53ha Lot (Lot 2 – Primary Production Lot) via SEPP (Rural Lands) 2008
Effect of Planning Instrument	The land is zoned 7(c) – Environmental Protection (Water Catchment) under the provisions of the Ballina LEP 1987
Locality Plan	The subject land is depicted in the locality plan attached

Introduction

It is proposed to subdivide Lot 2 of DP 594774 (54.43ha) into two lots of the following sizes:

- Proposed Lot 1 = 3.9ha
- Proposed Lot 2 = 50.53ha

Proposed Lot 1 will contain a future dwelling house approved under development consent 2014/229 (for a subdivision by way of minor boundary adjustment and consolidation to create 1 x 41ha and 1 x 50.7ha allotments and the erection of a dwelling house on each proposed allotment).

Proposed Lot 2 is to be a Primary Production Lot and therefore is the lot proposed to have no dwelling entitlement.

The application seeks consent for this two lot subdivision pursuant to the provisions of Clause 9 of State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP). Clause 9 (1) & (2) of the Rural Lands SEPP states the following:

*(1) The objective of this clause is to provide flexibility in the application of standards for subdivision in **rural zones** to allow land owners a greater chance to achieve the objectives for development in the relevant zone.*

*(2) Land in a **rural zone** may, with consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size otherwise permitted for that land.*

The subject land is located within the 7(c) – Environmental Protection (Water Catchment) Zone under the BLEP 1987. Within the 7(c) zone the minimum lot size is 40 ha. The assessment of the application by staff, in terms of the applicability of the Rural Lands SEPP to land zoned 7(c) and the merits of the proposed subdivision, has concluded that the application should be refused. The applicant has requested the DA to be reported to the Council for determination.

The site

The subject site is in a rural locality largely dominated by macadamia plantations and bounded by Emigrant Creek to the south and east. The locality provides a range of allotments sized between 20ha and 50ha. Opposite the site on Friday Hut Road is a large macadamia nut plantation and processing plant named Pacific Plantations.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was advertised and adjoining owners notified. No submissions were received.

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.

State Environmental Planning Policy (Rural Lands) 2008

As mentioned in the introductory part of this report, the applicant seeks consent for a two lot subdivision pursuant to the provisions of Clause 9 of Rural Lands SEPP. Clause 9(2), (3) and (4) of the Rural Lands SEPP states the following:

*(2) Land in a **rural zone** may, with consent, be subdivided for the purpose of primary production to create **a lot** of a size that is less than the minimum size otherwise permitted for that land.*

*(3) However, **such a lot** cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.*

*(4) A dwelling cannot be erected on **such a lot**. (**emphasis added**)*

Clause 3 of the Rural Lands SEPP provides the following definition for a "rural zone":

***rural zone** means any of the following, or an equivalent land use zone:*

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU3 Forestry,*
- (d) Zone RU4 Rural Small Holdings,*
- (e) Zone RU6 Transition.*

As the subject land is not zoned one of the above listed rural zones, the first important question to answer is whether the 7(c) – Environmental Protection (Water Catchment) Zone is an equivalent land use zone.

8.4 DA 2014/585 - Friday Hut Road, Brooklet - Two Lot Subdivision

Clause 3(3) of the SEPP provides it is the opinion of the consent authority which determines equivalence between the Standard Instrument LEP zone and a non-standard Instrument LEP zone.

Clause 3 - (3) A reference in this Policy to land within a land use zone that is equivalent to a named land use zone is a reference to land that, under an environmental planning instrument that is not made as provided by section 33A (2), is within a land use zone that (in the opinion of the consent authority for the land) is equivalent to that named land use zone.

To determine the equivalence of the 7(c) – Environmental Protection (Water Catchment) Zone to the applicable rural zones listed in the SEPP a land use equivalence assessment has been undertaken.

This comparison exercise is essentially a review of the zone objectives and the land uses permitted in the applicable zones as outlined in Clause 3 of the Rural Lands SEPP and those uses permitted in the 7(c) zone under the BLEP 1987 and then forming an opinion as to equivalence with the identified zones.

The equivalence comparison undertaken is both a numerical and qualitative equivalence test. That is, the number of uses, and the nature of those uses. Consideration was also given to those uses which are not common in order to form an opinion as to equivalence.

The analysis of the zones by Council staff has concluded that the 7(c) zone is not equivalent to a rural zone as defined in the Rural Lands SEPP. Therefore it is considered that the Rural Lands SEPP is not applicable in this instance.

Council has sought legal advice in relation to this matter. The equivalence assessment undertaken by staff is available to Councillors upon request.

The applicant's equivalence assessment contained in the Statement of Environmental Effects and letter dated 6 March 2015 is **attached** to this report.

In relation to this aspect of the application it is noted that the subject land was given an E3 Environmental Management, rather than a rural zone, in Council's new LEP prior to the Minister's review of the environmental zones.

In addition to the equivalence test, it is also considered that the proposed subdivision is at odds with clause 9(2), (3) and (4) of the Rural Lands SEPP in that the proposed lot that is less than the minimum size otherwise permitted will contain a dwelling.

Nevertheless, in light of the applicant's contention that the 7(c) zone is equivalent to a RU1 zone and that clause 9 enables the proposed subdivision, an assessment of the merits of the application has been undertaken.

Clause 2 – Aims of Rural Lands SEPP

The aims of the Rural Lands SEPP as set out in clause 2 are as follows:

(a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,

Comment:

It is not considered that the development serves to facilitate the orderly and economic use and development of rural lands for rural and related purposes. Rather, it is considered that the application serves a financial purpose for the landowner while potentially compromising the use of the land and surrounding lands for agricultural production. In this application, the one undersized lot (3.9ha) is for the purpose of creating a rural residential lot.

b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,

Comment:

As is identified in the assessment of the Rural Planning and Subdivision Principles that follow it is not considered that the application assists in the proper management, development, and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State.

(c) to implement measures designed to reduce land use conflicts,

Comment:

Clauses 9(2), (3) and (4) of the Rural Lands SEPP seek to address the potential for land use conflict by providing that in creating a lot of a size that is less than the minimum size otherwise permitted, such a lot cannot be created if an existing dwelling would as a result of the subdivision, be situated on the lot, or that a dwelling cannot be created on such a lot. The proposed subdivision is inconsistent with these clauses and this aim of the Policy.

(d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,

Comment:

The subject land is mapped as being less than 1 kilometre from State significant agricultural land and is identified as being regionally significant.

(e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

Comment:

The BLEP 1987 does not have concessional lot provisions.

Clause 7 - Rural Planning Principles of the Rural Lands SEPP

The Rural Planning Principles are as follows:

(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,

Comment:

The applicant has stated in the SEE *“the intent of the proposal is to secure the approved dwelling within its own parcel”*. However, this parcel will have no connection to the surrounding rural use of the locality which has the potential to impact negatively on the potential productive and sustainable economic agricultural activities in the area. The applicant maintains that the benefit of a 50ha lot with no dwelling entitlement is that *“the farm is more readily accessible as a going concern to investors who wish to expand their holding as a key component of the rural industry.”*

(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,

Comment:

The applicant maintains in response to this principle that the proposed development will create *alternate succession plans and/or improved investments and/or retirement options*. This may be the case however it is more financial rationalisation than recognition of the importance of rural lands for productive agricultural enterprises and the impact of fragmentation on these lands.

(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,

Comment:

The proposed subdivision will further fragment and alienate resource lands and increase the potential for land use conflict. Any financial benefit to the individual or sector would likely be at the detriment of the broader interest of the continued unencumbered use of the land and surrounding lands for the full range of agricultural uses. Also, uses that can be complementary to productive agriculture such as bed and breakfast establishments and home industries will no longer be possible on an allotment that does not have a dwelling entitlement. Such uses can be beneficial in supplementing the farm income.

(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,

Comment:

The introduction of a rural residential allotment in the absence of an adopted rural residential strategy and without appropriate buffers and with no connection to the agricultural use of the surrounding area is contrary to the social, economic and environmental interests of the community.

(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,

Comment:

It is considered that clause 9 of the Rural Lands SEPP does not facilitate this proposed subdivision within the 7(c) Environmental Protection (Water Catchment) Zone.

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

Comment:

As stated above it is not considered that the proposed subdivision, in the absence of an adopted rural residential strategy, would contribute to the social and economic welfare of rural communities.

(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,

Comment:

The proposed subdivision is unlikely to place additional demand on public services and infrastructure.

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Comment:

The applicant's rationale in response to this principle is that the proposed development recognises the region's aging population. This rationale again seems to support the view that this subdivision is as much about creating the opportunity for a rural residential lot as it is about primary production.

Clause 8 - Rural Subdivision Principles of the Rural Lands SEPP

The Rural Subdivision Principles are as follows:

(a) the minimisation of rural land fragmentation,

Comment:

The proposal fragments rural land and creates an allotment significantly under the prescribed size for the purpose of rural residential living.

(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,

Comment:

If approved there is considerable potential for land use conflict

(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,

Comment:

The proposed undersized lot for rural residential purposes is inconsistent with the surrounding agricultural land holdings and planned intent for this locality.

(d) the consideration of the natural and physical constraints and opportunities of land,

e) ensuring that planning for dwelling opportunities takes account of those constraints.

Comment:

The proposed development would potentially impact negatively on the rural productivity and rural opportunities of the land.

Furthermore the following is an extract from a Q&A Information Sheet concerning the Rural Lands SEPP from the Department of Planning released at the time of the SEPP's gazettal in May 2008.

Q. Why remove concessional lots?

A. *Concessional lot provisions have traditionally allowed the creation of one or more small rural residential lots within a much larger farm. The report of the Central West Panel strongly recommended the removal of this type of subdivision. This panel was chaired by former State MP and Minister Garry West and also included NSW Farmers' Association president Jock Laurie, Local Government and Shires Associations secretary Bill Gillooly and former Department of Planning Director- General Gabrielle Kibble. As such, its findings were guided by farmers and local government. Clearly issues in regard to concessional lots in the Central West are relevant to all parts of NSW.*

As noted by the panel, concessional lot provisions have in many instances in the past been misused. The provisions have resulted in the unplanned creation of rural residential lots occupied by out-of-town rural lifestylers located next to large commercial farms. As such concessional lots have resulted in a range of unintended impacts, e.g. fragmentation of rural land, land use conflicts and increased demand for infrastructure and services in remote areas.

Clause 9– Rural Subdivision for Agricultural Purposes (Rural Lands SEPP)

Clause 9(1) of the Rural Lands SEPP states:

(1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.

The subject land is Zoned 7 (c) Environmental Protection (Water Catchment) Zone pursuant to the provisions of BLEP 1987. The objectives of the 7 (c) zone are:

A The primary objective is to prevent development which would adversely affect the quantity or quality of the urban water supply.

B The secondary objective is to regulate the use of land within the zone:

(a) to encourage the productive use of land for agricultural purposes and to permit development which is ancillary to agricultural land uses, except for development which would conflict with the primary objective of the zone, and

(b) to ensure development of the land maintains the rural character of the locality, and

(c) to ensure development of the land does not create unreasonable and uneconomic demands, or both, for the provision or extension of public amenities or services.

C The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on water quality and quantity being minimised as much as is reasonably practical.

The application is not considered to encourage the productive use of land for agricultural purposes as it fragments the land and has the potential to cause land use conflict by introducing a rural residential lot disconnected from the agricultural pursuits of that land.

The addition of a rural residential lot adjoining larger agricultural holdings also has the potential to erode the rural character of the locality.

Therefore, it is considered that this application does not comply with the zone objectives.

Clause 11(2)(b) of BLEP 1987 prescribes a minimum allotment size of 40 hectares for the 7(c) zone. It is proposed to create an allotment with a dwelling entitlement of 3.9 hectares, being considerably under the 40 hectare minimum lot size standard.

The 50ha lot is proposed as the primary production lot.

The proposed subdivision is incompatible with the character of the area which generally comprises larger agricultural holdings.

A further issue raised in the assessment of the application is that the 50ha Lot 2 is proposed to not have a dwelling entitlement.

This is at odds with clause 12(3) of the BLEP 1987 as a lot with a minimum size of 40ha would enjoy a dwelling entitlement. Further, clause 29 of the BLEP 1987 provides that any covenant or instrument imposing restrictions as to the use of the land shall not apply to development "carried out in accordance with" the BLEP 1987.

That is, a restriction on the use of Proposed Lot 2 for the erection of a dwelling would not withstand the application of this clause 29 as the erection of a dwelling is development which can be carried out on Proposed Lot 2 in accordance with clause 12(3) of the BLEP 1987.

Ballina Shire Development Control Plan 2012

Chapter 2 – General and Environmental Considerations

Section 3.1 – Land use Conflict

Council's Environmental Health Officer has assessed the proposed development and reviewed the Land Use Conflict Risk Assessment prepared by Tim Fitzroy & Associates dated 26 November 2014. Council's Environmental Health Officer advised that the subject site is located across from a dehusking plant that operates seasonally during day time periods. The silos have the potential to operate 24 hours per day during the harvesting season.

Council has previously received noise complaints relating to the operation of this dehusking plant and silo and have undertaken noise readings at night which have demonstrated the noise carries significant distances on a quiet night in this locality.

It was noted the Land Use Conflict Risk Assessment concludes that land use conflict risk can be managed by retaining the existing macadamia trees or if they are removed, installing a 30 metre wide biological buffer between the proposed dwelling house and the adjoining macadamia plantation. However, the submitted plans seem to indicate the proposed dwelling on Proposed Lot 1 adjacent to the property boundary (potentially closer than 30 metres) with Proposed Lot 2 in a cleared part of the lot. Therefore it appears the macadamia trees will not be retained between the dwelling and the adjoining farm.

It also appears that the proposed alternative of a 30 metre wide vegetated buffer may not be able to be accommodated due to the lack of space. In addition, if the macadamia trees are retained they will be more of a hobby than an agricultural pursuit as the smaller allotment is not of a viable agricultural size.

Council's Environmental Health Officer concluded the proposed development reduces the agricultural viability of the land and allowing smaller rural residential allotments in an agricultural area may result in the sterilisation of the nearby agricultural land and can result in unreasonable restrictions to the normal agricultural activities that are appropriate in the locality.

This considered, the risk of land use conflicts occurring into the future if a small rural lot is created in an agricultural area is highly probable.

For these reasons Council's Environmental Health Officer could not support the proposed development.

Section 3.3 – Natural Areas and Habitat

The site is mapped within an area identified for natural and/or habitat significance. Although the majority of the site is covered with macadamia trees the site does contain a creek with a robust riparian zone containing established native vegetation.

Development control 3.3.3(ii) requires *all development (except dwellings, basic agricultural buildings and routine agricultural management activities) must demonstrate a net environmental benefit*. An Assessment of Significance was submitted with the application that concluded that the proposed development will not result in any significant impacts on threatened fauna species. A net environmental benefit has not, however, been demonstrated.

Section 3.8 – On-site Sewerage Management Systems

The location of the approved OSSMS would be required to be reassessed in relation to the location of the proposed boundary if the application was to be approved.

Chapter 7 Rural Living & Activity

The proposed subdivision is considered to be inconsistent with the overarching planning objectives which are to protect agricultural lands. The site is classified as Regionally Significant Farmland and it is considered that the creation of Proposed Lot 1 fragments this land and may sterilise normal agricultural activities on the surrounding macadamia plantation(s) via potential land use conflicts.

Section 3.2 Rural Subdivision

As outlined throughout this assessment, the proposal is considered to be in direct conflict with the planning objectives (a), (b) and (e) which are:

- a. Preserve existing and potentially productive agricultural land for agricultural production;*
- b. Ensure that subdivision design has regard for slope, conservation values, land use conflict, and amenity;*
- c. Ensure subdivision of land does not adversely impact on the environment;*
- d. Ensure availability and provision of adequate infrastructure and services in an efficient and effective manner; and*
- e. Ensure subdivision does not result in rural residential dwellings not related to agricultural production.*

Development Controls

- i. All subdivision applications must demonstrate that the relevant zone objectives set out in the BLEP will be achieved;*

The proposal is considered to be inconsistent with the objectives of the zone as it will fragment resource lands and increase conflict between land uses whilst not maintaining the rural character of the area.

- ii. Subdivision of land must not result in a significant diminution of the agricultural production potential of the land the subject of the application or land nearby or must result in a significant environmental benefit;*

The creation of the rural residential type allotment will reduce the agricultural production potential of the primary production lot by the placement of people not associated with the primary production in close proximity to macadamia production and processing.

8.4 DA 2014/585 - Friday Hut Road, Brooklet - Two Lot Subdivision

iii. Subdivision which achieves or promotes farm build-up must not provide an ability for additional allotments, or dwellings to be created in the future;

This application is not for the purpose of farm build up.

iv. Subdivision design must not create a situation where the relative position of existing or proposed improvements and rural activities on the new lots is likely to result in land use conflict.

The potential for land use conflict via the creation of a small allotment that is not invested in the agricultural uses in the locality and being proximate to horticulture and associated silos/infrastructure with minimal buffers will result in land use conflict.

v. The size and shape of the proposed new allotments and their setting must be suited to their intended use;

The size and shape of the rural residential type allotment is not suitable in this setting and for its intended use which is only for residential occupation with no purposeful agricultural potential.

vi. Vehicular access to and within the proposed allotments must be adequate having regard for the intended use of the land. The creation of allotments solely dependent on rights of carriageway for access provision is discouraged;

Access to Proposed Lot 1 has been addressed in DA 2014/229, however an access point has not been proposed for Lot 2. Any access off Friday Hut Road is problematic because of the topography and traffic sight lines. With no access off Friday Hut Road, Lot 2 would require access across Proposed Lot 1. This would be a less than ideal access solution that would further exacerbate the potential for land use conflict and is in direct conflict with this provision.

vii. Applications for subdivision must provide an assessment of the need for harvesting and storage of surface or groundwater for use on the allotments; and

Both proposed allotments would have access to existing surface or groundwater.

viii. Applications for subdivision are to be supported with sufficient information detailing that all relevant infrastructure, including on-site sewage management systems, are able to be wholly contained within each proposed allotment.

This aspect of the application has not been satisfied to date because of the close proximity of the proposed boundary to the approved on-site sewage management systems.

Options

1. **Approval** – Council would need to accept the Applicant's position that from a statutory perspective the proposed subdivision is consistent with Clause 9 of the Rural Lands SEPP and that the merits of the application warrant approval. This option is not recommended for the reasons outlined in this report.

- 2. Refusal** – This option is based on both statutory and merit grounds as outlined in this report. This option is recommended.

Conclusion

This application is not supported on both statutory and merit grounds. Primarily the application cannot be approved because, as determined by the land use equivalence test, the 7(c) zone is not equivalent to a rural zone for the purpose of the Rural Lands SEPP. Therefore, as the use of the Rural Lands SEPP in this case is not applicable, and the applicant is not relying on any other statutory mechanism, there is no valid means presented by the application to consent to the proposed subdivision.

Further, the proposed subdivision is contrary to Clauses 9 (2), (3) and (4) of the Rural Lands SEPP.

In addition, on its merits, there are a number of shortfalls that have been uncovered throughout the assessment of the application. There has been no substantive evidence provided to demonstrate how the subdivision would maintain or encourage agricultural production, or facilitate the orderly and economic use and development of rural lands for rural purposes.

The application does not achieve the Rural Planning Principles and the Rural Subdivision Principles of promoting the enhancement of the primary production uses of the nominated primary production lot and ensuring that fragmentation of rural land and land use conflicts are avoided.

RECOMMENDATION

That DA 2014/585 to undertake a two lot subdivision of Lot 2 DP 594774 Friday Hut Road, Brooklet be **REFUSED** for the following reasons:

1. The proposed subdivision is inconsistent with the relevant provisions of the SEPP (Rural Lands) 2008 including that the 7(c) Environmental Protection (Water Catchment) Zone applying to the subject land is not an equivalent rural zone for the purpose of the SEPP (Rural Lands) 2008.
2. The proposed subdivision is inconsistent with the relevant provisions of the Ballina Shire Development Control Plan 2012 and does not warrant the granting of development consent on merit grounds.

Attachment(s)

1. Locality Plan
2. Plans of Proposed Subdivision
3. Extract from Applicant's SEE including Equivalence Assessment
4. Applicant's letter dated 6 March 2015

8.5 DA 2014/586 - Jorgensens Lane, Brooklet - Two Lot Subdivision

8.5 DA 2014/586 - Jorgensens Lane, Brooklet - Two Lot Subdivision

Applicant	Northern Rivers Surveying Pty Ltd
Property	Lot 3 DP 613633, Lot 1 DP 1127878, Jorgensens Lane Brooklet
Proposal	Two Lot Subdivision by way of a Boundary Adjustment create 1 x 1.2ha lot (Lot 1 – Residue Lot) and 1 x 36 ha lot (Lot 2 – Primary Production lot) via SEPP (Rural Lands) 2008
Effect of Planning Instrument	The land is zoned 7(c) – Environmental Protection (Water Catchment) Zone under the provisions of the Ballina 1987 LEP
Locality Plan	The subject land is depicted on the locality plan attached

Introduction

It is proposed to subdivide Lot 3 DP 613633 (36.75ha) and Lot 1 DP 1127878 (5765m² - a “paper road”) into two lots of the following sizes:

- Proposed Lot 1 = 1.2ha
- Proposed Lot 2 = 36ha

Proposed Lot 1 will contain a dwelling house under development consent 2014/229 (for a subdivision by way of minor boundary adjustment and consolidation to create 1 x 41ha and 1 x 50.7ha allotments and the subsequent erection of a dwelling house on each proposed allotment).

Proposed Lot 2 is to be a Primary Production Lot and therefore is the lot proposed to have no dwelling entitlement.

The application seeks consent for this two lot subdivision pursuant to the provisions of Clause 9 of State Environmental Planning Policy (Rural Lands) 2008 (Rural Lands SEPP). Clause 9 (1) & (2) of the Rural Lands SEPP states the following:

*(1) The objective of this clause is to provide flexibility in the application of standards for subdivision in **rural zones** to allow land owners a greater chance to achieve the objectives for development in the relevant zone.*

*(2) Land in a **rural zone** may, with consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size otherwise permitted for that land.*

The subject land is located within the 7(c) – Environmental Protection (Water Catchment) Zone under the BLEP 1987. Within the 7(c) zone the minimum lot size is 40 ha. The assessment of the application by staff, in terms of the applicability of the Rural Lands SEPP to land zoned 7(c) and the merits of the proposed subdivision, has concluded the application should be refused. The applicant has requested the DA be reported to the Council for determination.

The Site

The subject site is in a rural locality dominated by macadamia plantations. Presently the land contains a macadamia plantation without a dwelling house. The adjoining and nearby properties comprise land areas of between 2ha and 17ha.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was advertised and adjoining owners notified. No submissions were received.

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.

State Environmental Planning Policy (Rural Lands) 2008

As mentioned in the introductory part of this report, the applicant seeks consent for a two lot subdivision pursuant to the provisions of Clause 9 of Rural Lands SEPP. Clause 9(2), (3) and (4) of the Rural Lands SEPP states the following:

*(2) Land in a **rural zone** may, with consent, be subdivided for the purpose of primary production to create **a lot** of a size that is less than the minimum size otherwise permitted for that land.*

*(3) However, **such a lot** cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.*

*(4) A dwelling cannot be erected on **such a lot**. (**emphasis added**)*

Clause 3 of the Rural Lands SEPP provides the following definition for a "rural zone":

***rural zone** means any of the following, or an equivalent land use zone:*

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU3 Forestry,*
- (d) Zone RU4 Rural Small Holdings,*
- (e) Zone RU6 Transition.*

As the subject land is not zoned one of the above listed rural zones, the first important question to answer is whether the 7(c) – Environmental Protection (Water Catchment) Zone is an equivalent land use zone?

8.5 DA 2014/586 - Jorgensens Lane, Brooklet - Two Lot Subdivision

Clause 3(3) of the SEPP provides it is the opinion of the consent authority which determines equivalence between the Standard Instrument LEP zone and a non-standard Instrument LEP zone.

Clause 3 (3) A reference in this Policy to land within a land use zone that is equivalent to a named land use zone is a reference to land that, under an environmental planning instrument that is not made as provided by section 33A (2), is within a land use zone that (in the opinion of the consent authority for the land) is equivalent to that named land use zone.

To determine the equivalence of the 7(c) – Environmental Protection (Water Catchment) Zone to the applicable rural zones listed in the SEPP a land use equivalence assessment has been undertaken.

This comparison exercise is essentially a review of the zone objectives and the land uses permitted in the applicable zones as outlined in Clause 3 of the Rural Lands SEPP and those uses permitted in the 7(c) zone under the BLEP 1987 and then forming an opinion as to equivalence with the identified zones.

The equivalence comparison undertaken is both a numerical and qualitative equivalence test. That is, the number of uses, and the nature of those uses. Consideration was also given to those uses which are not common in order to form an opinion as to equivalence.

The analysis of the zones undertaken by Council staff concluded that the 7(c) zone is not equivalent to a rural zone as defined in the Rural Lands SEPP. Therefore, the Rural Lands SEPP is not applicable in this instance.

Council has sought legal advice in relation to this matter. The equivalence assessment undertaken by staff is available to Councillors upon request.

The applicant's equivalence assessment contained in the Statement of Environmental Effects and letter dated 6 March 2015 is **attached** to this report.

It is further noted that the subject land was proposed to be given an E3 Environmental Management zone, rather than a rural zone, in Council's new LEP prior to the Minister's review of the environmental zones.

In addition to the equivalence test, it is also considered that the proposed subdivision is at odds with clause 9(2), (3) and (4) of the Rural Lands SEPP, in that the proposed lot that is less than the minimum size otherwise permitted will contain a dwelling.

Nevertheless, in light of the applicant's contention that the 7(c) zone is equivalent to a RU1 zone and that clause 9 enables the proposed subdivision, an assessment of the merits of the application has been undertaken.

Clause 2 – Aims of Rural Lands SEPP

The aims of the Policy are as follows:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes*

Comment:

It is not considered that the development serves to facilitate the orderly and economic use and development of rural lands for rural and related purposes. Rather it is considered that the application serves a financial purpose for the landowner while potentially compromising the use of the land and surrounding lands for agricultural production. In this application, the one undersized lot (1.2ha) is for the purpose of creating a rural residential lot.

(b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,

Comment:

As is identified in the assessment of the Rural Planning and Subdivision Principles that follow it is not considered that the application assists in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State.

(c) to implement measures designed to reduce land use conflicts,

Comment:

Clause 9(2) of the Rural Lands SEPP provides that land may be subdivided for the purpose of 'primary production'. However, the purpose of this application is to secure investment options and in doing so create a 1.2ha rural residential lot.

(d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,

Comment:

The subject land is mapped as being less than 1 kilometre from State significant agricultural land and is identified as being regionally significant.

(e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.

Comment:

The BLEP 1987 does not have concessional lot provisions.

Clause 7 - Rural Planning Principles of the Rural Lands SEPP

The Rural Planning Principles are as follows:

(a) the promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,

Comment:

The applicant has stated in the SEE *“the intent of the proposal is to secure the approved dwelling within its own parcel”*. However, this parcel will have no connection to the surrounding rural use of the locality which has the potential to impact negatively on the potential productive and sustainable economic agricultural activities in the area. The applicant maintains that the benefit of the 36ha lot with no dwelling entitlement is that *“the farm is more readily accessible as a going concern to investors who wish to expand their holding as a key component of the rural industry.”*

(b) recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,

Comment:

The applicant maintains in response to this principle that the proposed development will create *alternate succession plans and/or improved investments and/or retirement options*. This may be the case, however it is more financial rationalisation than recognition of the importance of rural lands for a range of productive agricultural enterprises and the impact of fragmentation on these lands.

(c) recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,

Comment:

The proposed subdivision will further fragment and alienate resource lands and increase the potential for land use conflict. Any financial benefit to the individual or sector would likely be at the detriment of the broader interest of the continued unencumbered use of the land and surrounding lands for the full range of agricultural uses. Also, uses that can be complementary to productive agriculture such as bed and breakfast establishments and home industries will no longer be possible on an allotment that does not have a dwelling entitlement. Such uses can be beneficial in supplementing the farm income.

(d) in planning for rural lands, to balance the social, economic and environmental interests of the community,

Comment:

The introduction of a rural residential allotment in the absence of an adopted rural residential strategy and without appropriate buffers and with no connection to the agricultural use of the surrounding area is contrary to the social, economic and environmental interests of the community.

(e) the identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,

Comment:

It is considered that clause 9 of the Rural Lands SEPP does not facilitate this proposed subdivision within the 7(c) Environmental Protection (Water Catchment) Zone.

(f) the provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,

Comment:

As stated above, it is not considered that the proposed subdivision, in the absence of an adopted rural residential strategy, would contribute to the social and economic welfare of rural communities.

(g) the consideration of impacts on services and infrastructure and appropriate location when providing for rural housing,

Comment:

The proposed subdivision is unlikely to place additional demand on public services and infrastructure.

(h) ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.

Comment:

The applicant's rationale in response to this principle is that the proposed development recognises the region's aging population. This rationale again seems to support the view that this subdivision is as much about creating the opportunity for a rural residential lot as it is about primary production.

Clause 8 - Rural Subdivision Principles of the Rural Lands SEPP

The Rural Subdivision Principles are as follows:

(a) the minimisation of rural land fragmentation,

Comment:

The proposal fragments rural land and creates an allotment significantly under the prescribed size for the purpose of rural residential living.

(b) the minimisation of rural land use conflicts, particularly between residential land uses and other rural land uses,

Comment:

If approved there is potential for land use conflict.

(c) the consideration of the nature of existing agricultural holdings and the existing and planned future supply of rural residential land when considering lot sizes for rural lands,

Comment:

The proposed undersized lot for rural residential purposes is inconsistent with the planned intent for this locality. Both the 1987 and 2012 LEPs contain no rural residential subdivision provisions.

(d) the consideration of the natural and physical constraints and opportunities of land,

(e) ensuring that planning for dwelling opportunities takes account of those constraints.

Comment:

The proposed development would potentially impact negatively on the rural productivity and rural opportunities of the land.

Furthermore, the following is an extract from a Q&A Information Sheet concerning the Rural Lands SEPP from the Department of Planning released at the time of the SEPP's gazettal in May 2008.

Q. Why remove concessional lots?

A. *Concessional lot provisions have traditionally allowed the creation of one or more small rural residential lots within a much larger farm. The report of the Central West Panel strongly recommended the removal of this type of subdivision. This panel was chaired by former State MP and Minister Garry West and also included NSW Farmers' Association president Jock Laurie, Local Government and Shires Associations secretary Bill Gillooly and former Department of Planning Director- General Gabrielle Kibble. As such, its findings were guided by farmers and local government. Clearly issues in regard to concessional lots in the Central West are relevant to all parts of NSW.*

As noted by the panel, concessional lot provisions have in many instances in the past been misused. The provisions have resulted in the unplanned creation of rural residential lots occupied by out-of-town rural lifestylers located next to large commercial farms. As such concessional lots have resulted in a range of unintended impacts, e.g. fragmentation of rural land, land use conflicts and increased demand for infrastructure and services in remote areas.

Clause 9– Rural Subdivision for Agricultural Purposes (Rural Lands SEPP)

Clause 9(1) of the Rural Lands SEPP states:

(1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.

The subject land is Zoned 7 (c) Environmental Protection (Water Catchment) Zone pursuant to the provisions of BLEP 1987. The objectives of the 7 (c) zone are:

A The primary objective is to prevent development which would adversely affect the quantity or quality of the urban water supply.

B The secondary objective is to regulate the use of land within the zone:

(a) to encourage the productive use of land for agricultural purposes and to permit development which is ancillary to agricultural land uses, except for development which would conflict with the primary objective of the zone, and

(b) to ensure development of the land maintains the rural character of the locality, and

(c) to ensure development of the land does not create unreasonable and uneconomic demands, or both, for the provision or extension of public amenities or services.

C The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, only in cases of demonstrated and overriding public need and subject to the impact on water quality and quantity being minimised as much as is reasonably practical.

The application is not considered to encourage the productive use of land for agricultural purposes as it fragments the land and has the potential to cause land use conflict by introducing a rural residential lot disconnected from the agricultural pursuits of that land. The addition of a 1.2ha lot for residential purposes within this locality also has the potential to erode the rural character of the locality.

Therefore, the proposed subdivision is inconsistent with the zone objectives.

A further issue raised in the assessment of the application is its relationship to development consent 2014/229. Proposed Lot 1 is to contain the dwelling house (yet to be constructed) but approved under DA 2014/229.

It is noted that DA2014/229 approved a boundary adjustment subdivision to create 1 x 41ha and 1 x 50.7ha allotments and the subsequent erection of a dwelling house on each proposed lot, meaning that the erection of the dwelling house was to occur after registration of the boundary adjustment subdivision.

This means that Lot 3 DP613633 to be subdivided in this DA(2014/586) would as a consequence of the 2014/229 subdivision DA be approximately 41ha, rather than 36ha.

The Proposed Primary Production Lot 2 in this DA(2014/586) and with no dwelling entitlement would therefore be approximately 40 ha (inclusive of paper road Lot 1 DP 1127878) rather than 36 ha. This would then be at odds with clause 12(3) of the BLEP 1987 as a lot with a minimum size of 40ha would enjoy a dwelling entitlement.

Further, clause 29 of the BLEP 1987 provides that any covenant or instrument imposing restrictions as to the use of the land shall not apply to development "carried out in accordance with" the BLEP 1987.

That is, a restriction on the use of Proposed Lot 2 for the erection of a dwelling would not withstand the application of this clause 29 as the erection of a dwelling is development which can be carried out on Proposed Lot 2 in accordance with clause 12(3) of the BLEP 1987.

Ballina Shire Development Control Plan 2012

Chapter 2 – General and Environmental Considerations

Section 3.1 – Land use Conflict

Council's Environmental Health Officer has assessed the proposed development and reviewed the Land Use Conflict Risk Assessment prepared by Tim Fitzroy & Associates dated 26 November 2014. Council's Environmental Health Officer concluded the proposed development reduces the agricultural viability of the land and that allowing smaller rural residential allotments in an agricultural area may result in the sterilisation of the nearby agricultural lands by resulting in unreasonable restrictions being placed on the normal agricultural activities that are appropriate in the locality.

This considered, the risk of land use conflicts occurring into the future if an additional small rural lot is created in an agricultural area, is likely. For these reasons Council's Environmental Health Officer does not support the proposed development.

However, the Environmental Health Officer advises that if the application was approved the recommendations of the Land Use Conflict Risk Assessment prepared by Tim Fitzroy & Associates should be implemented prior to release of Subdivision Certificate.

In addition, a plan which demonstrates a 30m wide vegetation buffer, incorporating details regarding the species to be planted, and maintenance of the vegetation buffer should be required to be submitted to and approved by the Council prior to release of the Subdivision Certificate. If approved, an 88b Instrument is to be placed on Proposed Lot 1 detailing that the required 30m wide vegetated buffer be maintained and retained.

Section 3.3 – Natural Areas and Habitat

The site is mapped within an area identified for natural and/or habitat significance. Trees of ecological significance have not been proposed to be removed.

Development control 3.3.3(ii) requires *all development (except dwellings, basic agricultural buildings and routine agricultural management activities) must demonstrate a net environmental benefit.*

An Assessment of Significance was submitted with the application that concluded that the proposed development will not result in any significant impacts on threatened fauna species.

A net environmental benefit has not, however, been demonstrated.

Section 3.8 – On-site Sewerage Management Systems

The location of the approved OSSMS would be required to be reassessed in relation to the location of the proposed boundary if the application was to be approved.

Chapter 7 Rural Living & Activity

The proposed subdivision is considered to be inconsistent with the overarching planning objectives which are to protect agricultural lands. The site is classified as Regionally Significant Farmland and the application has the potential to cause land use conflict.

Section 3.2 Rural Subdivision

As outlined throughout this assessment, the proposal is considered to be in direct conflict with the planning objectives (a), (b) and (e) which are:

- a. Preserve existing and potentially productive agricultural land for agricultural production;*
- b. Ensure that subdivision design has regard for slope, conservation values, land use conflict, and amenity;*
- c. Ensure subdivision of land does not adversely impact on the environment;*
- d. Ensure availability and provision of adequate infrastructure and services in an efficient and effective manner; and*
- e. Ensure subdivision does not result in rural residential dwellings not related to agricultural production.*

Development Controls

- i. All subdivision applications must demonstrate that the relevant zone objectives set out in the BLEP will be achieved;*

The proposal is considered to be inconsistent with the objectives of the zone as it will fragment resource lands and likely increase conflict between land uses whilst not maintaining the rural character of the area.

- ii. Subdivision of land must not result in a significant diminution of the agricultural production potential of the land the subject of the application or land nearby or must result in a significant environmental benefit;*

The creation of the rural residential type allotment will reduce the agricultural production potential of the primary production lot by the placement of people not associated with the primary production in close proximity to macadamia production and processing.

- iii. Subdivision which achieves or promotes farm build-up must not provide an ability for additional allotments, or dwellings to be created in the future;*

This application is not for the purpose of farm build up.

- iv. Subdivision design must not create a situation where the relative position of existing or proposed improvements and rural activities on the new lots is likely to result in land use conflict.*

The potential for land use conflict via the creation of a small allotment that is not invested in the agricultural uses in the locality and being proximate to horticulture and associated silos/infrastructure with minimal buffers will result in land use conflict.

- v. The size and shape of the proposed new allotments and their setting must be suited to their intended use;*

The size and shape of the rural residential type allotment is not suitable in this setting and for its intended use which is only for residential occupation with no agricultural potential.

vi. Vehicular access to and within the proposed allotments must be adequate having regard for the intended use of the land. The creation of allotments solely dependent on rights of carriageway for access provision is discouraged;

Access to proposed lot one has been addressed in DA 2014/229. Access to proposed Lot 2 is available via Jorgensens Lane.

vii. Applications for subdivision must provide an assessment of the need for harvesting and storage of surface or groundwater for use on the allotments; and

Both proposed allotments would have access to existing surface or groundwater.

viii. Applications for subdivision are to be supported with sufficient information detailing that all relevant infrastructure, including on-site sewage management systems, are able to be wholly contained within each proposed allotment.

This aspect of the application has not been satisfied to date because of the close proximity of the proposed boundary to the approved on-site sewage management systems.

Options

1. **Approval** – Council would need to accept the Applicant's position that from a statutory perspective the proposed subdivision is consistent with Clause 9 of the Rural Lands SEPP and that the merits of the application warrant approval. This option is not recommended for the reasons outlined in this report.
2. **Refusal** – This option is based on both statutory and merit grounds as outlined in this report. This option is recommended.

Conclusion

This application is not supported on statutory and merit grounds. Primarily the application cannot be approved because as determined by the land use equivalence test the 7(c) zone is not equivalent to a rural zone for the purpose of the Rural Lands SEPP.

Therefore, as the use of the Rural Lands SEPP in this case is not applicable, and the applicant is not relying on any other statutory mechanism, there are no valid means presented by the application to undertake the proposed subdivision.

Further, the proposed subdivision is contrary to clauses 9 (2), (3) and (4) of the Rural Lands SEPP.

In addition, on its merits, there are a number of shortfalls that have been identified throughout the assessment of the application.

There has been no substantive evidence provided to demonstrate how the subdivision would maintain or encourage agricultural production, or facilitate the orderly and economic use and development of rural lands for rural purposes.

The application does not achieve the Rural Planning Principles and the Rural Subdivision Principles of promoting the enhancement of the primary production uses of the nominated primary production lot and ensuring that fragmentation of rural land and land use conflicts are avoided.

RECOMMENDATION

That DA 2014/586 to undertake a two lot subdivision of Lot 3 DP 613633 and Lot 1 DP 1127878, Jorgensens Lane Brooklet be **REFUSED** for the following reasons:

1. The proposed subdivision is inconsistent with the relevant provisions of the SEPP (Rural Lands) 2008 including that the 7(c) Environmental Protection (Water Catchment) Zone applying to the subject land is not an equivalent rural zone for the purpose of the SEPP (Rural Lands) 2008.
2. The proposed subdivision is inconsistent with the relevant provisions of the Ballina Shire Development Control Plan 2012 and does not warrant the grant of development consent on merit grounds.

Attachment(s)

1. Locality Plan
2. Plans of Proposed Subdivision
3. Extract from Applicant's SEE including Equivalence Assessment
4. Applicant's letter dated 6 March 2015

8.6 McGeary Brothers Pty. Ltd. Quarries - Section 94 Contributions

8.6 McGeary Brothers Pty. Ltd. Quarries - Section 94 Contributions

Delivery Program Development Services

Objective To provide Council with an update on the outstanding section 94 Contributions for the McGeary Brothers Pty. Ltd. quarries.

Background

This matter was previously reported to the May 2012 Council meeting. At that time an audit of Section 94 heavy vehicle haulage contributions identified that approximately \$188,000 remained outstanding for the McGeary Brothers Pty Ltd quarries at:

1. Lot 3 DP 619233, Old Bagotville Road, Wardell, DA 1996/29, known as Eaton's Quarry; and
2. Lot 1 DP 787102, Old Bagotville Road, Wardell, DA 1996/30, known as Monti's Quarry

On both development consents, Condition 16 states:

As proposed by the applicant; a road maintenance levy of \$0.23/tonne hauled shall be paid quarterly to Council. The levy is to increase annually in accordance with the Consumer Price Index for Sydney, commencing January 1996 for the life of the extraction.

Between 1996 and 2011, McGeary Brothers operated two quarries within Old Bagotville Road, Wardell, either directly or under a lease to SEE Civil Pty Ltd. During that time, McGeary Brothers were required to pay Section 94 Heavy Vehicle Contributions in line with development consent conditions. Some payments have been made, however McGeary Brothers have withheld some contributions.

As outlined in more detail within the May 2012 report, McGeary Brothers reasoning behind not paying the contributions is that the payment was withheld due to a verbal agreement with an "unnamed" Council Officer that road maintenance works would be undertaken by McGeary Brothers in lieu of the required Section 94 Contributions. This agreement was made around 1996. There is no documentation to confirm this agreement.

At the May 2012 meeting, Council subsequently resolved:

That Council not accept the submissions as detailed in this report in respect to the non-payment of Section 94 contributions due to the lack of supporting evidence provided and Council seek to recover the outstanding contributions as provided for by conditions of the relevant development consents.

This matter was then referred to Council's solicitor, Clarissa Huegill of CH Law in line with Council's resolution.

This report provides a summary of the matter with a confidential report included later in this business paper in relation to the legal advice obtained in respect to the current situation.

Key Issues

- Non-payment by McGeary Brothers Pty Ltd.
- Legal options

Information

Since this matter was referred for legal action, Council staff and Council's legal representative have been attempting to recoup the outstanding money which is believed to be owed for the Section 94 Contributions.

These outstanding contributions can be broken down into two separate time periods:

1. Period 1996 to 2009 – During this period, the quarries were operated by McGeary Brothers (“the unpaid contributions”); and
2. Period 2009 to 2011 – During this time the quarries were leased to and operated by SEE Civil Pty Ltd (“the withheld contributions”).

For the period 1996 – 2009, McGeary Brothers operated both quarries and did not pay any contributions as required by condition 16 of development consents DA 1996/29 and DA 1996/30.

A figure to the value of \$87,946.58, being made up of:

- (a) \$43,519.59 for Monti's Quarry; and
- (b) \$44,530.99 for Eaton's Quarry

was arrived at based on information contained within the Section 96 Applications for development consents DA 1996/29 and 1996/30 lodged by Ardill Payne and Partners on behalf of SEE Civil Pty Ltd in 2010. In the supporting information provided with the Section 96 Application for DA 1996/29, the Applicant, Ardill Payne and Associates stated:

1. *The pit has been substantially under-utilised for the last 13 years resulting in a substantial amount of available extractable material remaining within the approved quarry – extraction rates over the last 13 years have averaged only 12,284.4 tonnes per annum.*

And in the supporting information provided with the Section 96 Application for DA 1996/30, the applicant, Ardill Payne and Associates stated:

1. *The pit has been substantially under-utilised for the last 13 years resulting in a substantial amount of available extractable material remaining within the approved quarry – extraction rates over the last 13 years have averaged only 11,976.7 tonnes per annum.*

For the period 2009 to 2011, SEE Civil Pty Ltd extracted a total resource of 559,119.36 tonnes and paid McGeary Brothers a total amount of:

- (a) Monti's Quarry - \$82,310.88; and
- (b) Eaton's Quarry - \$82,304.30

8.6 McGeary Brothers Pty. Ltd. Quarries - Section 94 Contributions

McGeary Brothers have paid Council \$64,615.18 and retained the remaining \$100,000-00 based on their claim of an agreement with an unnamed Council officer dating back to 1996.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
Not Applicable
- **Economic**
The combined total of Section 94 Contributions owed is in the vicinity of \$187,000-00, which would allow Council to maintain additional rural roads within the Ballina Shire.

Legal / Resource / Financial Implications

Council imposed conditions on all lawfully operating quarries within Ballina Shire requiring the payment of heavy vehicle haulage contributions in accordance with the adopted Section 94 Contributions Plan. Further, these conditions were specifically imposed on McGeary Brothers Pty Ltd in two development consents to operate quarries adjacent to Old Bagotville Road.

On face value, these conditions have not been complied with in that quarterly payments were not provided to Council in line with development consent conditions. Following compliance action, McGeary Brothers has paid part of the contributions.

Consultation

There has been ongoing consultation with Council's solicitors since the initial referral in mid 2012.

Options

This report is for noting with the confidential report included later in this business paper outlining the options available to Council.

RECOMMENDATION

That Council notes the contents of this report in respect to the update on the outstanding Section 94 contributions relating to the McGeary Brothers Pty. Ltd. quarries.

Attachment(s)

Nil

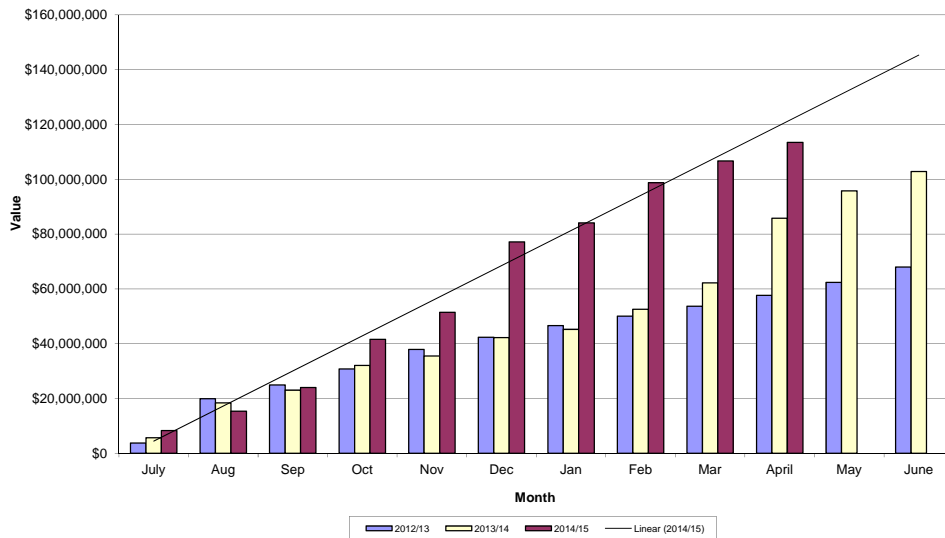
8.7 Development Consent Statistics - April 2015

8.7 Development Consent Statistics - April 2015

During the period of 1 April 2015 to 30 April 2015 the Development and Environmental Health Group issued Development Consent comprising of:

Number of Applications	Value of Work
40 Other Building Related	\$ 1,449,000
19 Dwelling/Duplexes/Residential Flat Buildings	\$ 5,304,000
2 General Developments	\$ 1,500
Total Value	\$ 6,754,500

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 2014/15 to assist in the comparison.



RECOMMENDATION

That Council notes the contents of the report on development consent statistics for 1 April 2015 to 30 April 2015.

Attachment(s)

Nil

8.8 Development Applications - Works in Progress - May 2015

8.8 Development Applications - Works in Progress - May 2015

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
2014/508	08/10/2014	Richard Lutze & Associates	Erection of Storage Shed and additional Knight Statue (fronting the new Pacific Highway) associated with and ancillary to an existing Tourist Facility (The Macadamia Castle) - 1697-1699 Pacific Highway, Knockrow	Referred to Government Department
2014/550	27/10/2014	SG Fitzpatrick	To Erect a Holiday Cabin - 188 Old Byron Bay Road, Newrybar	Referred to Government Department
2014/564	31/10/2014	P Sternberg	To use an existing building for tourist and visitor accommodation - 10 Martins Lane, Knockrow	Awaiting additional information
2014/609	21/11/2014	Planners North	To undertake a mixed use development comprising the	Matter Deferred as per Council's Resolution 26/3/2015

8.8 Development Applications - Works in Progress - May 2015

			erection & strata title subdivision of a two storey commercial premises fronting Ballina St and four, three storey, shop top housing units at the rear of the site adjacent to Rayner Ln & associated works including vehicle access off Rayner Lane & a central ground level car parking area – 45 Ballina Street, Lennox Head	Awaiting additional information
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	Referred to Government Departments
2015/34	30/01/2015	Northern Rivers Surveying Pty Ltd	Two Lot Subdivision to create 1 x 40.9 and 1 x 48.55 hectare allotments - 145 Brooklet Road, Newrybar	Being Assessed
2015/72	18/02/2015	Peter Turner & Associates	Erection of a Wall Advertising	Being assessed.

8.8 Development Applications - Works in Progress - May 2015

			Sign - 19 Pacific Parade, Lennox Head	
2015/92	02/03/2015	G Barlow	Erection of multiple carports, consolidation and strata title subdivision of 10 units within an existing residential flat building - 25-27 Crane Street, Ballina	Being Assessed
2015/101	09/03/2015	Ardill Payne & Partners	Alterations and additions to the food court area of the Ballina Fair Shopping Centre - 84 Kerr Street, Ballina	Being Assessed
2015/112	12/3/2015	Paul R Gray Prg Architects	Erection and Strata Title Subdivision of a Two Storey Multi Dwelling Housing Development Comprising Four Units and Associated Works – 14 Megan Crescent, Lennox Head	Being Assessed
2015/120	17/3/2015	Chris Abbott Surveying	Boundary adjustment subdivision to create 1 x 25ha and 1 x 43ha allotments – Lot 32 Newrybar Swamp Road, Tintenbar	Determination Pending
2015/122	17/3/2015	Don Taylor & Associates	Boundary Adjustment to Create 1 x 930m2 and 1 x 7876 mw Allotments – 18 Brooklet Road,	Referred to Government Departments

8.8 Development Applications - Works in Progress - May 2015

			Newrybar	
2015/127	20/3/2015	Michael Hajjar Surveying	Boundary Adjustment Subdivision to Create 1 x 4515m ² and 1 x 28ha Allotments – 1832 Pacific Highway, Newrybar	Referred to Government departments.
2015/130	20/3/2015	Northern Rivers Surveying Pty Ltd	To Change the Use of an existing building approved as Stables for the purpose of Tourist and Visitor Accommodation – 80 Owenia Way, Broken Head	Referred to Government Departments
2015/135	23/3/2015	Nasmyth Pty Ltd	Erection and Strata Title Subdivision of an Industrial Building Comprising Eight Industrial Tenancies and Four Storage Sheds – 1 Stinson Street, Ballina	Being Assessed
2015/138	26/3/2015	Civiltech Consulting Engineers	To undertake coastal protection works along the eastern boundary of the subject allotments comprising a dry rock retaining wall, removal of vegetation and filling of land – 2 Skinner Street, Ballina	Referred to Government departments.
2015/145	27/3/2015	N Samm	Alterations and additions to existing dwelling house to establish a	Referred to Government departments.

8.8 Development Applications - Works in Progress - May 2015

			Bed and Breakfast Facility – 21 Old Pacific Highway, Newrybar	
2015/150	31/3/2015	Ardill Payne & Partners	To undertake the establishment of a Bed and Breakfast Facility – 341 South Ballina Beach Road, South Ballina	Awaiting additional information.
2015/161	2/4/2015	Holcim (Australia) Pty Ltd	Alterations to existing concrete batching plant – 33 North Creek Road, Ballina	Being assessed.
2015/174	10/4/2015	Planners North	Stockpiling of fill material for future use in development of manufactured home estate under provisions of DA 2002/887 - 1 Riverbend Drive, West Ballina	Being assessed.
2015/183	15/4/2015	T Robinson	Change of use to Light Industry (Recording Studio) - 1/19 Kays Lane, Alstonville	Being assessed.
2015/202	22/4/2015	Ardill Payne & Partners	Change of Use to Office Premises - 268-270 River Street, Ballina	Being assessed.
2015/210	24/4/2015	Paul R Gray PRG Architects	To demolish an existing dwelling house and to undertake the erection and strata title subdivision of a	On Exhibition.

8.8 Development Applications - Works in Progress - May 2015

			three storey residential flat building (basement carpark and two storey above) comprising three units, swimming pool and associated works - 10 Byron Street, Lennox Head	
2015/211	27/4/2015	Northern Rivers Surveying Pty Ltd	Subdivision of land to create four rural lots comprising two x 20ha, 1 x 18.8 ha and 1 x 41ha allotments - 94 Rishworths Lane Brooklet	On Exhibition.
2015/215	29/4/2015	S Morris	Additions to Existing Church Hall - 77 Pearces Creek Road Alstonville	Being assessed.
2015/222	1/5/2015	Ardill Payne & Partners	Two lot boundary adjustment subdivision to create 1 5.8ha and 1 x 5.3 ha allotments - 658 Tamarind Drive Cumbalum	Referred to Government departments.
2015/233	6/5/2015	Ardill Payne & Partners	Two Lot Torrens Title subdivision to create 1 x 540sqm and 1 x 507sqm allotments and construction of carport fronting Newport Street - 9 Newport Street East Ballina	Referred to Government departments.
2015/248	12/05/2015	Mr & Mrs Greaves	Vegetation Management Works comprising the removal of one	Being assessed

8.8 Development Applications - Works in Progress - May 2015

			x Fig tree and the pruning of two x Tuckeroo Trees – 12 The Grove, Lennox Head	
2015/253	13/05/2015	Ardill Payne & Partners	Erection of Shade Sails over Existing Car Parking Spaces in the Car Parking Area of the Ballina Fair Shopping Centre – 84 Kerr Street, Ballina	Being assessed

Regional Development (Determined by Joint Regional Planning Panel)

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

8.8 Development Applications - Works in Progress - May 2015

2015/180	15/04/2015	Ardill Payne & Partners	To undertake the establishment of an Extractive Industry – Sand Quarry with a total extractable resource amount of 400,000m ³ (in situ) – Lot 2 DP 1192234 Old Bagotville Road, Bagotville	On Exhibition
2015/203	22/04/2015	Ardill Payne & Partners	To Undertake the Establishment of a Waste Management Facility comprising of a Waste Transfer Station capable of the temporary storage of up to 100,000 litres and Associated Works – 540 Pimlico Road, Pimlico	On Exhibition

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 - Stokers Lane, Teven	Council comments provided to DoPE Awaiting Determination from DoPE

RECOMMENDATION

That Council notes the contents of the report on the status of outstanding development applications for May 2015.

Attachment(s)

Nil

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

The subject properties are zoned RU2 Rural Landscape zone under the provisions of BLEP 2012. It is proposed that *freight transport facility*, and *warehouse or distribution centre* be included as additional permitted uses within the subject properties. The site has an approximate area of 17 hectares.

Attachment One to this report contains the land use table for the RU2 Rural Landscape zone as contained in BLEP 2012. In this respect it is noted that the RU2 zone permits, with consent, a significant number of intensive non-agricultural type land uses which include caravan parks, cellar door premises, crematoria, correctional centres, depots, function centres, information and education facilities, passenger transport facilities, markets, restaurants or cafes, vehicle repair stations and veterinary hospitals.

At its Ordinary Meeting held on 27 March 2014 the Council considered the planning proposal that had been prepared for the Teven Road Transport and Logistics Precinct and resolved as follows [Minute No. 270314/12]:

1. *That Council authorises the submission of a planning proposal which provides for the insertion of freight transport facilities and warehouse or distribution centre land uses as additional permitted uses within Schedule 1 of Ballina LEP 2012 to NSW Planning and Environment for review and Gateway determination.*
2. *That upon an affirmative Gateway determination being received from NSW Planning & Environment, the proponent be required to submit the technical documentation necessary to enable a comprehensive assessment of the proposal and potential environmental, social and economic implications.*
3. *That a further report be presented to the Council in relation to this matter prior to proceeding to public exhibition.*

The NSW Department of Planning and Environment issued a Gateway determination on 30 April 2014 which forms Attachment Two to this report. The Gateway determination required, amongst other matters, the undertaking of flood investigations to address the proposal's inconsistency with the EP&A Act Section 117 Direction 4.3 relating to Flood Prone Land. The planning proposal was required to be updated to reflect these investigations prior to public exhibition.

The timeframe for the completion of the LEP amendment was set at 9 months from the week following 30 April 2014. This time period was subsequently extended by an additional 9 month period until 7 November 2015.

Attachment Three to this report contains a copy of S.117 Direction 4.3 Flood Prone Land. Of particular relevance is the following requirement contained within the direction:

- (4) *A planning proposal must include provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas).*

Attachment Four contains a copy of the NSW Flood Prone Land Policy. Importantly, the policy objective is based on the recognition of the following two facts:

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

- *Flood prone land is a valuable resource that should not be sterilised by unnecessarily precluding its development; and*
- *If all development applications and proposals for rezoning of flood prone land are assessed according to rigid and prescriptive criteria, some appropriate proposals may be unreasonably disallowed or restricted, and equally quite inappropriate proposals may be approved.*

The NSW Flood Prone Land Policy requires a merit approach to be adopted for all development decisions in the floodplain and to take into account social, economic and ecological factors as well as flooding considerations.

Following the Gateway determination Newton Denny Chapelle was formally advised in May 2014 that a number of detailed studies and investigations were required so as to enable the planning proposal to be further considered. These studies were as follows:

- *Flora and Fauna Impact Assessment*
- *Bushfire Threat Assessment Report*
- *Preliminary Contamination Site Investigation*
- *Acid Sulfate Soils Investigation*
- *Geotechnical Investigation*
- *Traffic Impact Report*
- *Aboriginal Cultural Heritage Assessment*
- *Flood Impact Assessment.*

It was determined that the *Flood Impact Assessment* was the most critical, the results of which would ultimately determine the feasibility of proceeding with the planning proposal.

To that end Newton Denny Chapelle submitted detailed site level information in September 2014 for the site which then enabled flood modelling to be undertaken for various development scenarios. Modelling was undertaken in the period October 2014 to April 2015.

To enable the proponents and their consultants to consider the merit of undertaking additional studies and investigations, direction from the Council is now required in respect of departures from its current flood policy position.

This report has been prepared by the Strategic and Community Facilities Group with respect to the planning proposal, in conjunction with Council's Civil Services Group.

Key Issues

- Acceptability of a 1 in 5 year ARI flood planning level for car parking and vehicle access areas, and
- Acceptability of modelled flood increase impacts on the Ballina floodplain.

Information

Flood modelling was undertaken on behalf of the proponents (at their cost) by BMT WBM using Council's Integrated Flood Model. Various scenarios were required to be modelled to arrive at a development option which meets the needs of the proponents, and which also minimises flood impacts.

Attachment Five contains a copy of the finalised flood advice received from BMT WBM following the modelling of various development scenarios.

Scenario 4, as shown on Map 5B within Attachment Five, minimises flood level increase impacts within the floodplain to the greatest degree. This scenario makes provision for 40% of the site (western sections fronting Teven Road) to be filled to the 5 year ARI flood level (RL 1.2m AHD) and to be used for car parking and vehicle access purposes.

The remaining 60% of the site is proposed to be filled to the 100 year ARI flood level (RL 2.7m AHD) and would potentially be available for building purposes. Scenario 4 is also based on a 2 cell West Ballina Flood Relief Structure (WBFR - culverts under River Street) being in place. It also assumes appropriate site contouring of fill around the flood relief bridge under the Ballina Bypass so as to maintain effective connectivity between the floodplain on each side of the Bypass.

The 40/60 ratio was selected based on information supplied by Newton Denny Chapelle and is considered to reflect the relative proportion of open site areas and buildings associated with freight transport and warehouse type uses.

Map 2 below shows the development site and indicates, through the use of the blue colour, the section of the site modelled at the 5 year ARI flood level.

Map 2 – Development site showing proposed 5 year ARI flood fill level in blue



Map 3 – Extract from Map 5B – Scenario 4 Flood Impacts



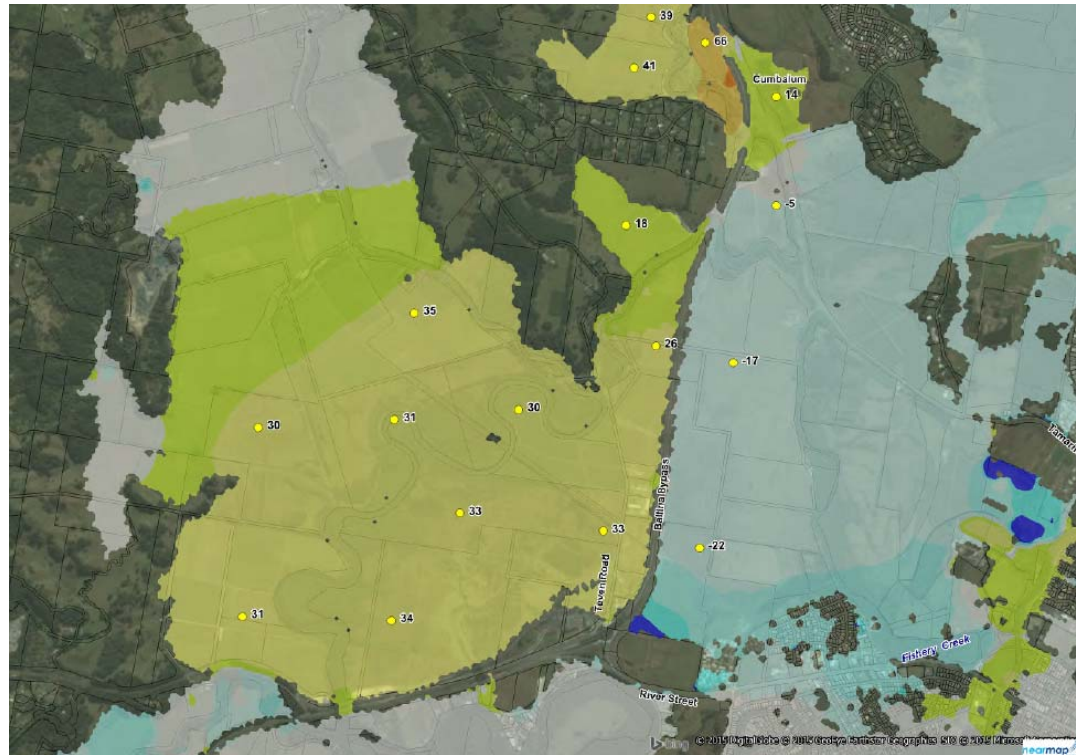
Map 3 above also shows the location of the development site and provides some spot impact increase levels, in millimetres, resulting from the Scenario 4 modelled development. The light green areas immediately to the north and south of the development site represent the areas of highest impact from the proposed development where peak flood levels have been modelled by BMT WBM to increase by between 5mm and 25mm.

Council's current policy position was developed following the 2008 Ballina Flood Study Update and required that development projects be assessed on a cumulative impact basis and not cause an increase of more than 50mm to peak flood levels based on 2005 floodplain conditions. Prior to the acceptance of the 2008 update study the same policy applied, based on the 1997 Ballina Floodplain Management Study, which defined acceptable impact on flood behaviour as one that did not increase cumulative design flood levels by more than 50mm.

Map 4 below shows cumulative flood increase levels for the 100 year ARI event, from approved developments, excluding the Teven Road proposal, from 2005 floodplain conditions, based on a 2 cell WBFR structure being in place. Modelling incorporating a 3 cell WBFR structure (Scenario 5) was also undertaken and showed no substantive differences to the modelling for the 2 cell scenario.

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Map 4 – 100 year ARI flood increase modelling results from approved developments – 2 cell WBF



The addition of the spot impacts levels shown in Map 3 to the spot impact levels shown in Map 4 provides an indication as to the degree to which the proposed development impacts on the 50mm maximum cumulative impact policy standard. In this respect it is noted that it is only in respect to Cumbalum, western side of the Ballina Bypass, where the 50mm increase policy standard will be exceeded. In that case there is currently already an exceedance of the standard.

Consideration of the 5 year ARI Flood Level for Open Car Parking and Vehicle Access Purposes

Advice from BMT WBM

BMT WBM state that the filling of parking areas to the 5 year ARI should be considered by Council on a ‘merit’ based approach in accordance with the NSW Floodplain Development Manual (2005). The relevant comments made by BMT WBM in its flood advice are reproduced below:

Use of the lower level parking facilities fulfils the objective for maintaining flood storage, however, comes at the cost of flood immunity. To compensate for the

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

reduced flood immunity, certain additional emergency management measures must be considered by the developer.

Should the multi-level filling scenario be adopted for this development, consideration should be given to the following in relation to emergency management of the site:

- *Emergency Action Plans should be prepared and actioned when flooding is expected. This should involve monitoring rainfall and creek / river levels, including monitoring BoM Flood Watches and Flood Warnings. A similar approach was adopted by the Ballina Bypass Alliance for construction of the road embankment. An Emergency Action Plan was developed, which included the following:*
 - *Identification of roles and responsibilities*
 - *Monitoring of rainfall and river levels*
 - *Evacuation management planning*
- *Consideration should be given to evacuation, particularly from the northern part of the site. The aerial survey used for the flood modelling and terrestrial survey provided by Council indicates Teven Road to be higher than the 5 year ARI flood level assigned to the parking area, so this will support effective evacuation.*
- *Detailed modelling should be undertaken to establish the lead time expected for flash flood scenarios. This shall include identification of hydrologic thresholds (rainfall depths / times and water level) that will trigger the flood action process.*

Strategic Context - NSW Floodplain Development Manual 2005 (FPDM) – Merit Approach

The merit approach is described in the FPDM as follows:

The merit approach weighs social, economic, ecological and cultural impacts of land use options for different flood prone areas together with flood damage, hazard and behaviour implications, and environmental protection and well being of the State's rivers and floodplains.

The merit approach operates at two levels. At the strategic level it allows for the consideration of social, economic, ecological, cultural and flooding issues to determine strategies for the management of future flood risk which formulate into council plans, policy and EPIs (environmental planning instruments). At a site specific level, it involves consideration of the best way of conditioning development allowable under the floodplain risk management plan, local flood risk management policy and EPIs.

At this stage of the process a merit-based approach to the determination of the suitability of a 5 year ARI flood level for car parking and site access area has not yet been documented.

Council's Civil Services Group has advised that the subject site is within the lower catchment of Emigrant and Maguires Creeks. The main flood hazard here appears to be associated with flash floods in the upper catchment. Floodwaters from such floods typically take less than 8 hours to reach the

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lower catchment, however, more precise information is not currently available. This issue is the subject of a recommendation by BMT WBM for detailed modelling to be undertaken so as to establish available lead times.

Council's Civil Services Group is of the view that appropriate emergency management plans can be developed for the subject site and that such plans, and the associated additional modelling, would be more appropriately undertaken as part of the development application process following completion of the planning proposal and associated LEP amendment.

In terms of the appropriateness of the 5 year ARI flood level for car parking and vehicle access purposes on the subject site, the following comments summarise the case to support the use of this standard:

1. 60% of the site is proposed to be filled to the 100 year ARI flood level and the floor level within buildings will have at least an additional 200mm freeboard. Buildings associated with freight transport uses are generally large and have the capacity to act as a refuge for vehicles that would otherwise be parked at the lower 5 year ARI level car park and also as a safe refuge for staff.
2. The upper reaches of the Emigrant and Maguires Creek catchments have in place a SMS early warning system linked to rain gauges within the upper catchments. This system was installed in 2008 with grant assistance. The valley is identified in the State Emergency Service's local flood plan. This system has the capacity to be expanded to include the lower catchment and in particular, development proposed for the subject site. When triggered it would enable response from specific Emergency Management Plans which would provide for the relocation of vehicles out of the 5 year ARI flood prone area to higher ground and, if necessary, the evacuation of staff from the site.
3. Teven Road, adjacent to the southern part of the site, is at a level above the 5 year ARI flood level (approx. road level of 1.5m AHD). Lots which front this section of Teven Road which is above the 1.2m AHD level suggested for car parking areas would be able to access Teven Road for evacuation purposes (this does not apply to the northern part of the site where the level of Teven Road is approximately 1m AHD).

Strategic Context - NSW Floodplain Development Manual 2005 (FPDM) – Strategic Planning Considerations

The FPDM sets out the strategic planning considerations for rezoning proposals for uses outside of those identified as appropriate by the existing flood risk management plan. The FPDM indicates that development is to be assessed both on a cumulative and individual basis to ensure:

- It will not increase the flood risk experienced by *other current floodplain occupants. This includes not altering the danger to personal safety of existing floodplain inhabitants or flood damage to other properties, or adversely affecting them in any way (such as elongation of inundation times) during flooding;*
- *It has to be designed and constructed in such a manner as to ensure that potential loss of life in an extreme flood event is minimal. The*

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development does not adversely impact upon emergency response management of other sites or areas.

- *It has been undertaken, designed, and constructed in such a manner as to hold potential financial losses from flooding at an acceptably low level; and*
- *It will also not adversely impact on the social, cultural or environmental requirements of the floodplain.*

In respect to the above considerations it is relevant to note that the draft Ballina Floodplain Risk Management Plan (draft BFRMP) was exhibited concurrently with the draft Floodplain Management Development Control Plan between February and March 2015. These documents are being reported elsewhere in this business paper and provide for merit-based assessments such as those being proposed.

The use of the 5 year ARI flood level for open car parking and vehicle manoeuvring areas does not however comply with the Flood Planning Level (FPL) nominated by the draft DCP for open car parking areas. The FPL nominated is the 50 year flood level. It is in terms of this issue that BMT WBM recommended the appropriateness of the 5 year ARI flood level to be assessed using the merit approach detailed in the FPDM.

Strategic Context - Ballina DCP 2012 – Chapter 2b – Floodplain Management

The current DCP Chapter 2b sets out requirements for site filling and building floor levels within flood prone areas of the shire. For the purposes of the DCP the subject site falls within the classification of rural zoned land that is currently vacant. Minimum site filling to the 1 in 100 year ARI flood (mAHD) is required plus 0.5m AHD minimum for building floor levels. In the subject case the 1 in 100 year ARI flood level is 2.7m AHD.

The DCP does not specifically reference open car parking. There have been previous merit assessments which required such areas to be no lower than the 1 in 50 year flood level. The DCP designates the 1 in 50 year flood level as the minimum applicable fill level for farm sheds. In the subject case the 1 in 50 year ARI flood level is 2.4m AHD.

The Council, at its Ordinary Meeting held on 27 February 2014, when considering a nearby Section 96 modification application related to DA2010/962 – Highway Service Centre, accepted a minimum fill level for car parking and vehicular access of 2.4m AHD. The minimum fill level under buildings, fuel bowser, fuel delivery and storage areas remained set at 2.7m AHD and the freeboard for buildings was reduced from 500mm to 200mm i.e. to 2.9m AHD. The acceptance by Council of the 1 in 50 year ARI flood level for vehicle access and car parking clarified the policy position that had previously been applied but not specifically referenced within the DCP.

The draft Ballina Floodplain Management Development Control Plan was publicly exhibited between 4 February 2015 and 6 March 2015 and at the time of preparing this report has not yet been adopted by the Council (these matters are subject to reporting elsewhere in this business agenda). Using information contained within the *2012 Ballina Floodplain Risk Management Study*, the draft DCP locates the subject site within a High Flood Risk Precinct.

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The draft DCP describes the High Flood Risk Precinct as '*Areas outside of Extreme Flood Risk areas which, if completely filled or developed, would cause an unacceptable change in flood behaviour. Filling or development would not normally be acceptable. Dangerous flood conditions occur here.*

The applicable relevant prescriptive development controls for the High Flood Risk Precinct are as follows:

Development	Flood Planning Level (FPL)
Commercial or Industrial Buildings	FPL 2 (2100 Climate Change 1 in 100 year flood level plus 200mm freeboard). In the subject case this is equivalent to 2.9m AHD.
Open car parking or car ports	The minimum surface level of open car parking spaces or carports shall be as high as <i>practical</i> , and not below: FPL 1 (2100 Climate Change 1 in 50 year flood level). In the subject case this is equivalent to 2.4m AHD.

Strategic Context – Conclusions - Use of 5 year ARI Flood Level

The FPDM provides a means whereby the merit based approach can be further considered by the proponents' planning consultants to determine the suitability of the 5 year ARI standard, should Council see merit in its use. An examination of the appropriateness of the 5 year ARI flood level standard for car parking and vehicle access purposes by Council's Civil Services Group, based on information currently available, has tended to indicate that on this particular site it may prove to be acceptable.

The use of the 5 year ARI flood standard as indicated above is however, a significant departure from Council's current policy position and the draft policy position as contained in the exhibited *draft DCP Chapter 2b – Floodplain Management*.

Consideration of Acceptability of Flood Level Increase Resulting from Proposed Filling Levels

Background

The 1997 Ballina Flood Management Study defined an acceptable impact on flood behaviour, as a consequence of filling, as one which did not increase the design flood level by more than 5cm (50mm). In that study various future development areas to the north and west of Ballina where assessed. These areas had a combined area of approximately 700ha and were modelled to determine flood increase impacts and the broad nature of flood alleviation measures required to meet the 50mm flood level increase limit.

The 1997 study noted that policy within NSW and other states at that time related to acceptable impacts on flood levels varying from zero to 10cm. A zero impact was suggested as being applicable to minor development; a 5cm impact for major development and a 10cm impact was suggested as being acceptable where the impact is confined to the property under consideration.

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The current policy management position was re-established following the 2008 Ballina Flood Study Update, and required that development projects be assessed on a cumulative impact basis, and not cause an increase of more than 50mm to peak flood levels based on 2005 floodplain conditions. Given that the 50mm increase threshold has been exceeded for Cumbulam (including non-Council projects) no additional impact on Cumbulam is permitted by the Council's current policy position.

In respect to the situation at Cumbalum it is noted that the approval granted by the Department of Planning for the Ballina Bypass in 2003 permitted a maximum increase of 50mm in inundation levels upstream of the project for the 1 in 100 year ARI rainfall event. The majority of the flood increase impacts at Cumbalum, west of the Ballina Bypass, can be attributed to the Ballina Bypass works.

Impact of Filling Development Site

The development site was originally modelled in December 2014 as being filled to the 100 year ARI flood level of 2.7m AHD. Modelling results for the 20 year and 100 year ARI flood event indicated increases to peak flood levels of between 5mm and 25mm over a large area (4.9km² to 5.4km²). Increases at Cumbulam were in the order of 2mm and 3mm for the 20 and 100 year events respectively.

BMT WBM suggested two options to mitigate the impacts of the development as follows:

- Reduction in development footprint (to maintain flood storage) and or
- Shaping of development footprint, especially around the flood relief bridge to maximize efficiency of the flood relief bridge).

The mapping for Scenario 4 and 5 shows that during a 100 year ARI flood event, there is a small area that will experience an increase in peak flood levels of between 5mm and 25mm. These areas are located immediately to the north of the Teven Road site and on the southern side of the site in the vicinity of the Teven Pacific Highway interchange. In both cases they are located on the western side of the Ballina Bypass. At Cumbulam, modelling indicates that peak flood levels increase by 2mm on the eastern side of the Ballina Bypass and less than 1 mm on the western side.

It appears that the Scenario 4 development will only exceed the 50mm cumulative impact limit on the western side of the Ballina Bypass at Cumbulam. At this location the cumulative impact of existing approved development is estimated to be 66mm. The Scenario 4 development has been estimated to add an additional 1mm to the 100 year ARI flood level at this point. Considering the inherent accuracy limitations within any model, the 1mm increase could be considered as no change.

In the event that the Council determines that the increases resulting to the 100 year ARI flood level, as a consequence of the Scenario 4 development are acceptable, this will have the following consequences for the proposed development:

- Development which requires additional site filling cannot proceed until the WBFR structure (2 or 3 cell) has been constructed;

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- That part of the site shaped and not filled, located within Lots 228 and 229 DP 1121079, adjacent to the flood relief bridge under the Ballina Bypass being designated as a floodway and appropriately protected through restrictions on title; and
- Shaping of development sites to create the lower level 5 year ARI car park and access areas. In some cases this will require a lowering of current site level at the front of existing lots.

An appropriate mechanism, to ensure that these outcomes are able to be achieved as part of the LEP amendment process, is a voluntary planning agreement.

Sustainability Considerations

- **Environment**
Ecological factors relating to floodplain impacts must be considered under the provisions of the NSW Flood Prone Land Policy. Whilst it is considered unlikely that there will be any significant adverse ecological impacts as a consequence of the increase in flood levels resulting from proposed filling, this has not yet been examined by the proponents' consultant.
- **Social**
Social factors are also required to be considered under the NSW Flood Prone Land Policy. Social impact issues include the physical and mental impacts on residents whose households are flooded and impacts associated with social disruption. Whilst the proponents' consultant has not yet examined the issue of social impacts, it is considered, given the minor increase in flood levels associated with Scenario 4, that social issues will not be significant.
- **Economic**
Flooding of properties can give rise to significant economic consequences for individuals directly affected and the broader community. Economic consequences are also required to be considered under the NSW Flood Prone Land Policy. As is the case with ecological and social impacts, the proponents' consultant would be required to consider economic impacts associated with the proposed filling and flood level increase in detail prior to the public exhibition of the planning proposal. That is in the event that the Council supports changes to current flood policy as outlined in this report.

Legal / Resource / Financial Implications

Section 733 of the Local Government Act provides an exemption from liability for anything done or omitted to be done in good faith by the Council in so far as it relates to the likelihood of land being flooded or the nature or extent of any such flooding.

The exemption from liability is applicable to the preparation or making of an environmental planning instrument, including a planning proposal for the proposed environmental planning instrument, or a development control plan. A council is considered to have acted in good faith in respect to flooding

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matters if it has substantially acted in accordance with the principles contained within the NSW Flood Plain Development Manual 2005.

All costs associated with the further documentation of the planning proposal are required to be met by the proponent and this includes any associated staff time.

Consultation

In accordance with the Gateway determination requirements, consultation is required with NSW Roads and Maritime Services and the Rural Fire Service. Community consultation for a minimum period of 28 days is also required. At this stage of the process no post Gateway consultation has been undertaken.

Options

1. Accept the 5 year ARI flood level for car parking and vehicle access purposes on the subject site as being a suitable criteria for a more in depth evaluation in accordance with the merit based approach detailed in the FPDM. Accept also modelling Scenario 4 which provides for a 1 mm flood level increase at Cumbulam, west of the Ballina Bypass, and other flood level increases as indicated in the report from BMT WBM contained in Attachment Five.

This is the recommended option. Acceptance of this option will enable the proponents' consultants to document in greater detail the relevant ecological, economic, cultural and social factors required to be considered in accordance with the merit approach outlined in the FPDM. In addition, consideration will also be required on the manner in which it is proposed to secure modelling parameters relating to lowering 40% of the site to the 5 Year ARI level, shaping of land adjacent to the flood bridge under the Ballina Bypass and restricting development to after the construction of the West Ballina flood relief structure.

2. Require additional flood modelling to be undertaken, as part of the planning proposal process, to determine a lead time for expected flash flood scenarios. This option is not recommended as part of the planning proposal process. Additional modelling is considered to be more appropriately undertaken as part of any future DA process. Information available to Council staff, at this stage of the process, suggests that there is sufficient lead time in the lower catchment of Maguires and Emigrant Creeks to be able to satisfactorily document Emergency Action Plans based on modelling required to be undertaken at the DA stage.
3. Reject the 5 year ARI flood level for car parking and vehicle access purposes on the subject site as being unsuitable. The unsuitability could be based on inconsistency with Council's current and draft DCP provisions. Reject also the flood level increases modelled in Scenario 4 and in particular the 1mm level increase at Cumbulam as being unacceptable and contrary to Council's current policy.

This option is not recommended as it would effectively sterilise the use of the subject site for more intensive land uses beyond those that currently exist. Sterilisation of land resources is contrary to the NSW Flood Prone Land Policy. This approach should also be considered in relation to the

9.1 Planning Proposal - Teven Road Transport and Logistics Precinct

potential economic benefits to the broader community that may arise from transport and logistics uses on the land and the broader suitability of the subject land for such a facility, being located adjacent to the Pacific Highway interchange at Teven.

The FPDM advocates the use of a merit approach to the determination of suitable flood planning levels which has not yet been undertaken. In respect to the 1mm increase at Cumbulam this is at a level within the accuracy limits of the model.

RECOMMENDATIONS

1. That Council advise the proponents that the 5 year ARI flood level for car parking and vehicle access areas may be used for the purpose of further documenting the merit approach to assessing the suitability of flood planning levels as outlined in the NSW Floodplain Development Manual, for the purpose of progressing the planning proposal.
2. That Council accept the increase in flood levels modelled as a consequence of Scenario 4 in the flood advice provided by BMT WBM.
3. That the proponents be required to advise Council how it is proposed to secure the Scenario 4 modelling parameters as detailed in this report. In the event that a voluntary planning agreement is proposed, such an agreement shall be prepared in draft form and be exhibited with the planning proposal.
4. That a further report be provided for the Council's consideration when the planning proposal has been fully documented and prior to it being publically exhibited.

Attachment(s)

1. Land Use Table RU2 Zone
2. Gateway Determination
3. Section 117 Direction 4.3 Flood Prone Land
4. NSW Flood Prone Land Policy
5. BMT WBM Flood Advice

9.2 LEP Amendment - Private Native Forestry Consent Provisions

9.2 LEP Amendment - Private Native Forestry Consent Provisions

Delivery Program Strategic Planning

Objective To advise the Council of the outcome of the Gateway determination by the Department of Planning and Environment in relation to Council's planning proposal that seeks to require development consent to be obtained for private native forestry in certain deferred areas zoned under the provisions of Ballina LEP 1987.

Background

The Council, at its Ordinary Meeting held on 18 December 2014, considered a Notice of Motion which sought the preparation of a planning proposal to establish a requirement for development consent as a prerequisite to the undertaking of private native forestry activity within Ballina Shire.

In relation to this matter the Council resolved as follows [Minute No.181214/12]:

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.*

The planning proposal was subsequently prepared and submitted to the Department of Planning and Environment (DP&E) for Gateway determination on 6 January 2015.

A Gateway determination was received by Council under cover of an email from DP&E on 20 April 2015 (letter dated 15 April 2015). The determination was that the planning proposal may not proceed due to the following reason:

1. *The introduction of new consent requirements and dual consent for private native forestry should not pre-empt the final outcomes of the Northern Councils review of environmental zones and the Government's review of biodiversity legislation.*

The Gateway determination was made by the Deputy Secretary, Planning Services, who exercised the delegation of the Minister for Planning.

A copy of the Department's letter forms Attachment One to this report.

9.2 LEP Amendment - Private Native Forestry Consent Provisions

Council may seek a review of the Gateway determination within 40 days from the date of notification. The 40 day period expires on 29 May 2015 and for this reason an application for the review of the Gateway determination has already been lodged with the DP&E.

This report seeks Council's retrospective endorsement for the lodgment of the review of the Gateway determination application.

Key Issues

- Endorsement of the application for Gateway determination review.

Information

A planning proposal was prepared which sought to require development consent for private native forestry in the following 1987 LEP zones:

- 1(b) Rural (Secondary Agricultural Land);
- 1(d) Rural (Urban Investigation);
- 1(e) Rural (Extractive and Mineral Resources);
- 7(c) Environmental Protection (Water Catchment);
- 7(f) Environmental Protection (Coastal lands); and
- 7(l) Environmental Protection (Habitat).

The planning proposal also sought to introduce a clause within LEP 1987 which specified the various matters that Council must consider before granting consent.

Under the Ballina LEP 2012, private native forestry is addressed via the definition of forestry. Forestry, including private native forestry, requires development consent in the existing RU1 Primary Production and RU2 Rural Landscape areas.

Given this, no amendment to the Ballina LEP 2012 was proposed.

The planning proposal was considered by the DP&E's Northern Region Planning Team in Grafton on 16 January 2015 and was recommended for support by that office, subject to conditions.

Attachment Two to this report contains a copy of the Northern Region Planning Team's report.

The report prepared by the Northern Region Planning Team indicated that the planning proposal should proceed as a 'routine' planning proposal.

The report also contained the following comments of particular relevance:

The proposed amendment to Ballina LEP 1987 is the most efficient means of introducing specific controls for managing PNF in the LGA. The protection of koala habitat could be indirectly achieved through the adoption of a comprehensive koala plan of management (KPOM) for the LGA which identifies core koala habitat.

9.2 LEP Amendment - Private Native Forestry Consent Provisions

The Private Native Forestry Code of Practice for Northern NSW does not permit PNF on land identified as core koala habitat in a KPOM. However this would prevent PNF altogether on land which may have significant timber resources and for which negative impacts can be adequately mitigated. Therefore provisions which may require certain matters to be considered before PNF is consented to is a more balanced and appropriate approach.

The Council, at its Ordinary Meeting held on 22 January 2015 resolved to endorse the draft Ballina Shire Comprehensive Koala Plan of Management (KPOM) for the purpose of public exhibition. At this stage the draft KPOM has not proceeded to public exhibition due to potential legal issues relating to the interpretation of State Environmental Planning Policy 44 – Koala Habitat Protection arising from investigations undertaken by Byron Shire Council and the DP&E.

Council staff is in liaison with the DP&E in relation to this matter. Issues relating to the draft KPOM will be separately reported to the Council once it becomes clear as to how the draft plan will be impacted by legal interpretation issues currently under investigation.

Importantly, it should be noted that the rationale for the introduction of the consent requirement for private native forestry extends beyond ecological matters.

Council is also seeking to ensure matters such as amenity, traffic and soil erosion and sedimentation are adequately addressed in relation to proposals for private native forestry. That is, the planning proposal seeks to enable adequate consideration of potential impacts from private native forestry on people (local residents and the wider community) as well as the environment.

The planning proposal was subsequently referred to the DP&E's Local Environmental Plan Review Panel on 22 January 2015. The Panel supported the regional office's recommendation that the matter proceed, subject to agency consultation.

Attachment Three to this report contains a copy of the Recommendations Report considered by the Local Environmental Plan Review Panel.

A review of the planning proposal was then requested by the DP&E's Executive Director, Regions on 24 March 2015 who apparently instructed that the Deputy Secretary Planning Services determine that the planning proposal not proceed.

Attachment Four to this report contains a copy of the report considered by the Deputy Secretary Planning Services.

It appears that the main reasons advanced for determining that the planning proposal may not proceed are related to the following factors:

- Submissions to the exhibition of the E zone review raised concerns about introducing additional complexity to undertake rural uses on rural land. Until the E zone review is finalised it was seen as not appropriate to include additional consent requirements in the deferred areas for a land use linked to existing rural pursuits; and

9.2 LEP Amendment - Private Native Forestry Consent Provisions

- The current independent review of the biodiversity legislation, including the Native Vegetation Act 2003, has recently been exhibited for public comment. Key recommendations include simplifying the approval process, including removing the need for dual consent and changing the assessment regime for private native forestry. Given the proposed changes to biodiversity legislation it was considered to be premature to introduce new controls and dual consent provisions.

From Council's perspective, the planning proposal sought to introduce consistency between the requirements contained with Ballina LEP 1987 and LEP 2012 in so far as they relate to the need to obtain development consent for private native forestry.

To that extent, the proposal is for the LEP provisions to be simplified, not made more complex. The intention is to establish a consistent, clear and transparent set of requirements to enable consideration and appropriate management of potential private native forestry social and environmental impacts.

In terms of the State Government's biodiversity legislation review, the proposed amendments to Ballina LEP 1987 are of no relevance to this review. An examination of the report of the Independent Panel, which reviewed the biodiversity legislation, found that it was recommended that private native forestry-related legislation be the subject of a separate review process.

In the above context, and given the fact that the proposed amendments to Ballina LEP 1987 are a "stop gap" or interim measure pending the finalisation of E zone review, there is considered to be no conflict or pre-empting of State based legislative or policy directions, as has been stated in the Gateway determination.

The introduction of the proposed provisions is not E zone dependent in any case, as they relate to the use of land and associated impacts and this may be addressed in a variety of land use zones (not only E zones) as is presently the case in the operating Ballina LEP 2012.

In considering E zones, it is also relevant to note that the DP&E has not been able to provide any information on a timeframe or approach for the conclusion of the E zone matter. Therefore, there is no transparent DP&E plan to enable the address of private native forestry issues and impacts as identified by Council.

In the absence of the planning proposal being able to proceed, there is a risk of an open ended continuation of private native forestry with very limited regulation and further adverse impacts in relation to amenity, ecology, soil erosion, sedimentation, noise, traffic and roads.

The main grounds for seeking a review of the decision not to allow the planning proposal to proceed relate to the reasons noted above. The Planning Assessment Commission (PAC) is the body responsible for reviewing the decision of the Deputy Secretary Planning Services not to allow the planning proposal to proceed.

Attachment Five to this report is a copy of the Gateway Determination Review Application lodged with the Department of Planning and Environment.

In addition to the technical issues outlined above, it is noteworthy that the DP&E's decision is contrary to the recent rhetoric of State Government suggesting that planning powers should be returned to local government. The proposed provisions are a clear example of Council seeking to better consider and manage the consequences of an activity that is known to have a variety of potential adverse impacts on the environment, infrastructure, amenity and residents.

Sustainability Considerations

- **Environment**

The planning proposal sought to better regulate private native forestry within Ballina Shire so as to secure improved environmental and amenity outcomes. The inability to secure a Gateway determination which allows the planning proposal to proceed to exhibition puts on hold Council's strategy of endeavouring to put in place a more rigorous assessment regime than currently exists under native forestry legislation.

- **Social**

Not Applicable

- **Economic**

Not Applicable

Legal / Resource / Financial Implications

Lodgment of the application for Gateway Determination Review did not incur any external monetary cost, and progress of this matter can be accommodated within the work program of the Strategic and Community Facilities Group.

Consultation

No formal consultation has been required to be undertaken with respect to the matters raised within this report.

Options

1. The Council may endorse the Gateway Determination Review Application that has been lodged and advise the DP&E accordingly. This is the recommended option and enables the decision making process, which prevented the planning proposal from proceeding, to be reviewed by the PAC.
2. The Council may accept the Gateway determination made by the Department's Deputy Director Planning Services and take no further action with respect to this planning proposal. This option is not recommended as there is no conflict with what is proposed by Council and State-based legislative and policy review positions. In such circumstances, and given the Council's previous resolution to progress the planning proposal, allowing the merits of the planning proposal to be reviewed by the PAC is considered appropriate.

RECOMMENDATIONS

1. That Council note this report regarding the decision by the Department of Planning and Environment not to allow Council's planning proposal relating to the introduction of development consent requirements for private native forestry to proceed.
2. That Council endorses the submission of the Gateway Determination Review Application contained in Attachment Five to the Department of Planning and Environment.
3. That the State Member for Ballina, Local Government NSW and Northern Rivers councils be advised of Council's action with respect to this matter.

Attachment(s)

1. DP&E Gateway Determination
2. Northern Region Planning Team Report
3. LEP Panel Recommendations Report
4. Report Considered By Deputy Secretary Planning Services
5. Ballina Shire Council Application for Review of Gateway Determination

9.3 Lennox Head CWA Meeting Rooms

9.3 Lennox Head CWA Meeting Rooms

Delivery Program Community Facilities and Services

Objective To seek the Council's direction in relation to the future use of the Lennox Head CWA building.

Background

The Lennox Head CWA has operated in Lennox Head for 46 years. The organisation commenced operations from premises owned in freehold by the CWA, located on Pacific Parade. It then relocated to Williams Reserve under a Reserve Trust Lease which commenced on 8 August 1990 and expired on 7 August 2010.

The relocation by the CWA to Williams Reserve occurred following a request for assistance from the CWA to Council. Following a period of negotiations which ran from 1983 between the local CWA Branch, the CWA Head Office, Council and Crown Lands, and concluded in 1989, the CWA relocated into the current CWA Rooms, which were constructed at Council's cost.

The issues which prompted relocation to Williams Reserve occurred as the Lennox Head CWA was unable to afford maintenance to the ageing building at the Pacific Parade site; there had been problems with noise and vandalism from the adjoining caravan park, as well as the issue of the water and sewer not being connected to the freehold premises.

The agreement reached between the parties in 1989 was that the CWA would transfer its freehold site to Council at a nominal price, and Council would find a suitable accommodation, at Council's cost, for the CWA to relocate to. The terms of the agreement also provided for Council to attend to, and cover the cost associated with, the maintenance and upkeep of the new premises. Council constructed the CWA Rooms on Williams Reserve in 1989 at an approximate cost of \$100,000.

Due to the construction of the Lennox Head Cultural and Community Centre (LHCCC) on Williams Reserve in 2010-2011, Crown Lands has required that Council enter into a lease for the footprint of the building. This must be done by way of a subdivision of Williams Reserve to excise the LHCCC footprint from the rest of the reserve to enable the registration of the Crown Lease. The Lennox Head CWA building has been included in the footprint for the lease subdivision and no separate tenure renewal has been negotiated for the CWA.

After discussions with the CWA in relation to its options for tenure renewal, Council staff wrote to the Lennox Head CWA with some options for future tenure and use of the rooms. A copy of that letter is attached to this report.

The CWA has responded by letter dated 18 January 2015 in which it advises that the organisation does not wish to pursue an exclusive occupation of the existing building, but would like to ensure a regular booking of the rooms for CWA meetings on Monday mornings at a peppercorn rental fee. A copy of this letter is also attached.

9.3 Lennox Head CWA Meeting Rooms

The purpose of this report is to determine the Council's response to the CWA's request.

Key Issues

- Community benefit provided by the Lennox Head CWA
- Reduction in hire fees

Information

The Council, on behalf of the community, benefitted substantially from the agreement reached in 1989 regarding the transfer to Council of the former freehold CWA site. Council has subsequently sold that land to the State Government, and it has effectively been subsumed into the adjoining Lake Ainsworth Caravan Park.

If Council supports the CWA's request for a reduced annual rental for the weekly use of the existing building, this will enable the CWA members to continue their community work, free from the costs and responsibilities of running the rooms as a separate hall. Issues of insurance and maintenance can be absorbed through the existing budgets of the Lennox Community Centre.

Council will become the booking agent for the rooms and receive income from the hire fees received from other users. This income will be available for the associated maintenance and running costs. This additional area will become important to the operations of the Community Centre by complementing the existing spaces currently available for casual hire.

In order to protect the existing property of the CWA members, it will be necessary to construct a lockable storage area (similar to a large built-in wardrobe) within the hall. It will also enable the storage of furniture and equipment for community spaces customers. The estimated cost for the construction of this storage is \$5,000. This cost is expected to be recouped through income generated from the room hire within the first year.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The Lennox Head CWA has provided a valuable community service for Lennox Head residents for the past 46 years.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

The purpose of this report is to ensure an appropriate arrangement is in place in respect of the occupation of the CWA rooms. The \$5,000 cost estimate will be financed from within existing budgets.

Consultation

Council staff has consulted with the members of the local CWA Branch, the regional CWA Group Coordinator, the CWA Head Office and Crown Lands staff.

Options

As Williams Reserve is Crown Land, the options for the CWA's continued tenure at Williams Reserve are to enter into a sublease of Council's head lease from the Crown, or to incorporate the CWA rooms as an additional space within the LHCCC. As the Lennox Head CWA has elected not to pursue a sublease, it has requested that the rooms be incorporated into the LHCCC. However, given the history of the transactions between Council and the CWA, the organisation does not want to be financially disadvantaged by having to pay weekly room hire fees.

The options for the Council are summarized as follows:

1. Agree to the CWA's request to incorporate the CWA rooms into the footprint of the LHCCC and waive the booking fees for the CWA's weekly use for the duration of the organisation's existence in Lennox Head. This is the preferred and recommended option, given the history of the relationship between Council and the CWA;
2. Agree to the CWA's request to incorporate the CWA rooms into the footprint of the LHCCC, with the application of a booking fee. This could be a nominal fee of, say, \$50 per year (or such other amount determined by the Council). Alternatively, a fee could be applied in line with the Council's adopted annual fees and charges (ie CWA would pay the same fee as any other hirer of that space). Again, given the history, this is not favoured;
3. Decline the CWA's request and advise the organisation to pursue a sublease with the Crown. This is not recommended, as such a course would be contrary to the best interests of both the CWA and Council.

RECOMMENDATIONS

1. That Council agrees to the CWA's request to incorporate the CWA Rooms into the footprint of the Lennox Head Cultural and Community Centre and waive the booking fees for the CWA's weekly use of the facility for the duration of the group's existence in Lennox Head.
2. That Council authorises up to \$5,000 of expenditure for the construction of an internal storage area for the CWA members' property and community spaces equipment, with these funds sourced from within existing budgets.

9.3 Lennox Head CWA Meeting Rooms

3. The General Manager is authorised to sign and affix the Seal of the Council to any documents prepared to give effect to this agreement.

Attachment(s)

1. Letter to CWA Head Office
2. Lennox Head CWA - response to meeting held 17/12/14 - lease arrangements - agreement to Clause B

9.4 Wardell Recreation Ground - Management

9.4 Wardell Recreation Ground - Management

Delivery Program Community Facilities and Services

Objective To invite the Council's consideration of a proposal for the Council to assume responsibility for the administration and management of the Wardell Recreation Ground.

Background

Land referred to as the Wardell Recreation Ground contains an area of approximately 13.5 hectares bounded by Bath Street, Pine Street, Sinclair Street and an un-named road, located on the north-western edge of the village of Wardell.

The land is illustrated in the plan attached to this report.

The Wardell Recreation Ground principally comprises Crown Reserve No 627 for Public Recreation. Located within this larger area is a separate Crown Reserve No 1002921 for Community and Sporting Club Facilities, containing an area of about 7698m².

The grounds have traditionally been used for football and cricket, however in more recent years, a golf course has been constructed. The smaller reserve referred to above is currently leased to the Wardell Sporting Recreation Club Ltd and contains a clubhouse and car parking.

A Community Trust Board, comprising members of the Wardell community, was previously appointed to administer the grounds and to manage the land in accordance with its obligations under the relevant provisions of the Crown Lands Act.

The appointment of this Trust Board expired on 30 November last year.

NSW Trade and Investment (Crown Lands) has now proposed that Ballina Shire Council be appointed to replace the former Trust and to undertake the management responsibility for the grounds.

This report is presented to provide the Council with an opportunity to consider Crown Lands' offer, and seeks to provide the Council with information which might assist that consideration.

In this regard, copies of items of recent correspondence between the Department and Council are attached, together with a copy of an email from the Wardell Progress Association dated 28 April 2015, which has expressed a view about the matter.

Key Issues

- Responsible management of community assets
- Equitable allocation of Council resources

Information

Council has been appointed to manage numerous parcels of Crown land throughout the shire. Council, in its capacity as the Reserve Trust Manager for these respective areas, has an obligation to administer them for the purpose for which they have been reserved, and in the broader interests of the community. Part of this obligation is to routinely report information concerning the use and management of the respective parcels to the Crown Lands Office, for its information.

There are other areas of Crown Land within the shire which are managed by Trustees, other than the Council. This is the case with the Wardell Recreation Ground. Even though the Council has no responsibility to do so, it has previously resolved to make a financial allocation in each year's Operational Plan toward the maintenance (mowing) of the reserve. This allocation is continued in the Council's adopted Long Term Financial Plan, with the amount increasing, based on CPI, from \$7,500 in the current year.

The attached items of correspondence indicate the manner in which the current situation came about. In November last year, as part of staff's regular quarterly meeting with representatives from Crown Lands, advice was provided (by Crown Lands) about the imminent expiry of the Community Trust Board's tenure. An enquiry was made at that meeting as to whether or not the Council would be interested in being appointed to the management role.

In response, staff advised they saw no overriding benefit in this proposal, but would be quite prepared to present the proposition to the elected Council for its consideration. Reference here is made to the attached letter from Crown Lands dated 19 December 2014, at paragraph two, where it is stated: "... I understand that Council as Trust Manager is willing, subject to the 34A Lease 402172 funds being disbursed to the Trust, to assist with operation and management of the subject reserves."

Council staff members in attendance at that meeting are very clear in their recollections that no such affirmative indication or advice was provided to the Crown Lands representatives.

Having regard for the above, and the contents of the letters between Crown Lands and Council, it is now appropriate for the Council to indicate whether it has an interest in assuming management responsibilities for the reserve at this time.

The Council may decline to accept the Crown's offer, in which case the Crown will decide on an alternative arrangement. The options here might involve the Crown reappointing a Community Trust (which may or may not involve the past incumbent Board members) or appointing an administrator to look after the affairs of the reserve.

If the Council chooses to indicate it is willing to accept the Crown's offer, it appears the revenue generated from the Crown's lease of the existing clubhouse would be disbursed to the Council in its new role as Trustee, to assist with the operation and management of the reserves. Details of this current clubhouse lease and the funds proposed to be paid to the Trustee of the reserve are set out in the attached letter from Crown Lands to Council dated 1 April 2015.

The other issue for the Council to consider is whether it wishes to maintain its current annual allocation toward the maintenance of the reserve. From staff's perspective, the preference would be that available Council funds be expended on land that it either owns or has management responsibilities for.

Finally, the other issue that Council might be aware of in its deliberations is the effect of section 48 of the Local Government Act 1993, which provides as follows:

"48 – Responsibility of certain public reserves

- 1) *Except as provided by Section 98A of the Crown Lands Act 1989, a council has the control of:
 - a) *Public reserves that are not under the control of or vested in any other body or persons and are not held by a person under lease from the Crown, and*
 - b) *Public reserves that the Governor, by proclamation, places under the control of the council.**
- 2) *If any doubt arises as to whether any land comes within the operation of this section, or as to the boundaries of a public reserve, the Governor may, by proclamation, determine the matter."*

What these provisions indicate is that if the Council declines to accept the offer of Crown Lands to be appointed as Reserve Trust Manager of the public reserve, and no other entity is appointed to manage the reserve, management responsibilities "devolve" to Council as a default arrangement.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The Wardell Recreation Ground provides very important recreational opportunities for the local community. What is less clear is understanding what processes the prior Trustees undertook to ascertain that the current improvements within the reserve, particularly the establishment of the golf course, best meet the needs of this community.

That is, are some members of the community effectively denied free and full use of part of the public reserve because they are not golfers?
- **Economic**
The Council will need to absorb additional expenses if it chooses to accept management responsibilities for the reserve. However, at this time it is difficult to quantify the extent of the likely increase, allowing for income from the Crown's allocation of the clubhouse rental. The Council is currently making an annual donation toward the maintenance of the grounds. If management is formally transferred, this amount could still be available, but would need to be reallocated for the purpose of the Council's Operational Plan.

Legal / Resource / Financial Implications

There is no impediment to the Council accepting Crown Land's offer of management of the reserve. However, doing so will incur additional costs in terms of general administration and day to day operational expenses.

Consultation

As Council currently does not have an interest in the reserve, no community consultation has been undertaken. However, an unsolicited advice (dated 28 April 2015) has been received from the Wardell and District Progress Association Inc which conveys that organisation's support for the grounds to continue to be managed by a community-based board. It is noted there may well be community members within Wardell who have an opposing view to that expressed by the Association.

Other consultation has involved internal discussion between Council staff. The recommendation which follows represents the consensus view of staff.

Finally, attempts were made to arrange a Councillor workshop to enable a representative from Crown Lands to discuss relevant issues relating to the past and future management of the reserve. Regrettably, the nominated representative from Crown Lands was unable to attend the scheduled workshop due to other work commitments.

Options

The basic options available to the Council are as follows:

1. Accept the offer of tenure of the Wardell Recreation Ground offered by Crown Lands. If this is the Council's preference it would authorise the General Manager to liaise with Crown Lands and to attend to the administration requirements to achieve this outcome.
2. Decline the Crown Lands offer. The Department would then determine an alternative management arrangement; either by selecting and appointing an alternative Board or an administrator. One would hope that the provisions of section 48 of the Local Government Act, as discussed above, would not be invoked if the Council had made it clear to the Department that it did not wish to assume the management responsibility.
3. Defer any decision and seek further dialogue with the Department. Under this option the Council would be asked to indicate to the General Manager what further information it would need or expect before ultimately making a determination.

Having regard for the contents of this report and the communications to date between Council and Crown Lands, the recommendation which follows is to decline the Department's offer at this time.

If this is the preferred position of the Council it would be on the understanding that the proposal may be revisited in the future if and when circumstances have changed and/or a more attractive proposal has been presented for the Council's consideration.

9.4 Wardell Recreation Ground - Management

The other item Council may wish to further consider is the current financial commitment it has made toward the annual maintenance of the reserve. As this is fundamentally a political decision for the Council on the basis of support for the Wardell community, the recommendation is silent in regard to this issue.

RECOMMENDATION

That Council inform NSW Crown Lands that it does not wish to be appointed as Reserve Trust Manager for the Wardell Recreation Ground or otherwise be responsible for the reserve's management under current circumstances.

Attachment(s)

1. Locality Plans - Wardell Sports Ground
2. Correspondence between Crown Lands and Ballina Shire Council - Wardell Sports Ground
3. Email from Wardell and District Progress Association Inc - Wardell Sports Ground

10.1 Use of Council Seal

10. General Manager's Group Reports

10.1 Use of Council Seal

RECOMMENDATION

That Council affix the Common Seal to the following documents.

US15/06	<p>Ballina Shire Council to release the following 'Restrictions as to User' created by Section 88B from the following plans of subdivision for the Prospect Estate at East Ballina which restricted the lots to a single dwelling house only and/or restricted any dwelling house floor space to be not less 80m2:</p> <ul style="list-style-type: none">• DP 259120 – Restriction fourthly referred to in the plan - items (c) & (e)• DP 259864 – Restriction thirdly referred to in the plan – items (c) & (e)• DP 263627 - Restriction fourthly referred to in the plan - items (c) & (e)• DP 262288 - Restriction thirdly referred to in the plan – items (c) & (e)• DP 709484 - Restriction secondly referred to in the plan – item (d)• DP 707808 - Restriction firstly referred to in the plan – item (d)• DP 776658 - Restriction secondly referred to in the plan – item (d) <p>The seal would be applied to the relevant documents including a release, request or deed of agreement prepared by the landowner's legal representative to release any of the abovementioned restrictions as to user.</p> <p>Explanation</p> <p>The existing restrictions as to use refer to no building other than a single dwelling house can be erected on the land and that no dwelling house shall have a floor space of less than 80 square metres.</p> <p>Council has supported the permissibility provisions in the 2012 LEP for the zone which allows secondary dwellings to be constructed. Council's Development & Environmental Health Group advise there is no planning objection in having these restrictions released from the land.</p> <p>Council has the authority to release, vary or modify restrictions within the relevant sections of the Section 88B Instrument attached to the abovementioned land.</p>
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10.1 Use of Council Seal

	<p>All costs for releasing a restriction shall be borne by the owner of the land.</p>
US15/07	<p>Ballina Shire Council to release the following 'Restrictions as to User' created by Section 88B for Lot 90 DP 259864 at 58 Antrim Street, East Ballina which relates to the following items:</p> <ul style="list-style-type: none">• DP 259864 – Restrictions thirdly referred to in the plan – items (a), (d) & (f) <p>The seal would be applied to the relevant documents including a release, request or deed of agreement prepared by the landowner's legal representative to release any of the abovementioned restrictions as to user.</p> <p>Explanation</p> <p>These restrictions refer to building materials and architectural style. Although all development must meet the LEP provisions and all buildings must meet BCA requirements, these restrictions influence the appearance and style of the building.</p> <p>Any variation to a restriction requires the written consent of the Council.</p> <p>The summary of each restriction is as follows:</p> <ul style="list-style-type: none">(a) All buildings must have clay brick exterior walls(d) Any permanent outbuilding (ie: garage or secondary dwelling) must have the same or similar material and architectural style as the main building(f) Roofing must not be corrugated iron, asbestos cement or other reflective material with a pitch greater than 3 ½ degrees. <p>The provisions of any restriction are in place to ensure a minimum standard of building design and compatibility are maintained throughout the subdivision. In recent years it is common for alternative building styles and materials within residential subdivisions to be considered acceptable.</p> <p>Council has the authority to release, vary or modify restrictions within the relevant sections of the Section 88B Instrument attached to the abovementioned land.</p> <p>All costs for releasing a restriction shall be borne by the owner of the land.</p>

Attachment(s)

Nil

10.2 Investment Summary - April 2015

10.2 Investment Summary - April 2015

Delivery Program Governance and Finance

Objective To provide details of how Council's surplus funds are invested.

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 April 2015.

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 April was \$63,284,000. This represents a decrease from March of \$1,999,000. Council's investments as at 30 April are at an average (weighted) rate of 3.44%, which is 1.20% above the 90 Day Bank Bill Index of 2.24%. The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 April 2015 was \$893,617.

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 investment portfolio 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
Total		100%

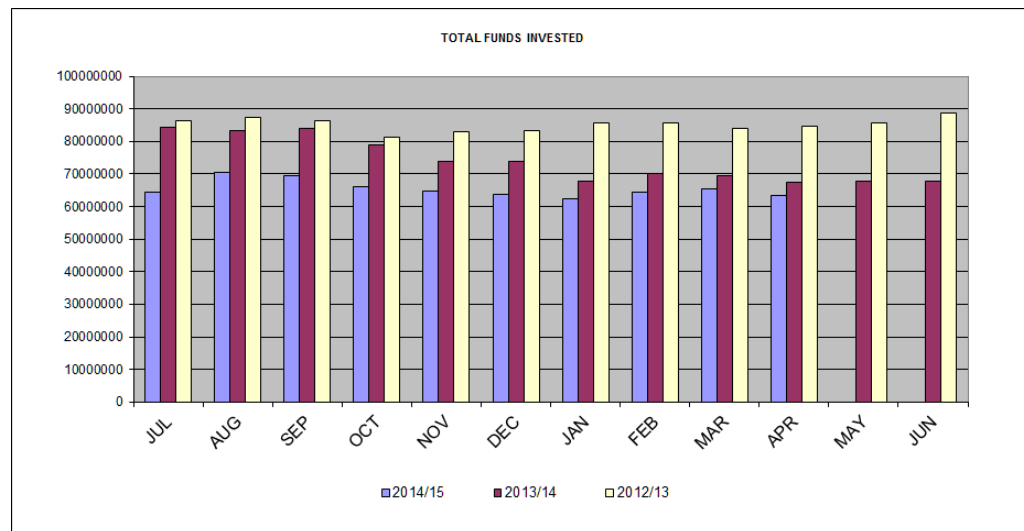
* Based on reserves held as at 30 June 2014

10.2 Investment Summary - April 2015

A. Summary of Investments by Institution

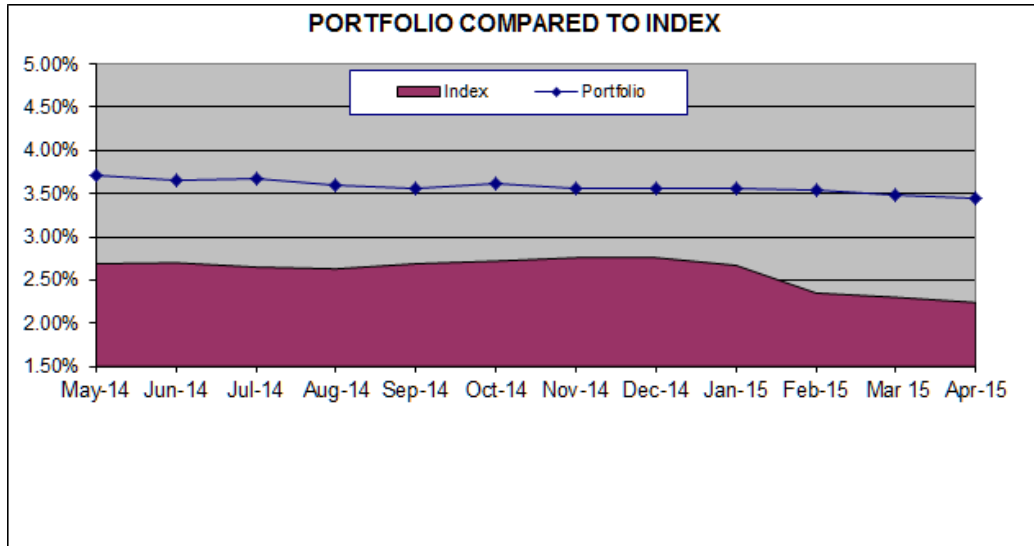
Funds Invested With	ADI Rating	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
Grandfathered Investments						
Goldman Sachs	A	1,000	1,000	0	1.6%	
National Australia Bank	BBB	1,788	1,788	0	2.8%	
National Wealth M'ment Holdings	A-	2,000	2,000	0	3.2%	8%
Rated Institutions						
AMP Bank	A+	6,000	6,000	20%	9.5%	
Bank of Queensland	A-	3,000	3,000	10%	4.7%	
Bank of Western Aust	AA-	9,000	9,000	20%	14.2%	
Bendigo & Adelaide Bank	A-	2,000	2,000	10%	3.2%	
Commonwealth Bank of Australia	AA-	2,495	2,496	20%	3.9%	
Defence Bank Ltd	BBB+	1,000	1,000	10%	1.6%	
Greater Building Society	BBB	2,000	2,000	10%	3.2%	
ING Bank Ltd	A-	4,000	4,000	10%	6.3%	
Members Equity Bank	BBB+	6,000	6,000	10%	9.5%	
National Australia Bank	AA-	8,000	6,000	20%	9.5%	
Newcastle Perm Bld Society	BBB+	2,000	2,000	10%	3.2%	
Suncorp-Metway Bank	A+	10,000	10,000	20%	15.8%	
Westpac Banking Corporation	AA-	5,000	5,000	20%	7.9%	92%
Unrated ADI's				\$1m	0.0%	0%
Total		65,283	63,284		100%	

B. Monthly Comparison of Total Funds Invested

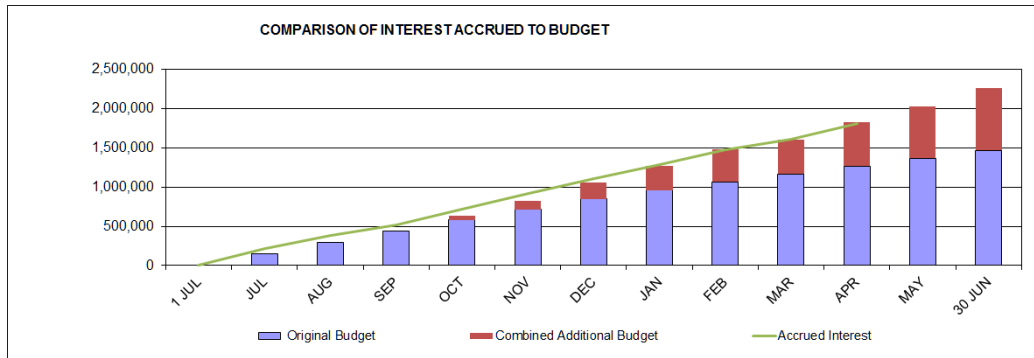


10.2 Investment Summary - April 2015

C. Comparison of Portfolio Investment Rate to 90 Day BBSW



D. Progressive Total of Interest Earned to Budget



10.2 Investment Summary - April 2015

E. Investments held as at 30 April 2015

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURIT Y DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
at call	Commonwealth Bank Of Australia	CDA	2.45%	at call	502	502
20/09/04	National Australia Bank (ASX Listed)	FRN	3.59%	Perpetual	1,788	1,373
12/04/06	Goldman Sachs	FRN	2.78%	12/04/16	1,000	999
16/06/06	National Wealth M'ment Holdings	FRN	2.95%	16/06/26	2,000	1,981
24/01/12	ING Bank Ltd	FRTD	4.21%	24/01/17	1,000	1,000
06/02/12	Westpac Bank	FRN	4.05%	06/02/17	1,000	1,023
25/01/13	Commonwealth Bank Of Australia	TD	4.25%	25/01/18	1,994	2,082
05/06/13	National Australia Bank	FRTD	3.43%	05/06/15	2,000	2,000
07/06/13	Greater Bld Society	FRN	3.78%	07/06/16	2,000	2,008
25/02/14	Westpac Bank	FRN	3.27%	25/02/19	2,000	2,027
22/09/14	Members Equity Bank	TD	3.65%	22/09/15	1,000	1,000
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
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%	11/05/15	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%	18/05/15	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
22/12/14	Bendigo & Adelaide Bank	TD	3.40%	22/06/15	2,000	2,000
05/01/15	Suncorp-Metway Bank	TD	3.45%	06/07/15	2,000	2,000
05/01/15	Suncorp-Metway Bank	TD	3.45%	13/07/15	1,000	1,000
23/01/15	AMP Bank	TD	3.40%	23/07/15	2,000	2,000
27/01/15	AMP Bank	TD	3.40%	27/07/15	1,000	1,000
27/01/15	AMP Bank	TD	3.40%	05/08/15	1,000	1,000
02/02/15	Newcastle Permanent Bld Society	TD	3.30%	04/05/15	2,000	2,000
02/02/15	AMP Bank	TD	3.30%	04/08/15	2,000	2,000
11/02/15	ING Bank Ltd	TD	3.20%	17/08/15	2,000	2,000
18/02/15	Members Equity Bank	TD	3.20%	17/08/15	2,000	2,000
26/02/15	National Australia Bank	TD	3.17%	25/08/15	1,000	1,000
02/03/15	BankWest	TD	3.10%	02/06/15	1,000	1,000
03/03/15	Suncorp-Metway Bank	TD	3.10%	31/08/15	2,000	2,000
13/04/15	Suncorp-Metway Bank	TD	3.00%	13/10/15	3,000	3,000
28/04/15	BankWest	TD	2.90%	29/07/15	2,000	2,000
	Totals				63,284	62,995
CDA = Cash Deposit Account		FRN = Floating Rate Note				
FRTD = Floating Rate Term Deposit		TD = Term Deposit				

RECOMMENDATION

That Council notes the record of banking and investments for April 2015.

Attachment(s)

1. TCorp Local Government Economic Commentary - April 2015

10.3 Borrowing Requirements - 2014/15

10.3 Borrowing Requirements - 2014/15

Delivery Program Governance and Finance

Objective To seek Council approval to take out external borrowings relating to the 2014/15 financial year.

Background

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

Key Issues

- To confirm Council approval for external borrowings

Information

The 2014/15 Operational Plan includes General Fund borrowings of \$725,000 for the Airport Carpark and Shade Covers. The budget envisaged that the external loan would fund 100% of the cost of works.

The expenditure has been incurred and the works are essentially completed. The budget for the works has been exceeded and there was some consideration given to increasing the borrowing to reflect the actual cost of works. However this option is not preferred (refer to comments in the Quarterly Financial Review report that forms part of this agenda) and it is proposed that the loan will remain at \$725,000.

Legal / Resource / Financial Implications

The works and loan funds are allocated in the current budget.

Consultation

The airport capital works and the loan was included in the 2014/15 budget which was subject to community consultation.

Options

Council's budget assumes external borrowings of \$725,000 to fund the Airport car park work. It is important that the loan funds are obtained for cash flow management purposes. The options are to approve the \$725,000 or alternatively increase it to match the actual expenditure as identified in the Quarterly Financial Review report. The preferred option is to minimise borrowings therefore the recommendation is to borrow \$725,000 as originally envisaged.

10.3 Borrowing Requirements - 2014/15

RECOMMENDATIONS

1. The General Manager is authorised to select the best rate quoted for a borrowing of \$725,000 for the airport capital works program for 2014/15.
2. The use of the Council seal is authorised on all loan documentation associated with this report.

Attachment(s)

Nil

10.4 Community Donations

10.4 Community Donations

Delivery Program Governance and Finance

Objective To invite Council to consider additional donation requests.

Background

Council approved a large number of general and capital assistance 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 requests are considered to be justifiable in reporting to Council for separate consideration.

Copies of the requests are attached.

Key Issues

- Community benefit
- Funding available

Information

Grant Smith – Australian Representation

Grant Smith, a Ballina resident has been selected to represent Australia as a member of the Australian Masters Hockey team to attend the Trans Tasman Challenge Series in Melbourne in May 2015.

The players are responsible for the payment of flights, accommodation, coaching/physio staff, turf fees and uniforms.

Council has a separate policy for Australian representation (titled - Donations - Australian Representation) which states that Council may provide a contribution for applicants representing Australia within Australia but outside the local government area. The amount specified in the Donations – Australian Representation Policy is \$225.

Michelle Anderson – Australian Representation

Michelle Anderson, a Ballina resident has been selected to represent Australia as a member of the Australian Masters Hockey team to attend the Trans Tasman Challenge Series in Melbourne in May 2015.

The players are responsible for the payment of flights, accommodation, coaching/physio staff, turf fees and uniforms.

10.4 Community Donations

Council has a separate policy for Australian representation (titled - Donations - Australian Representation) which states that Council may provide a contribution for applicants representing Australia within Australia but outside the local government area. The amount specified in the Donations – Australian Representation Policy is \$225.

Celebration Committee for Alstonville's Sesqui Centenary

The Committee are asking Council to waive the hire fees for the Alstonville Leisure and Entertainment Centre where they intend to hold a special dinner associated with the celebrations. Community Facilities staff have advised the cost would be \$250.

Yogawise – Vicki Veitch

Vicki Veitch held a fundraising yoga event on 2 May 2015 (details on poster attached). The event was moved from the Lennox Headland to the Lennox Head Cultural and Community Centre due to rain and incurred a cost of \$40 (invoice attached). Vicki Veitch has asked Council to consider paying the invoice so the extra money can go towards their fundraiser.

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	47,026	2,974
Donations (Public Halls - Capital)	41,000	39,802	7,866
Donations (Planning Fees)	2,000	9,824	(7,824)
Net Amount Available			\$3,016

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 requests.

RECOMMENDATIONS

1. That Council approves / refuses the request from Grant Smith for a donation under the Australian Representation Policy.
2. That Council approves / refuses the request from Michelle Anderson for a donation under the Australian Representation Policy.
3. That Council approves / refuses the request from the Celebration Committee for Alstonville's Sesqui Centenary.
4. That Council approves / refuses the request from Yogawise to pay the invoice from Community Spaces for room hire.

Attachment(s)

1. Grant Smith
2. Michelle Anderson (1)
3. Michelle Anderson (2)
4. 150th Celebration Committee - Alstonville's Sesqui Centenary
5. Yogawise

10.5 Policy (Review) - Investments

10.5 Policy (Review) - Investments

Delivery Program Governance and Finance

Objective To review the Investments Policy

Background

All of Council's existing policies are progressively reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Investments Policy.

Council first adopted this policy in 2006.

Key Issues

- Whether the policy meets the requirements of Council and current legislation.

Information

The review of this policy identified only minor changes as follows:

- A requirement for two authorised persons to authorise all redemptions. This is considered appropriate, particularly in relation to floating rate notes and similar products.
- The attachment of the extract from the Trustees Act has been removed, as a reference to the Act is all that is considered necessary.

The changes have been marked in yellow in the revised policy document contained in Attachment One.

Otherwise the policy is still considered to be contemporary and reflects current legislation, therefore no further changes are recommended. A copy of the amended policy is attached to the report.

No changes are recommended to the investment parameters.

Legal / Resource / Financial Implications

The policy looks to establish a framework to invest Council's excess cash in a manner that mitigates risks whilst enabling a fair return on funds invested.

Consultation

As the changes are only minor it is recommended that Council adopt the policy as presented, however the document will also be exhibited for public comment. If any submissions are received they can be reported back to Council however there will not be a need for any further report if there is no public comment.

Options

Council may accept or amend the proposed changes to the policy. The changes included are largely house keeping therefore it is recommended that the policy be adopted as presented.

RECOMMENDATIONS

1. That Council adopts the amended Investments 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. Investments Policy (Review)

10.6 Policy (Review) - Child Protection

10.6 Policy (Review) - Child Protection

Delivery Program Human Resources and Risk Management

Objective To review the Child Protection Policy

Background

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Child Protection policy.

Council first adopted this policy in November 2001, with amendments made and adopted in July 2006.

Key Issues

- Whether the policy meets the requirements of Council and current legislation.

Information

This review of this policy identified only minor changes as follows:

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.
- Amendments to the provisions for what constitutes a prohibited person under the policy in line with legislative changes.
- Minor amendments to the wording determining what constitutes a Registered Agency under the Act.
- The inclusion of the Child Protection Legislation Amendment Act 2014 and the Child Protection (Working with Children) Amendment Regulation 2014 as related documentation for Council's Child Protection Policy.
- The responsibilities for Employees and the General Manager have been amended to comply with the legislative changes. Any individual engaged in a role requiring direct access to children must be compliant with the requirements of the Act and ensure they are in possession of a current Working with Children Check prior to 31 March 2015. The principal officer and each member of the governing body must comply with Division 2, the mandatory requirements of the Act by 31 March 2015.
- Minor change to wording under the requirements for mandatory reporting, so that if a person believes on reasonable grounds that a child or young person is in need of protection due to being at risk of being physically or sexually abused or ill-treated they must report this to DoCS.

10.6 Policy (Review) - Child Protection

- Ensuring that any individual engaged by Council to provide services to children are in possession of a current Working with Children Check.

The changes have been marked in yellow.

Otherwise the policy is still considered to be contemporary and reflects current legislation therefore no further changes are recommended. A copy of the amended policy is attached to the report.

Sustainability Considerations

- **Environment**

Not Applicable

- **Social**

This policy aims to ensure the protection of children who are at potential risk of physical or sexual abuse or ill treatment and advise procedures for ensuring Council are compliant with legislative requirements pertaining to current Working with Children checks and investigating and reporting allegations/convictions of child abuse against people employed or engaged by Council that arise in the course of the work of Council.

- **Economic**

Not Applicable

Legal / Resource / Financial Implications

Child protection strategies are a legal requirement for Council.

Consultation

As the changes are only minor it is recommended that Council adopt the policy as presented, however the document will also be exhibited for public comment. If any submissions are received they can be reported back to Council however there will not be a need for any further report if there is no public comment.

Options

Council may accept or amend the proposed changes to the policy. The changes included are largely house keeping therefore it is recommended that the policy be adopted as presented.

It is also recommended that if no submissions are received from the exhibition process, the policy be adopted with no further actions required.

RECOMMENDATIONS

1. That Council adopts the amended Child Protection Policy, as attached to this report.

10.6 Policy (Review) - Child Protection

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. Child Protection Policy (Review)

10.7 Leasing - Fishheads@Shellys

10.7 Leasing - Fishheads@Shellys

Delivery Program Commercial Services

Objective To seek Council's concurrence to extend the current lease term for Fishheads @ Shellys

Background

Land tenure issues including leasing and land acquisition relating to Shelly's on the Beach Café (now known as "Fishheads@Shellys") have been considered and dealt with at various Commercial Services Committee and Council meetings in recent years. A summary of recent resolutions and tasks completed are as follows:

- 26 February 2013 - Commercial Services Committee resolved to extend the lease term for Fishheads@Shellys from twelve to twenty years (inclusive of lease options) with the final expiry date being 30 June 2033.
- 26 September 2013 – Council resolved to a confidential period of rental relief to Fishheads@Shellys in recognition of the time needed to finalise the acquisition of Crown land and reconstruction of the building on the site. To date rental relief has not been granted to Fishheads as the General Manager has not been advised as to when construction of the new building will commence.
- 26 September 2014 – Acquisition by Council of the portion of Crown land described as Lot 1 DP 1192961 was published in the NSW Government Gazette.
- 1 December 2014 - Council resolved to classify the portion of Crown land acquired (Lot 1 DP 1192961) as "operational land" and that the classification take effect immediately.
- Land acquired (Lot 1 DP 1192961) and Council's existing land holdings (Lot 1 DP 1095427) are consolidated into one land holding described as Lot 3 DP 1205999 and registered on 27 March 2015.

Now that the land acquisition and consolidation of titles have been completed the existing lease requires amending to identify Lot 3 DP 1205999 as the lease property.

In early 2015, the lessee, Fishheads@Shellys, was informed of the need to amend the current lease documentation. They responded with a request that the lease term be extended and that Council reconsider Condition 9 of DA 2012/348. Subsequently a letter of offer to vary the current lease was issued to Fishheads on 13 February 2015. Mr Mamone of Fishheads has now put forward a proposal to vary the lease to enable construction of their new restaurant to commence.

The purpose of this report is to present to Council the proposal to extend the lease term and reasons for doing so.

10.7 Leasing - Fishheads@Shellys

Key Issues

- Extension of current lease term
- Amendment of development consent condition

Information

The current lease over the Shelly's site was assigned from Elizabeth Anne Keemink to Fishheads@Byron Pty Ltd on 1 May 2012. Details of the lease are summarised as follows:

Lease Commencement Date	1 July, 2010
Lease Term	5 + 5 + 5 years
Current Rental	\$35,772 p.a. + GST
Property Outgoings	The Lessee to pay Council rates and land tax (if applicable).

Fishheads has exercised the option to renew the current lease for a further time of five years effective from 1 July 2015.

Fishheads held a licence over a portion of the land acquired from the Crown, however this licence has effectively ceased to exist because the land has been transferred to Council and the title description of land has changed. Fishheads is still paying the rental due under the licence of \$11,228 p.a. + GST for 81.7m². Therefore the total current rental being paid by Fishheads to Council is the sum of \$47,000 p.a. + GST.

The total area of Crown land acquired by Council is 129m² however Fishheads is not paying rental on the additional 47.3m² as they are not using the area and the building has not been built, nor has the lease been amended to take in the additional area.

Once the amended lease agreement is in place Fishheads will be paying an additional \$6,500 p.a. + GST taking the total rental payable to \$53,500 p.a. + GST.

In response to a request from Fishheads, Commercial Services Committee resolved on 26 February 2013 to extend the current lease term from twelve to twenty years (inclusive of lease options) taking the final expiry date to 30 June 2033. To date, amendment of the current lease in accordance with this resolution has been placed on hold pending the outcome of the process to acquire the Crown land.

As the process to acquire the Crown land took longer than anticipated, and Fishheads has not been able to commence construction over the past two years, they have requested that the current remaining lease term be extended from fifteen to twenty years (inclusive of lease options) taking the final expiry date to 30 June 2035.

This request is considered reasonable for the following reasons:

- a) Fishheads has been delayed in commencing construction of their new building until acquisition of the Crown land was completed;

10.7 Leasing - Fishheads@Shellys

- b) Fishheads has continued to pay rental whilst the land acquisition process was in train.
- c) Construction and fitting out of the new building may cost up to \$1m and as such Fishheads require a lease term of at least twenty years to raise construction finance and enable them to repay a loan for same.

Fishheads has also requested that Council reconsider amending the following condition contained in DA 2012/348 for the construction of the new building:

- *Condition 9 – The applicant is required to re-route or construct over the existing stormwater line that traverses the site at no cost to Council. Details are to be provided addressing how the main shall be both protected and remain structurally sound during all phases of the development proposal.*

Council's "Building Over Council Assets Policy" (26 April 2012) relates to underground assets including stormwater pipes and notes that:

"...where a structure has been given permission, previously by Council, to be built over an asset then no further extensions, additions or reconstructions will be allowed. Council recognises that the existing structure presents a risk to both the building and Council's liability. Therefore Council will not be prepared to increase this risk by approving further structures or additions and alterations".

The policy does provide scope for review in certain instances:

"...where this policy unreasonably restricts the ability to develop in an appropriate manner for that area (eg commercial areas) then proposals will be investigated on an individual basis in line with the objectives of this policy. Applicants dissatisfied with a decision of a Council officer made under this section, may appeal, in writing to the General Manager. In response, the General Manager will complete a review, and where practical, be advised by a different officer to the person who completed the initial assessment. The General Manager's decision represents the Council's final consideration of the appeal."

Fishheads' preference is that the stormwater line that runs under the existing building remain in place and be encased in concrete (for strengthening) or replaced (depending on its condition) and encased in concrete. The alternative option of re-routing the stormwater pipe around the proposed building will create disturbance to existing vegetation and be far more expensive to construct.

An inspection of the existing stormwater pipe is required to determine its condition and whether replacement is warranted. However, this may be difficult to fully determine until the pipe is exposed by way of excavation.

Subject to determining a scope of works and gaining quotes for same, it is estimated to cost at least \$10,000 to excavate around the existing stormwater pipe and encase it in concrete to permit building above it. If the pipe requires replacement the cost will be higher.

Fishheads previously addressed the Council Meeting held on 22 November 2012, requesting that Council assume responsibility for the cost of dealing with the stormwater pipe. Council rejected this request.

10.7 Leasing - Fishheads@Shellys

Fishheads respectfully request that Council reconsider its position on this matter for the following reasons:

- a) The cost of dealing with the stormwater pipe is unknown.
- b) An easement for the stormwater pipe was not noted on the title pertaining to the property, and as such they were unaware of its existence until such time as they prepared plans to redevelop the site; and
- c) Encasing, replacing or relocating the stormwater pipe was not required as a condition of consent issued to the previous lessee (Keemink) for DA 2010/336 granted on 31 May, 2010 to undertake alteration and additions to the existing building.

Legal / Resource / Financial Implications

Legal

Lot 3 DP 1205999 is classified as “operational land” under the provisions of the Local Government Act 1993 and as such Council can grant a long term commercial lease over the property.

Financial Implications

The initial cost estimates to comply with Condition 9 of DA 2012/348 is at least \$10,000. Should Council resolve to take responsibility for the cost of complying with these conditions, funds would have to be allocated from the Property Development Reserve.

Consultation

Council staff have consulted with Mr Ralph Mamone and Mr Mark Simms of Fishheads.

Options

1. Council resolves to:
 - a) Vary Fishheads' current lease by changing the description of the leased property from Lot 1 DP 1095427 to Lot 3 DP 1205999 and extending the remaining lease term from fifteen to twenty years (i.e. 5+5+5+5 years) with the final expiry date being 30 June 2035.
 - b) All other lease terms and conditions shall generally remain unchanged including the requirement for annual CPI rental reviews and rental reviews to market every five years. The initial commencement rental to be \$53,500 p.a. + GST.
 - c) Authorise the General Manager to finalise negotiations with Fishheads and approve the use of Council's Common Seal to be attached to the lease and associated documentation.

10.7 Leasing - Fishheads@Shellys

This option is recommended as it will assist in enabling Fishheads to raise finance to undertake construction and fitout of their proposed building. This request is considered reasonable given the time it has taken to acquire the portion of Crown land and amalgamate it into Council's ownership.

A total lease term of twenty years inclusive of lease options will enable Fishheads to construct a landmark building to complement what is a prime coastal site. It is also worth noting that at the end of the twenty year term the building will revert to the ownership of Council.

Should Council resolve not to adopt this option, it is likely further delays will be encountered and could result in an inferior building being constructed on the site thus putting at risk Council's return on their investment. As noted earlier, Fishheads have exercised the option to renew their lease for a further term of five years, therefore putting the lease out to tender is not an option.

2. Council resolves to delete Condition 9 from DA 2012/348 and take responsibility for the cost to re-route or concrete encase the existing stormwater line that traverses Lot 3 DP 1205999 and that the funds to meet this cost be drawn from Council's Property Development Reserve.

The preference is to recommend this option as it is not unreasonable for a developer or lessee of a commercial site to assume that if easements for services are not noted on a certificate of title and or deposited plan, the site should be free of encumbrances to development. Furthermore, a condition such as this was not imposed on the previous development consents issued over the site.

Whilst Council has considered this issue previously, the Lessee has requested Council give the matter reconsideration. Should Council resolve not to adopt this Option, it is likely further delays maybe be encountered in constructing a new building on the site.

As Council has previously resolved not to support this proposal the recommendation has been worded in a manner consistent with that resolution. However, ideally, the preferred recommendation would be worded as follows.

That Council approves the sourcing of a maximum of \$15,000 in funds from the Property Development Reserve to finance the cost of meeting Condition 9 from DA 2012/348 as per option two of this report.

If Council was comfortable amending its existing position this wording could replace the existing point two in the recommendation.

The other options available for this report relate to Council not supporting option one.

RECOMMENDATIONS

1. That Council approves a variation to the Fishheads' lease to provide a maximum term of twenty years as per option one of this report.

10.7 Leasing - Fishheads@Shellys

2. That Council does not approve the sourcing of funds from the Property Development Reserve to finance the cost of meeting Condition 9 from DA 2012/348 as outlined in option two of this report, as Council has previously determined that this is not a reasonable proposal to be funded by Council as lessor for this site.
3. That Council approves the use of Council's Common Seal to be attached to the lease and associated documentation and execute same.

Attachment(s)

Nil

10.8 Delivery Program and Operational Plan Review - 31 March 2015

10.8 Delivery Program and Operational Plan Review - 31 March 2015

Delivery Program Governance and Finance

Objective To provide the quarterly review of Council's Delivery Program and Operational Plan.

Background

Under the Integrated Planning and Reporting requirements Section 404 (5) of the Local Government Act states as follows:

Delivery Program

"The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months".

Even though Council is only required to receive six monthly progress reports the preferred practice has been to receive more timely quarterly reports. This report represents the third review of the 2014/15 - 2017/18 Delivery Program and the 2014/15 Operational Plan, with the information contained in the report based on work undertaken up to 31 March 2015.

The review information is included as a separate attachment to this report and the attachment provides an overview of all the programs included in the Delivery Program and Operational Plan, with comments provided by the relevant group and section manager.

For reference purposes copies of the current Delivery Program and Operational Plan are available on Council's web site and also accessible by Councillors on their ipads.

Key Issues

- Compare actual results against the adopted goals and priorities

Information

The Delivery Program and Operational Plan are the two key corporate documents that establish Council's goals and priorities for the term of the Council and the current financial year. The attachment to this report provides a comprehensive overview of the actions being progressed, with the information also being linked to Council's Community Strategic Plan (CSP) Objectives.

The attachment has two main sections being:

- Program Actions - This section provides a comment on the status of all the major actions in the Operational Plan
- Service Delivery Targets - This section provides details on the key indicators within the Operational Plan.

10.8 Delivery Program and Operational Plan Review - 31 March 2015

In respect to the Operational Plan there are a total of 100 major actions listed in the Plan and the following two tables provide an overview of the status of those actions on a number and percentage basis.

Program Actions Overview - By Number of Tasks

Group / Status	GM	DEH	Civil	SCF	Total
Green	29	7	28	25	89
Amber	1	1	3	4	9
Red	1	0	1	0	2
Total	31	8	32	29	100

Program Actions Overview - By Percentage

Group / Status	GM	DEH	Civil	SCF	Total
Green	94	88	88	86	89
Amber	3	13	9	14	9
Red	3	0	3	0	2
Total	100	100	100	100	100

Many of the actions are progressing, with items not tracking as planned, or other items of interest, including:

- Development and implementation of Aboriginal Reconciliation Program (page four) – Limited resources have been allocated to this project by the Strategic and Community Facilities Group, with the aim being to provide a base RAP this financial year.
- Implement Adopted Sports Fields Management Plan (page six) – As previously reported the new Manager for this section is questioning the value of this project against other priorities and this work will not be completed this financial year.
- Participate in Roads and Maritime Services Location Marker Program for Ballina (page eight) – This project is being co-ordinated by RMS and delays continue to occur with the commencement of the works.
- Implement online Section 149 certificates (page nine) – A lot of work has been undertaken to finalise this project, however the actual commencement is delayed due to operational issues with the Authority software which are still to be resolved.
- Progress availability of land at the Russellton Industrial Estate (page 11) – As reported to Council there are a number of issues in trying to have land released at this Estate. Negotiations are continuing with the adjoining land owners in an attempt to obtain agreement on a financially viable solution.
- Complete review of Lake Ainsworth Management Plan and implement actions arising (page 14) – Council will not be in a position to complete a review of this Management Plan this year as the focus is currently on the south eastern precinct works and the review of the Shaws Bay Management Plan has been the other primary focus. The review of the Lake Ainsworth Management has been included in the 2015/16 Delivery Program once the agreed south eastern works are completed.

10.8 Delivery Program and Operational Plan Review - 31 March 2015

In respect to the Service Delivery Targets there are a total of 93 targets identified and the following two tables provide an overview of how Council is performing against those targets, again on a number and percentage basis.

Service Delivery Targets Overview - By Number of Activities

Group / Status	GM	DEH	Civil	SCF	Total
Green	16	17	21	17	71
Amber	5	2	9	3	19
Red	0	1	1	1	3
Total Tasks	21	20	31	21	93

Service Delivery Targets Overview - By Percentage

Group / Status	GM	DEH	Civil	SCF	Total
Green	76	85	68	81	76
Amber	24	10	29	14	20
Red	0	5	3	5	3
Percentage Total	100	100	100	100	100

In respect to these services the majority meet the agreed target with items of note being:

- Asset Management – Percentage of DA referrals completed within 21 days – 100% (Page 25 - Target > 90%). Improved reporting and processes has seen a significant improvement in this indicator for this quarter.
- Commercial Services (Airport) – Increase in Operating Revenue and Operating Surplus Percentage (Page 26) – Revenue is trending below budget and with expenses such as rates and insurance incurred at the start of the year, the net operating result is currently trending below the preferred ratio.
- Water and Wastewater – Various (pages 34 and 35) – There are a number of variations for this program however generally they relate to targets being set at unrealistic levels (i.e. zero non-compliances) or programs that are being advanced, although not at the rate originally hoped for.

In reviewing these targets it is important to recognise that some of the benchmarks are preferred outcomes and at times the targets may not be able to be achieved due to circumstances beyond the control of Council.

Sustainability Considerations

- **Environment**
There is a range of environmental, social and economic outcomes identified in the Delivery Program and Operational Plan.
- **Social**
As above.
- **Economic**
As above.

10.8 Delivery Program and Operational Plan Review - 31 March 2015

Legal / Resource / Financial Implications

The Delivery Program and Operational Plan identify the allocation of Council's resources and finances.

Consultation

The purpose of this report is to provide the community with information on how Council is performing or performed in respect to the Delivery Program and Operational Plan.

Options

The report is largely for information purposes, although Council is able to amend the Delivery Program targets and projects as required. Ideally any changes should be minimised as the original document was subject to a formal consultation process.

RECOMMENDATION

That Council notes the contents of the 31 March 2015 review of the 2014/15 Delivery Program and Operational Plan.

Attachment(s)

1. Status Report as at 31 March 2015 (under separate cover)

10.9 Financial Review - 31 March 2015

10.9 Financial Review - 31 March 2015

Delivery Program Governance and Finance

Objective To provide a review of the 2014/15 financial year budget based on the known results to 31 March 2015

Background

In accordance with the Local Government Act the responsible accounting officer of a council must, not later than two months after the end of each quarter, prepare and submit to the council a budget review statement that shows a revised estimate of the income and expenditure for that year. The report that follows provides this review for the third quarter of 2014/15.

Key Issues

- Variations to the budget and financial performance of Council

Information

The purpose of this report is to provide information on known budget variances as at 31 March 2015. The format of the report complies with the Quarterly Budget Review Statement Guidelines set down by the Office of Local Government (OLG).

To comply with these guidelines an Operating Statement, Capital Budget, Cash and Investment Statement, Key Performance Indicators, Contractors, Consultants, Legal Information and certification by the Responsible Accounting Officer are required. Commentary on the variations recommended is then provided after the tables. A brief overview of the information provided in the report is as follows:

Section One - Operating Income and Expense - These tables provide the operating revenues and expenses for the Funds (General, Water and Wastewater).

Section Two - Capital Budget - These tables outline the capital expenditure budgets.

Section Three - Cash and Investment Statement - These tables provide details on the projected movements in reserve balances.

Section Four - Key Performance Indicators - The ratios provide an indication of the financial health of the organisation.

Section Five - Contractors/Consultants/Legal Expenses - This information provides details of specific expenses incurred and contracts entered as required by the OLG.

Certification - This is a Statement by the Responsible Accounting Officer as to whether the current year's estimated financial performance is or is not satisfactory.

10.9 Financial Review - 31 March 2015

General Fund

This next section of the report deals with Council's General Fund operations. Tables for income and expense follow, including recommended variations to budget. Following the tables are comments in respect to proposed budget variations that are considered to be material.

General Fund – Operating Revenues and Expenses

Operating Income	Original Budget 000's	September Budget 000's	December Budget 000's	Approved Changes 000's	Revised Budget 000's	Changes for Approval 000's	March Budget 000's	Actual to March 000's
Strategic and Community Facilities Group								
Strategic Planning	221	312	323		323	47	370	126
Community Services and Halls	371	371	381		381	(2)	379	318
Cultural and Community Services	109	114	115		115	(8)	107	79
Library Services	116	116	112		112	0	112	131
Swimming Pools	336	336	342		342	10	352	335
Tourism and Communications	45	45	83		83	58	141	128
Sub Total	1,198	1,294	1,356	0	1,356	105	1,461	1,117
Development and Environmental Health Group								
Development Services	359	359	324		324	0	324	243
Building Services	800	900	990		990	100	1,090	938
Environment and Public Health	235	235	235		235	3	238	231
Admin and Public Order	156	226	226		226	22	248	229
Sub Total	1,550	1,720	1,775	0	1,775	125	1,900	1,641
Civil Services Group								
Engineering Management	198	208	325		325	7	332	297
Procurement and Building Mgmt	0	0	0		0	0	0	0
Stormwater and Env Prot	282	282	293		293	0	293	293
Roads and Bridges	68	146	146		146	30	176	30
Ancillary Transport Services	713	713	755		755	50	805	525
Roads and Maritime Services	861	869	867		867	0	867	652
Open Space and Reserves	719	758	831		831	80	911	693
Fleet Mgmt and Workshop	4,132	4,132	264		264	(5)	259	184
Rural Fire Service	214	214	214		214	0	214	160
Quarries and Sandpit	360	360	280		280	0	280	200
Landfill and Resource Management	6,959	7,084	4,125		4,125	(75)	4,050	3,454
Domestic Waste Management	6,365	6,408	5,853		5,853	0	5,853	5,815
Sub Total	20,871	21,174	13,953	0	13,953	87	14,040	12,303
General Manager's Group								
Governance	0	0	0		0	0	0	0
Administrative Services	28	28	28		28	1	29	23
Financial Services	158	158	208		208	0	208	118
Financial Services-General Purpose Reve	22,163	22,341	22,321		22,321	0	22,321	21,488
Information Services	11	11	12		12	(3)	9	5
Human Resources and Risk Mgmt	122	122	270		270	29	299	289
Property Management	3,011	3,011	3,051	(64)	2,987	17	3,004	2,010
Ballina Byron Airport	4,981	4,911	4,862		4,862	(31)	4,831	3,426
Sub Total	30,474	30,582	30,752	(64)	30,688	13	30,701	27,359
Total Operating Income	54,093	54,770	47,836	(64)	47,772	330	48,102	42,420

10.9 Financial Review - 31 March 2015

General Fund – Operating Income and Expenses (cont'd)

Operating Expenses (excluding depreciation)	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Strategic and Community Facilities Group								
Strategic Planning	1,124	1,385	1,385		1,385	31	1,416	847
Community Services and Halls	759	759	769		769	(7)	762	556
Cultural and Community Services	778	793	823	17	840	10	850	655
Library Services	1,419	1,499	1,494		1,494	1	1,495	1,370
Swimming Pools	792	792	798		798	10	808	661
Tourism and Communications	776	798	835		835	59	894	667
Sub Total	5,648	6,026	6,104	17	6,121	104	6,225	4,756
Development and Environmental Health Group								
Development Services	1,213	1,213	1,193		1,193	(20)	1,173	845
Building Services	765	765	750		750	(11)	739	543
Environment and Public Health	779	768	718		718	(30)	688	448
Admin and Public Order	1,189	1,194	1,154		1,154	(13)	1,141	829
Sub Total	3,946	3,940	3,815	0	3,815	(74)	3,741	2,665
Civil Services Group								
Engineering Management	2,411	2,411	2,410		2,410	15	2,425	1,777
Procurement and Building Mgmt	1,842	1,855	1,873		1,873	(11)	1,862	1,528
Stormwater and Env Prot	762	1,087	1,095		1,095	148	1,243	756
Roads and Bridges	4,450	4,410	3,835		3,835	(319)	3,516	3,622
Ancillary Transport Services	1,691	1,793	1,834		1,834	60	1,894	1,421
Roads and Maritime Services	861	932	842		842	(25)	817	575
Open Space and Reserves	3,289	3,702	3,774		3,774	0	3,774	2,474
Fleet Mgmt and Workshop	3,020	3,020	(847)		(847)	0	(847)	(774)
Rural Fire Service	387	431	431		431	(80)	351	254
Quarries and Sandpit	165	530	530		530	(1)	529	172
Landfill and Resource Management	5,393	5,393	2,183		2,183	(175)	2,008	962
Domestic Waste Management	6,236	6,236	5,621		5,621	41	5,662	4,271
Sub Total	30,507	31,800	23,581	0	23,581	(347)	23,234	17,038
General Manager's Group								
Governance	1,039	1,041	1,041		1,041	0	1,041	760
Administrative Services	560	569	569		569	(2)	567	399
Financial Services	(3,777)	(3,777)	(3,749)		(3,749)	5	(3,744)	(3,214)
Financial Services-General Purpose Rev	0	0	0		0	0	0	0
Information Services	1,559	1,569	1,599		1,599	35	1,634	1,475
Human Resources and Risk Mgmt	962	1,423	1,768		1,768	147	1,915	1,434
Property Management	3,747	3,747	3,912		3,912	9	3,921	2,137
Ballina Byron Airport	3,494	3,494	3,517		3,517	90	3,607	2,878
Sub Total	7,584	8,066	8,657	0	8,657	284	8,941	5,869
Total Operating Expenses	47,685	49,832	42,157	17	42,174	(33)	42,141	30,328
Net Operating Result Before Depreciation								
	6,408	4,938	5,679		5,598	363	5,961	12,092
Unwinding interest free loans	399	399	399		399	0	399	299
Depreciation Expense	15,139	15,139	14,668		14,668	(1,398)	13,270	9,953
Net Operating Result Continuing Operations	(9,130)	(10,600)	(9,388)		(9,469)	1,761	(7,708)	1,840

General Fund Working Capital Forecast

Item	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Working Capital	(130)	(130)	(156)		(156)	49	(107)	

Comments - General Fund

The **forecast operating surplus** (before depreciation) has improved from \$5.7 million to \$6 million. Inclusive of depreciation, a loss of \$7.7 million is now forecast, which is an improvement from \$9.4 million which was the forecast at December.

The improvement to the operating position (excluding depreciation) is due to a number of factors including the shifting of roads expenditure from operating to capital, a reduction to forecast operating expenses in Landfill and Resource Management and the continuation of Building Services income to exceed forecasts.

Further refinement of the depreciation expense has resulted in a decrease to the forecast by \$1.4 million. The adjustment relates to road assets and it is based on revised calculations done as part of a revaluation of the roads/bridges/footpaths and bulk earthworks infrastructure asset classes.

Other major changes identified in this report include an increase to forecast interest income from funds invested, despite the falling rate of interest. This is because firstly, in many instances, investment placements were taken out for periods in excess of six months. Hence the portfolio has thus far, essentially been protected from the last few reductions to interest rates.

Secondly the assumed decrease to the total balance of funds invested has not occurred. This is because capital works have not been completed as budgeted and to a lesser extent because funds from sources such as section 94/64 contributions, grants and property sales have exceeded expectations.

Office based staff salary budgets have been reduced in various sections as they are trending below forecast. This is because staff have taken leave in excess of standard leave entitlements (e.g.; long service leave) or there has been a reasonable amount of time elapse in the recruitment of replacement staff. In each instance where the salary budget has been reduced the staff leave budget (located in Human Resources) has been increased by an equivalent amount as actual leave expense is trending high in comparison to budget.

The estimated **unrestricted working capital movement** has improved by \$49,000 to negative \$107,000. There have been numerous amendments and where possible negative adjustments have been offset by positives.

Details of the larger budget variations are detailed in this report. The adjustments shown in the tables are inclusive of all amendments and the comments do not account for minor budget changes.

General Fund - Operating Revenues

Strategic and Community Facilities Group

Strategic Planning

Rezoning Fees: income to \$37,000 has been received for four different rezoning applications. Expenditure budgets have been raised to the same value to fund the rezoning work.

Community Project Grant: funds to \$6,000 have been received and applied. A top up of another \$4,000 is now anticipated so both income and expense budgets have been increased.

Section 94 Contribution Interest Income: forecast income has been increased by \$6,000 based on latest forecasts.

Community Services and Halls

Community Centres: various adjustments (positive and negative) have been made to forecast income across the centres that balance each other.

In summary forecast income for LHCC is trending approximately \$18,000 under forecast whilst forecast income for the Ballina Surf Club and Kentwell Community Centre has been increased as they are trending to exceed the existing budget.

Cultural and Community Services

Gallery Consignment Sales; income is down in comparison to previous years and the current budget. The revised forecast is \$22,000 which is a decrease of \$10,000.

Swimming Pools

Operating Income: both pools will exceed forecast income and Ballina has been revised to \$198,000 (increase of \$6,000) and Alstonville \$154,000 (increase of \$4,000).

Tourism

Visitor Information Centre: income from 'co-op advertising' is well in excess of forecast due to contributions towards the next issue of the visitor guide. The budget has been increased by \$58,000 and there has been an equivalent increase to the promotional expenses budget.

Development and Environmental Health Group

Building Services

Building Fees: forecast income has been increased by \$100,000. By way of comparison actual income from this section in 2012/13 was \$598,000 and the revised forecast for 2014/15 is \$1,090,000.

The revenue generated from this source is a major reason why the budget has coped particularly well this year.

Regulatory Control Services

Parking Fines: estimated income from parking fines has been increased by \$20,000 to \$164,000. The revised forecast is more than twice the actual revenue received last financial year.

Civil Services Group

Roads and Bridges

Interest Income: estimated income attributable to the Ballina and Alstonville By-Pass reserves has been increased by \$30,000.

Ancillary Transport Services

Private Works: revenue is trending in excess of forecast and has been increased by \$50,000. This is always a difficult budget to predict and whilst there have been no major jobs carried out a number of relatively small jobs together with continued wastewater works at Cabbage Tree Island have combined to exceed forecast.

Open Spaces and Reserves

Interest Income: it was anticipated that the Wollongbar Sports Fields project would be progressed to a greater extent than has occurred. The grant received for these works has not been expended so it is due to receive interest to approximately \$80,000.

Landfill and Resource Management

Operating Income: forecast income has been reduced by \$75,000. The main adjustment is a reduction to forecast income from self-haul users of \$70,000 based on trend. This takes the revised forecast to \$1,360,000. Also income from recyclable metal is not meeting expectations and the budget has been reduced by \$20,000.

General Manager's Group

Financial Services

Fees and Charges: interest income from unpaid rates has been trending down over the course of the year as recovery efforts continue. The forecast has been reduced by \$10,000.

Financial Services General Purpose Revenue

Interest on Investments: forecast income has been increased by \$10,000.

Human Resources and Risk Management

Long Service Leave Contribution: Council has received payments to \$29,000 as new employees take up positions.

The payments are made by the Council that formerly employed the person. The funds will be transferred to reserve.

Property Management

Interest on Investments: interest attributable to the property reserves has been increased by \$17,000.

Airport

10.9 Financial Review - 31 March 2015

Operating Income: forecast income has been reduced by \$31,000. The main changes are;

- reduction to passenger income of \$43,000 taking the revised forecast to \$2.2 million which is still over \$100,000 more than last year
- reduction to car parking fees by \$50,000. The original forecast assumed that the car park extension would be completed much earlier in the year
- lease franchise income increased by \$25,000
- shuttle bus fees increased by \$9,000
- lessee reimbursement increased by \$20,000

The 'Other Matters' section of this report includes discussion on the Airport.

General Fund - Operating Expenses

Strategic and Community Facilities

Strategic Services

Rezoning/Grant Projects: see comments in the income section of this report regarding additional income to \$41,000.

Employees Costs: actual expenses are trending below budget and the forecast has been reduced by \$10,000.

Cultural and Community Services

Gallery Wages: the budget has been increased by \$14,000 to provide support to Gallery operations. The expense is funded by reductions to budgets in community service programs and Lennox Head Cultural and Community Centre.

Swimming Pools

Ballina Pool Operating Expenses: the budget has been increased by \$10,000 which counters the increase to forecast income. Expenditure relating to rates and charges is well in excess of budget and the matter is being investigated.

Ballina Pool has experienced exponential growth in water consumption since approximately 2012 and this translates to massive increases in both water and wastewater consumption charges. Actual expense to the end of the third quarter is \$106,000 which compares to a total bill in 2011/12 of \$35,000.

The assumption is that most of the excess water is leaking from the main pool which means that this water is not being returned to the wastewater system.

Hence there should be some adjustment to the account in respect to the wastewater usage charge, which could be substantial.

Until this issue is resolved the amount of budget required is difficult to predict however it is likely that the increase of \$10,000 will be sufficient.

Tourism and Communications

Visitor Information Centre: see comments in the income section of this report.

Development and Environmental Health Services

Development Services/ Building Services/ Environment and Public Health Services/ Regulatory Control services

Employee Costs: actual expense is trending below forecast and budgets have been reduced by a total of \$74,000. The reduced expense has been applied to offset increases to leave budgets.

Civil Services

Engineering Management

Operating Expenses: changes to budgets in this section include an increase to forecast expense; administration \$13,000 (conferences/telephone), survey \$6,000 (legal costs/external contractor), emergency services \$21,000 (contribution to State Government/decommission septic tank at SES building). Budgets for staff salaries have been decreased by \$25,000.

Procurement and Building Management

Building Maintenance: budgets for sports fields buildings have been decreased by \$11,000 to offset an increase to the expenditure budget for the Emergency Services building.

Stormwater

Contribution to Rous County Council: a budget to \$35,000 for coastal zone management works has been transferred to reserve. The funds will be applied to works in the 2015/16 budget.

Beach and Foreshore Management: the available budget of \$85,000 has been consumed and the budget has been increased by \$20,000, on the understanding that expenditure for the remainder of the year will be minimal.

Canal Dredging: the budget has been increased by \$163,000 sourced from the canal dredging reserve \$113,000 and a capital budget of \$50,000 set aside for this same purpose (i.e. shift from capital to operating).

Roads and Bridges

Budget Relocation: budgets to \$465,000 for urban and rural roads major maintenance have been relocated from operating to capital expenditure as it is considered that this is the more appropriate accounting treatment for this nature of expenditure.

Maintenance and Operations; budgets for mowing and vegetation management are exceeding forecast and a further \$123,000 has been added to the budget. Similarly street sweeping and town centre cleaning are tending high and the budget has been increased by \$23,000. Funds have been sourced from capital projects to offset these increases.

10.9 Financial Review - 31 March 2015

Ancillary Transport

Private Works: forecast expense has been increased by \$60,000 based on current trends.

The budget predicted a net surplus (income less expense) of \$20,000 and this has been revised down by \$10,000 following the decision to write off approximately \$10,000 of an account associated with damage to council infrastructure.

Roads and Maritime services

Budget Relocation: budget to \$25,000 has been relocated from operating to capital expense on Main Road 545 as the expenditure is of a capital nature.

Rural Fire Service (RFS)

Contribution to Bush Fire Fighting Fund: the estimated contribution has been reduced by \$80,000 based on definitive information provided by the RFS.

The previous estimate was based on preliminary information that was aligned with the contribution paid in 2013/14, which was considerably more than the current year.

It is difficult to obtain information about this expense in a timely manner.

The RFS process is such that we will not be advised of the actual 2015/16 contribution until the close of the 2015 calendar year.

Domestic Waste Management (DWM)

Operating Expense: budgets have been increased by \$41,000. Within this movement there have been both positive and negative adjustments with the largest adjustments being an increase to the budget for gate fees \$95,000 (fee paid by DWM to access the waste centre) and a reduction to the kerbside collection costs of \$55,000.

Landfill and Resource Management (LRM)

Operating Expenses: there is a net reduction to estimated expenses of \$175,000 resulting from numerous changes.

The larger adjustments were:

- reductions to expense; transfer/preloading of waste \$70,000, transport of mixed waste \$50,000 and Inert exportation \$40,000
- increase to internal income of \$75,000 for councils use of the waste facility. This primarily relates to the Domestic Waste Management and the revised total of internal income is now \$3.25 million
- expenditure increases; road maintenance \$20,000 and leachate pre-treatment system \$40,000.

The revised outlook for LRM, following the proposed adjustments to forecast income and expenditure, is an operating surplus of \$2,043,000 excluding depreciation.

General Manager's Group

Information Services

Operating Expense: various budgets are over spent and a further \$35,000 has been added to the total. The largest increases relate to broadband connections and software licences/support.

Human Resources

There has been a net increase to the budget of \$147,000 which incorporates both positive and negative adjustments as discussed below.

Staff Recruitment: the budget has been increased by \$20,000 to \$115,000. The primary expense is advertising for candidates.

Superannuation: the estimate has proven to be reasonably accurate however fine tuning is considered necessary and the budget has been increased by \$30,000 to \$2,108,000.

Employee Entitlements: The budget has been increased by \$140,000 as staff look to reduce leave balances in accord with award provisions. This increase has been offset by reductions to salary budgets.

Oncost Income: forecast income (negative expense) relating to staff salaries is not looking as though it will achieve forecast and there has been a reduction of \$60,000 to the budget.

The shortfall occurs as staff are on leave or there is delays in replacements and anticipated oncosts are not generated.

Workers Compensation: the budget for the annual premium was increased by \$150,000 at the December Review based on advice from the insurer. The increase was associated with a case in which Council is involved.

The latest advice is that the outlook this financial year is not as expensive as first thought and the budget has been reduced by \$100,000.

Ballina Byron Gateway Airport

Operating Expense: various adjustments have been made to forecast expenses with a net increase of \$90,000. Most budgets have been adjusted as every effort has been made to limit the forecast net increase to expenses.

The main changes are increases to forecast employee costs (outdoor staff) \$25,000, building maintenance \$20,000 consultants \$15,000, rates \$17,000, and promotion \$10,000.

The 'Other Matters' section of this report includes discussion on the Airport.

Water Operations

This next section of the report deals with Council's water operations. The outlook has improved by \$147,000 which is largely due to increases to estimated consumption income.

Water - Statement of Operating Income and Expenses (\$'000)

Item	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Operating Income	10,259	10,259	10,570		10,570	167	10,737	6,804
Operating Exps (excl. dep)	9,469	9,484	9,582		9,582	20	9,602	7,590
Net Operating Result Before Depreciation								
Depreciation	790	775	988	0	988	147	1,135	(786)
Depreciation Expense	1,900	1,900	1,700		1,700	0	1,700	1,275
Net Operating Result from Continuing Operations	(1,110)	(1,125)	(712)		(712)	147	(565)	(2,061)

The **forecast operating position** (exclusive of depreciation) is a surplus of \$1,135,000 and the revised operating result is estimated to be a loss (inclusive of depreciation) of \$565,000.

Water consumption income received after three quarters of the year represents approximately 77% of budget. Based on this trend estimated consumption has been increased by \$75,000 which is slightly more than 50% of the trend.

Estimated income for water connection fees and sundry services has been increased by \$35,000. The high volume of building activity has contributed to more than expected revenue in these areas. Also forecast income from funds invested has been increased by \$47,000.

Estimated operating expense was adjusted up by \$20,000. The larger amendments include a reduction to estimated plant costs of \$54,000 and increases to meter repairs \$65,000.

Wastewater Operations

This next section of the report deals with Council's Wastewater operations.

Wastewater- Statement of Operating Income and Expenses (\$'000)

Item	Original Budget	September Budget	December Budget	Approved Changes	Revised Budget	Changes for Approval	March Budget	Actual to March
Operating Income	14,907	15,074	15,207		15,207	147	15,354	13,652
Operating Exps (excl. dep)	14,054	14,221	14,197		14,197	(95)	14,102	10,086
Net Operating Result Before Depreciation								
Depreciation	853	853	1,010		1,010	242	1,252	3,566
Unwinding interest free loans	349	349	349		349	0	349	262
Depreciation Expense	2,900	2,900	2,600		2,600	0	2,600	1,950
Net Operating Result from Continuing Operations	(2,396)	(2,396)	(1,939)		(1,939)	242	(1,697)	1,354

The **forecast operating position** (exclusive of depreciation) has improved by \$242,000 to a surplus of \$1,252,000. The revised operating result is estimated to be a loss (inclusive of depreciation) of \$1.7 million.

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Forecast revenues have been increased by \$147,000. The larger amendments relate to access charges \$22,000, interest on investments \$77,000, non-residential usage charge \$14,000, sundry \$18,000 and house drainage plans \$10,000.

Forecast operating expenditure has decreased by \$95,000. The main adjustment is a decrease of \$60,000 for energy costs. This will be associated with the solar power that has been installed.

Capital Expenditure

This next section of the report looks at capital expenditure and examines proposed changes to the program.

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General Fund - Capital Budget - Source and Application of Funds (\$'000)

General Fund Capital works	Original Budget 2014/15 \$'000	September Budget \$'000	December Budget \$'000	Approved Changes \$'000	Revised Budget \$'000	March Changes for approval \$'000	March Budget \$'000	Actual to March \$'000
General Fund Capital Funding								
General revenue	3,309	3,549	4,410		4,410	(11)	4,399	
Reserves	13,733	21,345	18,260	214	18,474	36	18,510	
Loans	725	725	725		725	0	725	
Section 94 contributions	670	948	1,226		1,226	0	1,226	
Grants and contributions	4,218	5,057	3,445		3,445	591	4,036	
Total Funding	22,655	31,624	28,066	214	28,280	616	28,896	0
General Fund Capital Expense								
<i>Strategic and Community Facilities Group</i>								
Cultural and Community Services	423	631	386		386	220	606	163
Swimming Pools	200	238	238		238	0	238	15
Northern Rivers Community Gallery	10	25	25		25	0	25	8
<i>General Manager's Group</i>								
Administration & Information Services	25	25	25		25	0	25	9
Property Management	2,150	3,565	3,691	65	3,756	0	3,756	2,718
Camping Ground	10	10	10		10	0	10	
Ballina Airport	1,125	995	995		995	117	1,112	1,112
<i>Development & Environ Health Group</i>								
	0	25	25		25	0	25	11
<i>Civil Services Group</i>								
Procurement & Building Management	4,175	4,782	1,909		1,909	0	1,909	501
Stormwater	231	548	548		548	(50)	498	182
Roads and Bridges	4,659	8,004	8,234	80	8,314	18	8,332	4,327
Ancillary Transport Services	2,208	4,188	3,228		3,228	47	3,275	1,831
Water Transport and Wharves	376	453	444		444	18	462	362
RMS			90		90	25	115	41
Open Space -Parks and Reserves	248	341	411		411	0	411	170
Open Space - Sporting Fields	5,122	5,290	5,290	69	5,359	0	5,359	222
Cemeteries	0	0	0		0	0	0	0
Public Amenities	80	80	98		98	0	98	91
Fleet and Plant	755	1,566	1,566		1,566	221	1,787	738
Rural Fire Service	0	0	0		0	0	0	0
Waste Management	858	858	853		853	0	853	105
Total Capital expense	22,655	31,624	28,066	214	28,280	616	28,896	12,606
	0							
Water Supply Capital Works								
Water Capital Funding								
Reserves	902	1,698	1,215	(93)	1,122	0	1,122	
Section 64 contributions	3,477	3,251	2,199	(251)	1,948	0	1,948	
Grants & Contributions	0	0	152	184	336	0	336	
Total Funding	4,379	4,949	3,566	(160)	3,406	0	3,406	0
Water Capital Expense								
Water Storage	500	455	455	(205)	250	0	250	53
Water Pump & Bore Stations	731	793	353	(33)	320	0	320	164
Pressure Management	650	1,330	1,330	200	1,530	0	1,530	1,156
Trunk mains	1,595	673	213	775	988	0	988	10
Other	902	1,698	1,215	(897)	318	0	318	513
Total Capital expense	4,378	4,949	3,566	(160)	3,406	0	3,406	1,896
Wastewater Services Capital works								
Wastewater Capital Funding								
Reserves	5,885	8,780	6,680	(2,192)	4,488	0	4,488	
Section 64 contributions	1,150	1,423	1,123	(1,123)	0	0	0	
Loans		0	0		0	0	0	
Total Funding	7,035	10,203	7,803	(3,315)	4,488	0	4,488	0
Wastewater Capital Expense								
Consultancies	0	41	41	29	70	0	70	72
Treatment Plants	427	2,237	1,305	791	2,096	60	2,096	1,758
Recycled Irrigation	418	832	832	(139)	693	0	693	232
Pump Stations	3,116	3,196	3,528	(3,034)	494	0	494	313
Trunk Mains	557	1,175	1,175	(442)	733	0	733	558
Wastewater Mains Renewals	422	453	453	(303)	150	(80)	150	11
Plant	2,095	2,269	469	(268)	201	0	201	90
Other	0	0		51	51	20	51	93
Total Capital expense	7,035	10,203	7,803	(3,315)	4,488	0	4,488	3,127

General Fund

The capital works program increased by approximately \$800,000 with the larger changes relating to the Airport and Plant Fund.

Strategic and Community Services

Cultural and Community Services

The capital budget increased by \$220,000. The main adjustment was a relocation of \$200,000 from operating to capital in respect of the grant to do improvements at the Lennox Head Cultural and Community Centre. Also a grant of \$20,000 was received from the regional Library to assist with the upgrade of the Ballina Library.

General Managers Group

Ballina Airport

Two projects have exceeded budget with the terminal upgrade expending \$17,000 more than the available \$30,000. Some of the additional expense was to prepare plans that have been used to apply for grant funding. The second project is the car park upgrade and shade covers which cost \$878,000 and budget was \$725,000. Variations related to new pay and display machines, additional lighting towers, new road widening on Southern cross Drive (past the new car park), new signage (regulatory and directional), additional consultant costs, and the cost of additional fencing in this location.

Proposed capital expense on the actual airport fencing will not occur and this budget has been reduced by \$51,000. Refer to comments later in this report on the airport.

Civil Services Group

Stormwater

A capital budget of \$50,000 for canal dredging has been relocated to operating expense, also for canal dredging.

Roads and Bridges

There have been numerous adjustments to this program as jobs are completed or substantially progressed and budgets are shifted around the Stormwater/Roads/Ancillary Services/Water Transport programs. There has been a net increase to the roads capital budget of \$18,000

The larger variations include:

- Tamar Street/Cherry Street roundabout was completed well under budget. This project was funded in part from section 94 reserves and \$240,000 has been transferred back to this reserve.
- Net budget totalling \$299,000 has been relocated from operating to capital regarding reseals and heavy patch. An amount of \$465,000 was originally transferred however \$166,000 was returned to fund operating expenses

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that have exceeded forecast (roads vegetation maintenance/street cleaning/foreshore protection).

- Uralba road upgrade has exceeded budget and it has been increased by \$72,000.
- A reduction to the budget for Ballina Bypass of \$18,000 is proposed to fund operating expenditure.
- Ridgeway Drive has been completed and \$100,000 has been applied to other works.

Ancillary Transport Services

Budgets have been increased to meet actual expenditures for Swift Street Bus Interchange \$14,000 (grant funded), speed zone signs \$7,000 (grant funded), and coastal shared paths sections 1 and 2 \$25,000 (funded from reductions to budget in the roads program).

Water Transport and Wharves

Emigrant Creek Pontoon exceeded budget by \$18,000 which has been funded from reductions to the roads program.

Roads and Maritime Services

Budget to \$25,000 has been relocated from operating expense to capital, which more correctly reflects the nature of the expenditure.

Fleet and Plant

The 2014/15 program has been increased by \$221,000 funded from reserve.

Water - Capital Budget - Source and Application of Funds (\$'000)

There were no material capital adjustments done as part of this review. Adjustments done during the quarter were approved via the Finance Committee reporting.

Water Supply Capital Works								
Water Capital Funding								
Reserves	902	1,698	1,215	(93)	1,122	0	1,122	
Section 64 contributions	3,477	3,251	2,199	(251)	1,948	0	1,948	
Grants & Contributions	0	0	152	184	336	0	336	
Total Funding	4,379	4,949	3,566	(160)	3,406	0	3,406	0
Water Capital Expense								
Water Storage	500	455	455	(205)	250	0	250	53
Water Pump & Bore Stations	731	793	353	(33)	320	0	320	164
Pressure Management	650	1,330	1,330	200	1,530	0	1,530	1,156
Trunk mains	1,595	673	213	775	988	0	988	10
Other	902	1,698	1,215	(897)	318	0	318	513
Total Capital expense	4,378	4,949	3,566	(160)	3,406	0	3,406	1,896

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Wastewater - Capital Budget - Source and Application of Funds (\$'000)

There were no material capital adjustments done as part of this review. Adjustments done during the quarter were approved via the Finance Committee reporting.

Wastewater Services Capital works								
Wastewater Capital Funding								
Reserves	5,885	8,780	6,680	(2,192)	4,488	0	4,488	
Section 64 contributions	1,150	1,423	1,123	(1,123)	0	0	0	
Loans		0	0		0	0	0	
Total Funding	7,035	10,203	7,803	(3,315)	4,488	0	4,488	0
Wastewater Capital Expense								
Consultancies	0	41	41	29	70	0	70	72
Treatment Plants	427	2,237	1,305	791	2,096	60	2,096	1,758
Recycled Irrigation	418	832	832	(139)	693	0	693	232
Pump Stations	3,116	3,196	3,528	(3,034)	494	0	494	313
Trunk Mains	557	1,175	1,175	(442)	733	0	733	558
Wastewater Mains Renewals	422	453	453	(303)	150	(80)	150	11
Plant	2,095	2,269	469	(268)	201	0	201	90
Other	0	0		51	51	20	51	93
Total Capital expense	7,035	10,203	7,803	(3,315)	4,488	0	4,488	3,127

Investments

The next table shows details of projected cash and investments.

	Original Budget 2014/15 \$'000	September Budget \$'000	December Budget \$'000	Approved Changes \$'000	Revised Budget \$'000	Changes for approval March \$'000	March Budget \$'000
Unrestricted	3,908	3,908	3,908		3,908	0	3,908
Externally Restricted							
- Section 94	2,486	2,585	3,912	(397)	3,515	290	3,805
- Domestic Waste M'tment	1,052	1,232	1,292		1,292	(41)	1,251
- Unexpended Grants/loans			0		0	350	350
- Other	65	102	72		72	0	72
- Section 64 Water	4,446	5,194	6,257	232	6,489	0	6,489
- Water	2,154	2,220	2,882	16	2,898	147	3,045
- Section 64 Sewer	2,017	2,805	2,692	1,123	3,815	500	4,315
- Sewer	3,912	4,104	7,274	2,183	9,457	242	9,699
Total Externally Restricted	16,132	18,242	24,381	3,157	27,538	1,488	29,026
Internally Restricted							
- Strategic and Community Service	196	281	281		281	(17)	264
- Employee Leave Entitlements	1,713	1,777	1,777		1,777	32	1,809
- Plant Replacement	505	466	466	(221)	245	(5)	240
- Quarries	1,055	1,017	937		937	0	937
- Property Reserves	872	2,005	2,818	(140)	2,678	587	3,265
- Properties Refurbishment	1,325	1,062	1,051		1,051	1	1,052
- Open Spaces and Reserves	239	242	242	(69)	173	105	278
- Landfill Management	1,950	2,388	2,544	(80)	2,464	100	2,564
- Civil Works	2,876	3,219	5,329		5,329	(41)	5,288
- Other	218	251	256		256	21	277
Total Internally Restricted	10,949	12,708	15,701	(510)	15,191	783	15,974
Total Restricted	27,081	30,950	40,082	2,647	42,729	2,271	45,000
Total Cash and Investments	30,989	34,858	43,990	2,647	46,637	2,271	48,908

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The unrestricted cash figure is not inclusive of transactions that would normally be included when calculating working capital; i.e. it is exclusive of movements in items such as debtors and creditors. The available cash figure is taken from note six of the financial statements as at 30 June 2014. Council does not track movements in available cash on a quarterly basis.

Statements

1. Council's investments are all in accordance with the Local Government Act, the regulations and Council's investment policy.
2. As per the investments summary for March 2015, funds invested amounted to \$65,283,000. All restricted monies are included in these investments.
3. Cash has been reconciled to the bank statement as at 31 March 2015 to the amount of \$2,728,178.
4. Actual year to date cash and investments amount to approximately \$68,011,000 as at 31 March 2015. This amount includes cash at bank of \$2,728,178 and funds invested of \$65,283,000, which has been reconciled to bank statements and investment reports.

Bank Reconciliation Summary as at 31 March 2015

Balance as per Bank Statement	2,728,178
Less Unpresented Cheques	587,806
Sub Total	2,140,372
Plus Outstanding not Credited	90,465
Sub Total	2,230,837
Less Amounts Deposited at end of month not in ledger	16,167
Balance as per Ledger	2,214,670

Comment on Cash and Investment Position

The forecast reserves position has increased from \$43.9 million to \$48.9 million. The increase is due to proposed capital works being removed from the budget and transferred to later years as well as increases to section 64 and 94 balances and more land sales than anticipated.

Details of the major changes for approval are summarised below.

Section 94 Reserves

There has been a net increase to the forecast reserve balance of \$290,000 following increases to both forecast interest and capital contributions of \$50,000. There has been a reduction to the contribution required for the Cherry/Tamar street roundabout of \$240,000. This job was completed well under budget.

Domestic Waste Management (DWM)

There is a net decrease to the reserve forecast following adjustments to forecast operating budgets.

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Unexpended Grants

The net change relates to the \$350,000 received for the Marine Rescue Tower.

Water Reserves

Net reserves are predicted to increase by \$147,000, which is due to improvements in the forecast operating result.

Council approved amendments to the Water budget via reports prepared for the finance committee.

Wastewater Reserves

Net reserves are predicted to increase by \$742,000, which is due to improvements in the forecast operating result and an increase to estimated income from section 64 contributions of \$500,000. The increase to section 64 contributions is a combination of a conservative forecast and a busy development year.

Strategic and Community Service

The Gallery reserve was reduced by \$17,000 to pay for improvements to the Gallery.

Employee Leave Entitlements

The transfer to reserve has been increased due to payments from other Councils as employees transfer to Ballina with an existing leave liability.

Property Reserves

The forecast increase to the reserve balance is \$587,000 and the primary movements are:

- increased revenue from sales at Wollongbar \$500,000
- reduced sales at Southon Cross \$150,000
- increased revenue from miscellaneous sales including sales to Ballina high school and Alstonville plaza \$60,000
- increase to funds recouped from section 94 contributions \$397,000
- decrease in funds of \$ 239,000 regarding the airport expanding the internal loan as when it was predicted to make a payment to property reserves.

Open Spaces and Reserves

The increase to reserve relates to a grant funds received for lights at the Ballina netball courts \$25,000 and interest income for Wollongbar sports fields grant \$80,000.

Landfill Management

The reserve is forecast to increase by \$100,000 which is attributable to an increase to the forecast operating surplus.

Civil Works

The reserve decrease relates primarily to interest income for the roads by pass reserves (positive \$30,000), carry forward of the CZMP stormwater budget (positive \$35,000) and transfer from reserve (negative \$113,000) regarding the canal dredging project.

Other

The main adjustment is the transfer to reserve of 2014/15 unexpended salary budget to fund salary costs in Health Services in 2015/16.

Key Performance Indicators

The next section of the report takes selected financial benchmarks and compares the 30 June 2013 and 2014 ratios with the forecast at March to 30 June 2015.

The performance indicators that have been selected have a short term focus, which suits the quarterly review as it also focuses on the short term.

Key Performance Indicators - Description

1. **Unrestricted Current Ratio** - Unrestricted current assets divided by unrestricted current liabilities.

Measured: as a ratio

Purpose: this ratio is used to measure Council's ability to meet short term liabilities with available short term assets.

Indicator type: Financial Position

Benchmark: >1.5:1 (NSW code of accounting practice)

2. **Operating Performance Ratio** – Total continuing operating revenue (excluding capital grants/contributions and fair value adjustments) less operating expense (excluding capital items and profit or loss on sale) as a percentage of continuing operating revenue (less capital items and fair value adjustments).

Measured: as a ratio

Purpose: this percentage measures whether the Council is sustainable in terms of its operating result. Council should not be recording recurring operating deficits or funding operating results from capital revenue.

Indicator type: Financial Performance

Benchmark: = greater than 0: 1 (NSW code of accounting practice)

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3. **Debt Service Cover Ratio** – Operating result (excluding fair value adjustments, capital grants/contributions, depreciation/amortisation, interest expense and profit or loss on sale) as a percentage of loan interest and capital payments

Measured: as a ratio

Purpose: The purpose of this percentage is a measure of whether Council has excessive debt servicing costs relative to the adjusted operating result.

Indicator type: Financial Position

Benchmark: >2:1 (NSW code of accounting practice)

Benchmark Indicators – General Fund

1. Unrestricted Current Ratio – General Fund

Benchmark: >1.5:1

2012/13	2013/14	March
Actual	Actual	Estimate
2.61:1	1.97:1	1.60
Pass	Pass	Pass

Comment

The ratio is predicted to fall in 2014/15 as the current forecast is for reserves to decrease by approximately \$15 million from \$36.5 million to \$21.5 million. Assuming this decrease does occur the ratio is forecast to remain as a pass, although it is becoming quite marginal.

The forecast has improved in comparison to the December quarter because proposed capital works will not be occurring this financial year. This means that forecast current assets have increased and this assists the ratio.

If the works program is not completed as forecast, the ratio will not decline to the extent forecast.

2. Operating Performance Ratio – General Fund

Benchmark: >0

2012/13	2013/14	March
Actual	Actual	Estimate
-0.04:1	-0.19:1	-0.16:1
Fail	Fail	Fail

Comment

The current forecast for the ratio to June 2015 is that it will improve in comparison to the 2013/14 result. Perhaps the biggest influence on this change is the decrease to roads depreciation following their revaluation this financial year.

The ratio is affected by many variables and in comparing the 2012/13 financial year, the result for that year benefitted from a one off payment in respect to the two bypass handovers (approx \$7 million). This means that the 2013/14 result and the 2014/15 forecast are more reflective of the real position of the Fund.

The Long Term Financial Plan forecasts that this ratio will improve significantly in 2015/16 as expenses are shifted from operating to capital (most correctly reflects the nature of the expense), depreciation is refined and some benefits are derived from the proposed special variation.

Nevertheless the outlook is that the benchmark will not be achieved and strategies that may be considered to meet the benchmark include:

- increase the Ordinary Rate beyond the rate pegging limit. Based on comparative data from the OLG, Council has a comparatively low average ordinary rate.
- assess current operations to confirm all services currently provided should continue and if so whether current practices can be improved.
- identify opportunities for new income sources such as entrepreneurial activities, taking a dividend from Water and Wastewater Funds and analysing the schedule of fees and charges for opportunities.
- fine tune asset management calculations to ensure that depreciation expense reflects the real cost of the deteriorating asset.

3. Debt Service Cover Ratio – General Fund

Benchmark: > 2

2012/13	2013/14	March
Actual	Actual	Estimated
2.56	1.82	1.45
Pass	Fail	Fail

Comment

With Council having an operating deficit we are struggling to meet the benchmark with the recent trend being negative.

In 2012/13 Council borrowed approximately \$13 million relating to the airport and other infrastructure improvements primarily through the Local Infrastructure Renewal Scheme (LIRS). This represented an

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approximate 70% increase in General Fund's debt and is the primary reason for the negative trend.

The Long Term financial Plan predicts that the benchmark will be achieved in the next year or so. This coincides with the expiration of a waste loan.

The strategy to meet the benchmark is to limit further borrowings, unless matched by offsetting revenues, and strengthen the operating result by a combination of increasing income and decreasing expense.

Benchmark Indicators - Water

1. Unrestricted current ratio - Water

Benchmark: >1.5:1

2012/13	2013/14	March
Actual	Actual	Estimated
30.67:1	42.34:1	39.42
Pass	Pass	Pass

Comments

The ratio meets the benchmark comfortably as the Fund has reasonable reserves and no debt.

2. Operating Performance Ratio - Water

Benchmark: > 0

2012/13	2013/14	December
Actual	Actual	Estimated
-0.12:1	-0.02:1	-0.06:1
Fail	Fail	Fail

Comments

The forecast is that the Fund will fail the benchmark in 2014/15 however this outcome is very dependent on income from water consumption.

The strategy is to gradually increase revenue via the annual charge at a rate that exceeds the increase to operating expense. A pass is anticipated in 2015/16.

3. Debt Service Cover Ratio - Water

Benchmark: >2

2012/13	2013/14	December
Actual	Actual	Estimated
100	100	100
Pass	Pass	Pass

Comments

The Fund has no external borrowings and none are anticipated this financial year.

Benchmark Indicators - Wastewater

1. Unrestricted current ratio - Wastewater

Benchmark: >1.5:1

2012/13	2013/14	March
Actual	Actual	Estimated
4.00:1	5.44	3.14
Pass	Pass	Pass

Comments

The ratio is forecast to meet the benchmark although it is predicted to fall in comparison to 2013/14. The reason for the decline is due to the use of cash reserves to fund the capital works program and to finance loan repayments.

The forecast has improved from the December review as proposed capital works have been removed from the program for 2014/15. This means an increase to cash on hand and therefore current assets.

2. Operating Performance Ratio - Wastewater

Benchmark: >0

2012/13	2013/14	March
Actual	Actual	Estimated
-0.15:1	-0.18:1	-0.11:1
Fail	Fail	Fail

Comments

The ratio is forecast to fail the benchmark as the Fund struggles to come to terms with debt repayments. Going forward the strategy is to continue to increase annual charges by amounts in excess of CPI and carefully manage expenses. A breakeven result is expected by approximately 2017/18 due to proposed increases in wastewater charges.

The forecast has improved marginally from the December review due to a reduction in forecast expenses.

3. Debt Service Cover Ratio - Wastewater

Benchmark: > 2

2012/13	2013/14	March
Actual	Actual	Estimated
0.94	0.69	0.79
Fail	Fail	Fail

Comments

The forecast is for the ratio to fail the benchmark as the full extent of the loan liability takes effect. The loan was structured such that the capital portion of the loan repayment was delayed for a few years however this period has expired.

This ratio will fail the benchmark for many years although the forecast is that the ratio will gradually improve year on year. Staff are also in the process of investigating a restructure of the Wastewater loan portfolio to see if there are any benefits that may be obtained from the prevailing low interest rates.

Contractors

The table below provides details of contracts entered into in the March quarter. Contracts below \$50,000 are not included.

Contractor Name	Purpose	Amount \$	Start Date	Duration of Contract	Incl in Budget Y/N
Ausrocks p/l	Provision of a quarry development plan	123,500	12/1/15	3 months	y
The Airport Group	Airport consultancy services	110,000	16/2/15	4 months	y
Rocla p/l	Supply of concrete storage tanks	107,500	2/3/15	1 month	y
Newlands Civil Construction	Replacement of smith DR water main	621,000	1/4/15	4 months	y
Synergy resource Management	Construction of Wollongbar sports fields	3,978,000	13/4/15	8 months	y

Legal Expenses

The next table summarises the expense incurred to the end of December on legal fees.

For the purposes of the report legal fees have been included where there is a dispute situation. This includes for example recovery of rates not paid but excludes processing of infringement notices (no dispute at this point) and amounts paid to legal firms that may be related to the creation of a lease or sale of land.

Item	Expenditure YTD	Included in Budget Y/N
Legal Fees	\$126,000	Y

Other Matters

Budget adjustments proposed for the Airport this review are negative. The table below shows the forecast at December and March.

Airport Estimated Income and Expense

Item	December Estimate \$000's	March Estimate \$000's
Operating Income	4,862	4,831
Operating Expense	3,517	3,608

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Operating Result	1,345	1,221
Capital Income	725	725
Capital Expense	1,841	1,958
Cash Result	229	(12)

NB: The table excludes depreciation.

The Airport was forecast to reduce an internal loan (\$592,000 at the start of the year) by \$229,000 and the revised position is to increase the internal loan by \$12,000. Unfortunately this trend of the Airport continually deteriorating by around \$200,000 per annum as compared to budget has occurred a number of times in recent years resulting in a significant internal loan of \$592,000 (which will now be \$614,000).

The 2015/16 budget includes virtually no capital works funded from Council with the forecast assuming that in excess of \$200,000 will be paid off the internal loan. Extra efforts will also need to be made to ensure operating and expenses and capital expenditure are contained to meet the adopted Council budget.

In respect to the current year the budget includes taking up an external loan of \$725,000 to fund the carpark upgrade works. As noted earlier in this report the car park extension has exceeded the budget of \$725,000 by \$151,000.

One option would be to increase the external loan by \$151,000 which would enable the internal loan to be reduced by \$139,000.

On balance it is considered best to minimise external borrowings where possible so it is proposed to keep the external borrowing at \$725,000. This will affect the property reserves as they are the funding source for the internal loan. It was anticipated that property reserves would receive approximately \$200,000 from the Airport at the end of this financial year and this will not occur.

The property reserves are frequently required to accommodate quite large budget fluctuations and this will be another adjustment amongst many.

As one example the section 94 reimbursement to property reserves was increased during the quarter by \$397,000. Admittedly \$350,000 of this amount was committed to the Wollongbar Skate Park however it does illustrate the point that the property reserves adjust priorities to accommodate available funds.

Statement

The following statement is made in accordance with clause 203(2) of the Local Government (General) Regulations 2005.

It is my opinion that the Quarterly Budget Review Statement for Ballina Shire Council for the quarter ended 31/3/2015 indicates that Council's projected financial position at 30 June 2015 will be satisfactory at year end, having regard to the projected estimates of income and expenditure and the original budgeted income and expenditure.

10.9 Financial Review - 31 March 2015

The satisfactory position is based on the short term (twelve month) outlook. Council is forecasting operating losses, inclusive of depreciation and exclusive of capital grants, on both a consolidated and fund basis for some years into the future. From a long term perspective Council needs to work towards an operating surplus.



Signed Peter Morgan, Responsible Accounting Officer

Sustainability Considerations

- **Environment**

This report encompasses the entire Council budget and as such has implications for environmental, social and economic outcomes. Council needs to bear in mind the implications of allocating or not allocating resources to particular works and services.

- **Social**

As above

- **Economic**

As above

Legal / Resource / Financial Implications

This report informs Council of actual financial results to date in comparison to budget. Where legal ramifications are envisaged they are detailed within the information section of this report.

Consultation

This report has been prepared to inform the community of budget variations.

Options

Council may approve the budget amendments proposed, make changes or not approve any changes. It is considered that the proposed changes reflect either Council policy or necessary adjustments that reflect the trending of actual incomes and expenses.

RECOMMENDATIONS

That Council notes the contents of the March 2015 Quarterly Budget Review and approves the changes identified within this report.

Attachment(s)

Nil

11.1 Floodplain Risk Management Plan - Adoption

11. Civil Services Group Reports

11.1 Floodplain Risk Management Plan - Adoption

Delivery Program Engineering Works

Objective To adopt the draft Floodplain Risk Management Plan.

Background

At the last meeting of Council, a report was considered to assess the response to the public exhibition of the draft Ballina Floodplain Risk Management Plan (BFRMP). The decision of the Council in response to this report was to hold a Councillor briefing to examine the issues in the report in further detail. The briefing was held 11 May 2015 and the purpose of this report is to enable Council to again consider its position regarding the draft plan.

The process to prepare the BFRMP has followed NSW Government Guidelines. Concurrent to this process, the Council has also prepared a revision to its Floodplain Management Development Control Plan (FMDCP). A draft of this plan was placed on public exhibition with the BFRMP. This plan was also reviewed at the recent briefing meeting and is reported separately in this meeting agenda.

It is also noted that this meeting agenda includes a Notice of Motion item from Cr Meehan dealing with flood impact issues associated with flooding of Tamarind Drive.

Key Issues

- Flood Mitigation Planning

Information

The background information regarding the preparation of the draft BFRMP and the response to the public exhibition of the draft was in the previous report to Council and is not repeated here.

The key issue within the discussions regarding the BFRMP relate to the question of the preferred options for the planning controls that offer protection for property. In particular, the constraints of the historical minimum fill policy provisions have been highlighted and this is discussed later in this report and in more detail in the report considering the FMDCP.

The following information identifies the most important elements in the BFRMP.

1. *Flood Study and Model*

11.1 Floodplain Risk Management Plan - Adoption

To assist in the preparation of the BFRMP, the Council has prepared a flood study which was informed by the construction of a flood model. The flood model has been progressively developed over many years.

As well as the significant investment in the model project by Council, the model has been updated through an integrated study undertaken in conjunction with the Ballina Bypass Project and updates have been undertaken as part of the process to assess many of the major development proposals that have been considered by Council.

The modelling has been undertaken by a specialist consulting team using contemporary and sophisticated systems and techniques. This work has included processes to calibrate the model against historical flood events.

While the submission from the Ballina Ratepayers and Residents Association, and others, contest some of the findings in the study, the above process remains the most robust advice available to Council and is preferred as the primary decision making tool. It is however important for the Council to consider further investment in the model to ensure that it continues to represent the best information available.

2. Climate Change

The flood model has been developed using the benchmark predications in the former NSW Government Sea Level Rise Policy Statement. As per the flood study, it is unlikely that the use of these benchmarks will receive universal support, however these benchmarks have been selected as they represent the best option for Council from a risk management point of view. It is open for the Council to select alternative sea level rise and rainfall predictions. If the Council made such a decision it would be important to document the basis of the Council's decision to insure its interests are protected in the future from potential property damage or public liability claims.

3. Implementation Actions

The BFRMP includes a number of implementation actions. These are listed below. Further background details for each of these proposals can be found in attachment one to this report. The actions are divided into three categories, Property Modification Measures, Flood Modification Measures and Response Modification Measures.

BFRMP Implementation Actions

Property Modification Measures

- Update Development Controls
- Develop Agricultural Levee Guidance
- Develop Voluntary House Raising Scheme

Response Modification Measures

- Finalise Selection of Evacuation Centres
- Update Evacuation Planning
- Develop Community Engagement Strategy
- Extend Gauge Network
- Develop Flood Intelligence Cards

11.1 Floodplain Risk Management Plan - Adoption

- Assess Alternative Evacuation Order Methods
- Investigate Flood Warning and Predication System Options
- Raise Low Points on Evacuation Routes

Flood Mitigation Measures

- Implement Gallens Road Cycleway Floodway
- Consider Removal or Lowering of Deadmans Creek Road
- Implement Cabbage Tree Island Low Level Deflector Levee
- Implement Structural Measures Assessed Separately from BFRMS
 - West Ballina Flood Relief
 - Waste Transfer Floodway
 - Develop specific flood mitigation measures
 - Consider recommendations from the Newrybar Swamp Flood and Drainage Assessment

The briefing examined each one of the above actions individually and the outcomes of the discussion generally noted the following;

- All of these actions require further investigation, planning and decisions of Council prior to implementation.
- Subject to the further investigation details, the actions were all supported as important potential opportunities to improve the outcomes for the community in response to flood events.
- In regards to the Update Development Controls (as per Property Modification Measures), this is the subject of further reporting. However to reinforce this point it is recommended to amend the BFRMP to record a specific action to further investigate alternative options to the current minimum fill height approach within the current development control.
- The action to investigate the lowering or removal of Deadman's Creek Road was determined by Council at its previous meeting. However, there are concerns in respect of the relationship to this decision and flooding of Tamarind Drive immediately to the north of Deadman's Creek Road. These issues are examined by the Notice of Motion from Cr Meehan. On the expectation that Cr Meehan's motion will be supported by the majority of Council, and this is recommended, the recommendation to this report seeks to incorporate that resolution, if passed, into the BFRMP. The key point is to record a decision of the Council that the lowering of Deadman's Creek Road is not proposed until the issues at Tamarind Drive are satisfactorily addressed.
- The Ballina Major Retail Centre strategy is progressing and the findings from this work may assist the further development of both the BFRMP and the FMDCP.

Based on these points the proposed amendments to the draft BFRMP are as follows.

1. The addition of the following further flood modification measure.

11.1 Floodplain Risk Management Plan - Adoption

F8 Investigate the feasibility of alternate systems of flood structural measures that may include a combination of levee, pump and floodgates to provide protection for the Ballina Island precinct.

2. Amend F2 (Consider Lowering of Deadmans Creek Road) to the following;

F2 Lower Deadmans Creek Road

The Council has considered a report and determined its preference is to lower the surface of Deadmans Creek Road to a level of 0.9 m AHD. This level represents the preferred optimum balance between providing a level of flood immunity for the road and achieving a reduction in the impact of flooding for upstream property owners.

The Council records its decision not to implement this decision until satisfactory access service levels are provided at Tamarind Drive, immediately to the north of Deadman's Creek Road.

3. Add the following further property modification measure in relation to the Ballina Major Retail Centre Strategy

P4 Monitor the outcomes of the Ballina Major Retail Centre Strategy and integrate these outcomes within the Floodplain Risk Management Plan and the Development Control Plan as appropriate.

Sustainability Considerations

- **Environment**
This plan assesses the potential impacts to the environment from major flood events.
- **Social**
This plan assesses the potential impacts on the community from major flood events.
- **Economic**
This plan assesses the likely financial impact to the community from flood events and the investment options available to mitigate the risks associated with flood impacts.

Legal / Resource / Financial Implications

The BFRMP contains a number of proposed implementation actions. It is proposed that the Council continue to seek grant opportunities to assist in the delivery of the plan and for the Council to consider annually during the preparation of its budget whether it is able to allocate funds to projects within the plan. The adoption of the plan does not bind the Council to allocate the required funds.

Adoption of the plan is considered important in respect of assisting Council to defend claims made against Council arising out of its management of the floodplain.

Consultation

11.1 Floodplain Risk Management Plan - Adoption

The preparation of BFRMP has followed the policy and practice prescribed in the NSW Government's Floodplain Development Manual. This has included extensive consultation with government agencies, the NSW SES, community representatives (through a study reference group) and has now been on public exhibition twice.

Options

The options available to Council are as follows.

1. Adopt the plan as exhibited
2. Amend the plan and adopt
3. Defer or decline adoption.

Adopting the plan is considered important for a number of reasons.

Firstly, it will allow Council to conclude this phase of its floodplain planning and enable the focus of our activities to be the implementation of the proposed actions.

Secondly, the adoption of the plan is considered important from a governance risk point of view as it will assist in the defence of any claims made against the Council in regards to our management of the floodplain.

Thirdly, the adoption of the plan will allow Council to apply for flood mitigation grants to assist with the implementation of the actions in the plan.

Therefore the adoption of the plan is recommended and further to the discussions at the Council meeting and the workshop, the amendments reported above are recommended for inclusion in the adopted plan.

It is also open to the Council to make further or alternative amendments to the plan.

RECOMMENDATIONS

That Council adopt the Ballina Floodplain Risk Management Plan, as previously exhibited, subject to the following amendments;

1. The addition of the following further flood modification measure.

F8 Investigate the feasibility of alternate systems of flood structural measures that may include a combination of levee, pump and floodgates to provide protection for the Ballina Island precinct.
2. Amend F2 (Consider Lowering of Deadmans Creek Road) to the following;

F2 Lower Deadmans Creek Road

The Council has considered a report and determined its preference is to lower the surface of Deadmans Creek Road to a level of 0.9 m AHD. This level represents the preferred optimum balance between providing a level of flood immunity for the road and achieving a

11.1 Floodplain Risk Management Plan - Adoption

reduction in the impact of flooding for upstream property owners.

The Council records its decision not to implement this decision until satisfactory access service levels are provided at Tamarind Drive, immediately to the north of Deadmans Creek Road.

3. Add the following further property modification measure in relation to the Ballina Major Retail Centre Strategy

P4 Monitor the outcomes of the Ballina Major Retail Centre Strategy and integrate these outcomes within the Floodplain Risk Management Plan and the Development Control Plan as appropriate.

Attachment(s)

1. Table - Recommended Flood Mitigation Measures

11.2 Floodplain Management Development Control Plan - Update

11.2 Floodplain Management Development Control Plan - Update

Delivery Program Engineering Works

Objective To adopt an update on this planning policy.

Background

At the last meeting of Council, a report was considered to assess the response to the public exhibition of a draft update for the Council's Floodplain Management Development Control Plan (FMDCP). The decision of the Council in response to this report was to hold a Councillor briefing to examine the issues in the report in further detail. The briefing was held 11 May 2015 and the purpose of this report is to enable Council to again consider its position regarding the draft plan.

Concurrent to the preparation of this draft FMDCP, the Council has also prepared a draft Ballina Floodplain Risk Management Plan (BFRMP). The BFRMP and FMDCP were advertised for public exhibition at the same time. The briefing meeting with Councillors also considered the BFRMP and the outcomes from that discussion relevant to that plan are reported separately in this meeting agenda.

The background information regarding the preparation of the draft FMDCP and the response to the public exhibition was previously reported to Council and is not repeated here.

The key issue within the discussions regarding the FMDCP is the constraints associated with the historical minimum fill policy provisions. This issue is further discussed below.

Key Issues

- Establishing planning controls that are cost effective, are aligned to community expectations, and which provide appropriate levels of protection for lives and property from the risks associated with floods.

Information

The FMDCP is more properly described as Chapter 2b – Floodplain Management Development Control Plan. The plan was placed on public exhibition and the process to prepare and advertise the FMDCP has been undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.

It appears the key point in contention is the issue of the costs and other disadvantages associated with lot filling. Due to previous reporting on this issue, the following is not intended to be a complete analysis. Rather the information seeks to respond to some specific comments made in response to the public exhibition of the draft and to document the options discussed at the Councillor briefing.

11.2 Floodplain Management Development Control Plan - Update

At the last meeting Council considered the comments from a deputation from Planners North. One of the key points in the submission and deputation from Planners North was that the Council needs to consider that the cost of filling can be prohibitive to development and the impact of the Council policy is that it transfers the entire burden for flood mitigation from the public purse to private interests.

Also substantial filling increases the demand for a finite resource and the relationship between filled and unfilled allotments can result in poor outcomes.

It is agreed that these are important considerations when comparing the options available. However, in regards to undertaking this comparison, the previous report noted that staff did not concur with the figures presented in the Planners North submission. Mr Connelly suggested to Council it should review further evidence in response to the reported position of staff and this is provided below.

The assessment of staff was undertaken using Council's GIS system. Council staff estimate to fill the remaining private land in Ballina Island to the 2050 height level, the volume of fill required is 530,000 cm and for West Ballina the amount is 300,000 cm for a total of 830,000 cm.

Using the cost for filling suggested by Edge Consulting from their work preparing the Ballina Major Retail Centre Strategy, the cost of this filling is estimated to be \$75 million. The Planners North estimate is 3,500,000 cm at a cost of \$537 million.

For road assets, staff calculate Ballina Island has 52 kilometres of road which require 460,000 cm of fill costing \$16 million. For West Ballina, the road length is 21 kilometres and the fill requirement is 210,000 cm, costing \$7.5 million. Combined, the replacement value of the 73 kilometres is estimated to be \$120 million.

Therefore the Council's estimate for the raising of road assets is \$143.5 million. The Planners North submission estimates 46.2 kilometres at a cost of \$415 million.

Notwithstanding this significant difference in costs, the costs are still substantial. Any analysis of the options available to Council needs to have regard to the cost, who bears this cost, and the opportunity cost associated with the resources applied for each option.

While it is acknowledged there are a number of issues associated with the filling policy, to date investigations undertaken by Council's consultants, or information in submissions, have not identified feasible alternatives.

It is however a reasonable position for Council to invest in further investigations to ensure it is satisfied or otherwise with its policy position. In particular a study of the feasibility of a combination system of levees, floodgates and pumps would appear to be the most appropriate focus for this work.

11.2 Floodplain Management Development Control Plan - Update

At this point in time Council staff have not attempted to evaluate the costs of this investigation work, however it is likely that an amount in the order of \$50,000 or more would be required.

The recommendation to the report elsewhere in this business paper in relation to the FMRP includes the suggestion that this action be included in the implementation program proposed under that plan.

Assuming this is supported by Council, staff will consult with our technical advisors and prepare a scope of works and cost estimate which can then be reported to Council for funding consideration.

As it is uncertain as to when this work could be done, and what the outcomes will be, the Council needs to determine whether or not it would prefer to continue to operate under the existing DCP, or adopt the proposed update, with possible amendments as discussed below.

There are several advantages in adopting the update, however an option is also available that will enable most of these benefits to be achieved while maintaining the status quo in regards to minimum fill heights.

The key benefit in adopting the update plan is, as compared to the previous plan, is that it provides a more flexible approach.

The plan has planning controls which are prescriptive measures however it also includes performance criteria which enable a proposal to be assessed when it does not meet the prescriptive measures, but is able to demonstrate achieving the desired policy outcomes.

This is particularly relevant for commercial properties which are able to assess and report on risk for their individual circumstances and incorporate satisfactory design and other controls under the performance criteria.

Further to this, the new policy provides for flood risk precincts. This means the planning controls for each precinct reflect the level of risk relevant for the land rather than a "one size fits all" approach.

The new policy also incorporates the climate change factors developed in the flood model.

Finally, the update has been an opportunity to ensure the policy is contemporary in regards to its relationship to statutory regulations and other Council documents.

Council first prepared a floodplain management study in 1997 and in each review the minimum fill height has increased. The new policy establishes a basis where these continued increases can be avoided. The purpose of this filling is to provide sufficient grade for land to be effectively drained by gravity after rainfall.

As the policy now satisfactorily takes into account climate change impacts for tides and drainage, if further property protection measures are required from increases in predicted flood heights, this can be achieved by increasing the minimum habitable floor height without reference to the fill height. That is, if

11.2 Floodplain Management Development Control Plan - Update

adopted, the Council has reached the end limit of filling as a policy direction based on current known guidelines and information.

It is an option for Council to achieve the above improvements and maintain a status quo policy position regarding filling. This could be achieved by amending the draft policy to retain the minimum fill level provisions from the current policy.

In general terms, the policy differentiates between greenfield subdivisions and brownfield development areas such as infill development on Ballina Island.

This differentiation is due to the fact greenfield subdivisions have the opportunity to avoid many of the issues associated with the fill policy, such as large changes in level between adjacent properties.

Therefore the suggestion is to amend the provisions pertaining to brownfield areas. Typically this would reduce the fill required in these areas by between 100 and 200 millimetres.

Under this amendment there is no change to the minimum habitable floor height, which remains as 100 year ARI flood event for 2050 plus freeboard (500mm).

This is the height required to protect built assets and if the Council elected to adopt a minimum height different from the predicted level required in the flood study, it would be important for the Council to document the reasons for such a decision in case it was required to defend any claims for damage.

This change would however allow a resident or developer to elect to either fill to the minimum floor height or to the minimum fill height with a design that addresses the relationship between the building and the gap between the floor and the fill.

For example this could be achieved with a frame on stilts with the gap screened by lattice type partitions.

Sustainability Considerations

- **Environment**

The purpose of this planning control is to consider and manage the impacts on the built and natural environment in response to the risks associated with floods.

- **Social**

The purpose of this planning control is to enhance the social amenity of our urban areas.

- **Economic**

This plan aims to optimise, to the extent appropriate in planning controls, the costs to mitigate the risks associated with flooding.

Legal / Resource / Financial Implications

The Council has certain legal obligations in respect of this policy. It is a requirement that the policy meet the statutory provisions of the *Environmental Planning Assessment Act 1979*.

To ensure the Council is appropriately protected, it is also important for the Council to consider the information prepared by its specialist consultants in accordance with relevant standards and the NSW Government guidelines relevant to floodplain management.

Where Council adopts a different standard to the controls recommended, it is important that Council documents the reasons for its decision.

Consultation

This plan has now been on public exhibition twice.

Options

The options available to Council are;

1. Adopt the plan as exhibited.
2. Defer adoption until further investigation into alternative property protection measures are completed in accordance with the revised Floodplain Risk Management Plan implementation action.
3. Adopt the plan as exhibited, subject to an amendment which retains the fill level for certain areas to the level of the current plan.

Assuming the Council accepts the recommendation to amend the FRMP reported earlier in this business paper, the proposal to further investigate alternative options for property protection will be undertaken irrespective of Council's decision in regards to the FDCP.

Option 2 is not recommended on the basis that the improvements to the plan identified in the above report are not achieved.

Either Option 1 or 3 are considered reasonable.

On balance, the recommendation to this report is option one. The primary reasons for this position are;

- It is consistent with the predicted fill levels required for 2050 drainage and tidal impacts.
- The cost impact of the additional fill (100 – 200mm) is considered reasonable in the circumstances.

However option three can be justified on the basis that;

- It maintains the status quo for a period of time while Council conducts further investigations.
- It avoids the cost of additional fill.

11.2 Floodplain Management Development Control Plan - Update

If the Council prefers option 3 then the suggested text for a resolution is as follows:

That Council adopts the draft Ballina Shire Development Control Plan Chapter 2b – Floodplain Management, subject to the document being amended to retain the minimum fill levels as per the current Development Control Plan for land where the 2050 climate change conditions apply.

It is noted for option 3, while the staff advice is that it is possible to amend the proposed minimum fill height, within this proposal staff are recommending that the minimum habitable floor heights determined under the draft update to the policy be retained.

RECOMMENDATION

That Council adopts the draft Ballina Shire Development Control Plan Chapter 2b – Floodplain Management, as exhibited.

Attachment(s)

Nil

11.3 Deadmans Creek Road - Future

11.3 Deadmans Creek Road - Future

Delivery Program Engineering Works

Objective To further consider the future role of Deadmans Creek Road.

Background

Council considered a report 23 April 2015 on the future of Deadmans Creek Road and resolved as follows:

- "1. *That, based on the information in the above report, Council determine its preference is to lower the surface of Deadmans Creek Road to a level of 0.9 m AHD when funds become available.*
2. *Council invite comments from the public and key stakeholders in response to the decision in point one above.*
3. *Council respond to opportunities to apply for flood mitigation grant funds to assist in the costs to lower the surface of Deadmans Creek Road.*
4. *That Council receive a report on mandatory load limits, traffic calming, Deadmans Creek Road becoming an exit only and undertaking regular maintenance of the current drainage system around Deadmans Creek Road."*

This report responds to Part 4 of the resolution.

Key Issues

- Optimising the amenity of Ballina Heights residents
- Optimising road network access and traffic management at Ballina Heights
- Assessing the benefits and costs of traffic management measures to the community and the environment
- Drainage management

Information

Deadmans Creek Road, One Way Traffic Exit Only

Regulating Deadmans Creek Road to be one way, exit traffic only would provide some traffic volume reduction and therefore some improved residential amenity around the southern section of The Ridgeway.

Given the low accident record on the NSW CrashLink database for Ballina Heights, it may be difficult for the Local Traffic Committee to justify imposition of one way traffic on Deadmans Creek Road. It is likely the Committee would recommend that Council formally assesses the impact of noise with regard to relevant standards and guidelines. If required, alternative noise mitigation measures should be considered before or at least in conjunction with any option that reduces the service potential of the road.

11.3 Deadmans Creek Road - Future

Further traffic counts and modelling indicate imposition of one way traffic would burden Ballina Heights residents as a whole with an extra trip length of 1.5 km for 801 vehicle trips per day or 438,821 vehicle km per year. This is half the vehicle trip penalty of 1.5 km for 1603 vehicle trips per day or 877,642 vehicle km per year reported to the 23 April meeting if Deadmans Creek Road was closed at Tamarind Drive.

Further to this, discussed elsewhere in this business paper is the function of Deadmans Creek Road during flood events which have the potential to close Tamarind Drive. On these occasions it is essential that Deadmans Creek function in a two way capacity. From a traffic management point of view, if the one way system was in place, in times of flooding additional resources are required and other operational issues would arise to enable the two way function to be reinstated for the duration of the event.

Placing a Load Limit on Deadmans Creek Road

In regard to placing a load limit on Deadman's Creek Road, Clause 74 of the Road Transport (Mass, Loading and Access) Regulation 2005, provides the following powers to councils:

"74 Mass requirements on certain roads and bridges etc

*(1) The council of a local government area or the Authority may do either or both of the following things by means of one or more notices (a **limit notice**) conspicuously displayed on or adjacent to the road, bridge or road-ferry concerned:*

(a) prohibit vehicles with a laden mass exceeding a specified maximum mass from passing along or over a road, bridge or causeway,

(b) prohibit vehicles with a laden mass exceeding a specified maximum mass from using a road-ferry maintained in connection with a road.

(5) However, a limit notice does not prohibit any person from driving a vehicle along or over a public road if the destination of the vehicle lies in or on the road and there is no alternative route by which to reach that destination."

It would be open to Council to place a load limit on the section of Deadmans Creek Road between Tamarind Drive and Summerhill Crescent and force the majority of heavy vehicles going to and from Ballina Heights to divert to Ballina Heights Drive. Such a load limit would minimise wear, tear and maintenance on Deadmans Creek Road, reduce the volume of heavy vehicles using The Ridgeway and improve residential amenity in that area. Assuming heavy vehicles are 3% of total traffic volume on Deadmans Creek Road, the load limit is predicted to result in an additional 1.5 km for 48 heavy vehicle trips per day or 17,520 heavy vehicle km per year.

As this change is implementing a regulatory regime, the approval of the Local Traffic Committee would be required. It is the understanding of staff from previous reviews of this type that the RMS would prefer to only install load limits where there is a structural deficiency in a road asset meaning safety would be compromised if the asset was used and damaged by a heavy vehicle. The reason for this position is that there are concerns that regulatory signs lose impact and compliance levels reduce if drivers perceive the regulation is not needed to manage safety and function of a road, or the regulation is so widely used it is unreasonable.

11.3 Deadmans Creek Road - Future

While this is the understanding of staff, it is open for the Council to request the Local Traffic Committee to determine a response to the request.

The majority of heavy vehicle movements on this road are related to the construction of the subdivision. Council's subdivision approvals include conditions in relation to the operating hours for construction work to ensure an appropriate balance is maintained by the need to complete the work in an economic manner and have regard to the amenity of an area.

The demand for trucks at these works changes depending on the roll out of the subdivision and it is noted that in time this demand will continue to shift to the north meaning Power Drive and Ballina Heights Drive will provide the most direct route to the works site.

Proposed Traffic Calming

In NSW traffic calming devices are authorised as part of Local Area Traffic Management (LATM) schemes. These are comprehensive schemes and are defined in Austroads Guide to Traffic Management Part 8: Local Area Traffic Management (2008)

"Local Area Traffic Management is concerned with the planning and management of the usage of road space within a local traffic area, often to modify streets and street networks which were originally designed in ways that are now no longer considered appropriate to the needs of residents and users of the local area. LATM can be seen as a tool of traffic calming at the local level (Brindle 1991; O'Brien and Brindle 1999 p. 259). It involves the use of physical devices, streetscaping treatments and other measures (including regulations and other non-physical measures) to influence vehicle operation, in order to create safer and more pleasant streets in local areas".

The low number of accidents on the NSW CrashLink database does not support a priority for providing resources for an extensive Local Area Traffic Management scheme for Ballina Heights at this time.

Maintenance of Drainage System around Deadmans Creek Road

The topography of this area and the amount of change that has occurred over time has made the management of drainage at this area a challenge for Council. Works have been progressively undertaken by Council and the developer and these have been the subject of constant review.

In the opinion of staff several recent tasks have contributed to some improvements, however Council's technical staff would like to investigate some further opportunities for improvements and will undertake this work as soon as it can be incorporated into our program. General maintenance and inspection arrangements are in place as per our practices for Shire wide drainage assets.

It is also the case that due to the challenges of the site, technical and operational staff conduct regular site inspections during storm periods to ensure we continue to build our corporate knowledge and general observations.

11.3 Deadmans Creek Road - Future

It is also noted that elsewhere in this business paper, Cr Meehan has proposed a notice of motion relevant to the question of the future of Deadmans Creek Road.

Specifically this motion recommends that the Council does not take any further action in regards to the proposal to lower Deadmans Creek Road until drainage issues at Tamarind Drive are resolved.

If adopted, it is also proposed to incorporate this resolution into the Council's Floodplain Management Plan.

Specifically it is proposed that Council take no further action in regards to its decision to lower Deadmans Creek Road until the drainage issues with Tamarind Drive are resolved.

Sustainability Considerations

- **Environment**

Imposing one way exit only traffic on Deadmans Creek Road would increase vehicle trips 438,821 vehicle km per year with associated adverse energy consumption and emissions impacts. Imposing a heavy vehicle load limit on Deadmans Creek Road would increase heavy vehicle trips 17,520 heavy vehicle km per year with associated adverse energy consumption and emissions impacts.

- **Social**

Imposing one way exit only traffic on Deadmans Creek Road will reduce amenity for a significant portion of Ballina Heights residents, requiring them to travel longer distance/time to/from destinations in Ballina. Imposing one way exit only traffic and a heavy vehicle load limit on Deadmans Creek Road will reduce traffic volumes, particularly by heavy traffic, and thereby improve residential amenity for those residents around the southern end of The Ridgeway.

- **Economic**

Imposing one way exit only traffic on Deadmans Creek Road will cost Ballina Heights residents an estimated extra 438,821 vehicle km per year. Imposing a heavy vehicle load limit will cost an estimated 17,520 heavy vehicle km per year.

Legal / Resource / Financial Implications

Regulation of Deadmans Creek Road for one way exit only traffic would require the concurrence of the Local Traffic Committee. Clause 74 of the Road Transport (Mass, Loading and Accesss) Regulation 2005, would enable Council to impose a heavy vehicle load limit on Deadmans Creek Road.

Consultation

This report has responded to submissions to Council from the community about the future of Deadmans Creek Road and associated traffic management options.

11.3 Deadmans Creek Road - Future

Options

Deadmans Creek Road, One Way Traffic Exit Only

Option One – Request the Local Traffic Committee to provide advice in respect of the proposal to regulate for one way traffic on Deadmans Creek Road.

Option Two – Take no further action.

Option Three – Complete a formal assessment of potential noise impacts from Deadmans Creek Road.

In regards to Option Three, Council needs to be mindful that many residents would prefer reduced traffic noise at their properties. Therefore if the Council was to study Deadmans Creek Road, it is possible Council will receive many similar requests. Therefore Council should prioritise an investigation at this location only if it is satisfied that such a priority is warranted in the circumstances.

Given the social, economic and environmental benefits for the overall community from the two way option, and the limited residential amenity benefits associated with the potential change to one way, Option Two - No Action is the recommendation to this report.

Placing a Load Limit on Deadmans Creek Road

Option Four – Request the Local Traffic Committee to approve a heavy vehicle load limit on Deadmans Creek Road.

Option Five - No further action.

It is difficult, from the perspective of staff, to differentiate a position for either of these options.

Option Five is reasonable given the number of vehicles involved and there is sufficient control, through conditions of consent, on the time the vehicles can operate. Furthermore, as noted in the above report, by taking no further action Council will avoid the emissions and economic costs associated with approximately 17,000 extra heavy vehicle kilometres per year.

However on balance Option Four is recommended as to investigate further is considered the more the more proactive response to the issue raised to Council by some residents in the area. Council is reminded however there is the possibility that the Local Traffic Committee may not be in a position to support the request.

Proposed Ballina Heights Traffic Calming

Option Six - Commence the process to investigate, consult and implement a Local Area Traffic Management scheme at Ballina Heights.

Option Seven - No further action.

11.3 Deadmans Creek Road - Future

Given the low crash record, high resource requirements and limited likely benefits of a LATM scheme, option 7, no further action is the recommended option.

Maintenance of Drainage System around Deadmans Creek Road

If the Council has a specific maintenance request, these can be reviewed, otherwise it is recommended Council receive and note the information in the report above.

RECOMMENDATIONS

1. That based on the contents of this report Council take no further action to seek approval for one way exit only traffic on Deadmans Creek Road.
2. That Council request the Local Traffic Committee to consider the establishment of a heavy vehicle load limit on Deadmans Creek Road.
3. That based on the contents of this report Council take no action to commence a Local Area Traffic Management scheme at Ballina Heights.
4. That Council notes the contents of this report in respect to the drainage maintenance actions around Deadmans Creek Road.
5. That Council notes that matters relevant to the future of Deadmans Creek Road are to be determined elsewhere in this agenda as per the information in this report.

Attachment(s)

Nil

11.5 Land Acquisition - Shared Path

11.4 Ballina Heights Drive - Noise Wall

Delivery Program Engineering Works

Objective To consider the warrant for the remaining acoustic wall on the eastern side of Ballina Heights Drive.

Background

Council is the proponent of DA 2010/1045, Construction of Ballina Heights Drive. A consent condition requires the construction of an acoustic wall on the east side of Ballina Heights Drive between Unara Parkway and Power Drive.

As part of the Ballina Heights Drive construction contract, the majority of wall (about 300 m) has been constructed, southwards from Unara Parkway.

The remaining 167m section of wall to terminate at Power Drive was not part of the contract and its construction has now been deferred until construction of Stage 8a of the Ballina Heights subdivision. The developers of Ballina Heights support seeking removal of the requirement to construct the remaining section of soundwall. Its removal would save Council expenditure of an estimated \$267,000.

The purpose of this report is to consider whether or not the Council should seek an amendment to the development consent to remove the condition requiring the construction of the wall.

Key Issues

- Residential amenity
- Noise impacts and noise attenuation policy
- Infrastructure costs
- Integration of noise policy into strategic planning and development of urban release areas and associated infrastructure

Information

1. Requirement for Sound Walls on Ballina Heights Drive

The original consent for DA 2010/1045 (Subdivide, dedicate and construct Ballina Heights Drive) had the effect of requiring completion of a sound wall on the eastern side between Unara Parkway and Power Drive, prior to use of the road. Amendment 3 of the consent, 30 October 2013, amended this to defer the timing of the 167 m section of sound wall immediately north of Power Drive to be concurrent with Stage 8a of Ballina Heights Subdivision (DA 2003/413).

Condition 2.7 of the road consent requires the Construction Certificate for sound walls to be in accordance with the "Road Traffic Noise Impact Assessment, Dated 15 April 2013, prepared by Carter Rytenskiid Group (CRG) or as amended".

Condition 5.1 requires certification by the consultant that the acoustic barrier has been provided as specified in their report.

At this time the the majority of wall (about 300 m) has been constructed south from Unara Parkway, but the remaining 167m section terminating at Power Drive has been deferred until construction of Stage 8a of the Ballina Heights subdivision. The CRG report recommends a 2.4m high wall in this section. Estimated cost, based on the road contract rates is \$267,000 (167m x 2.4m x \$667/m²).

2. Assessment of Sound Wall Requirement

Consultants CRG were requested by Council (as the proponent of DA 2010/1045) to prepare a "Road Traffic Noise Impact Assessment" to support their development application. The recommendations, of the original 10 February 2011 CRG report for construction of sound walls, were called up in the original consent. The current consent amendment (No. 3) calls up an amended CRG report dated 15 April 2013. The original and amended reports do not materially vary in regard to recommendations for the remaining 167m of wall north of Power Drive.

The CRG assessment used modelling to predict the noise levels on adjacent residential zoned land to be generated by predicted future traffic (6,681 vpd for the this section of Ballina Heights Drive) and compared these levels, with and without noise attenuation measures (noise walls, etc), with criteria in the NSW EPA document "Environmental Criteria for Road Traffic Noise (1999)". On the basis of this comparison, CRG recommended 2.4m high acoustic walls for the remaining 167m section north of Power Drive.

3. Proposal to Remove Requirement for 167 m of Sound Wall

At the meeting of the Ballina Heights Monitoring Group, 9 March 2015, Ardill Payne representing the landowner/developer of Ballina Heights (Catholic Church), advised that the "developers would support removal of acoustic treatment for the eastern and western side of Ballina Heights Drive" and in support a report "Review of Traffic Noise upon Lots C1 to C9 Ballina Heights Drive, Cumbalum" (TTM December 2014) has been provided for Council consideration.

It is understood the removal of this section of sound wall is supported, by the developers, because the negative residential amenity impacts of the sound wall are considered greater than the positive amenity benefits of the wall's sound attenuation.

As the DA for construction of Ballina Heights Drive has a condition of consent requiring the completion of the remaining 167m of sound wall, this can only be changed or removed if Council, as the proponent, lodges a Section 96 amendment application to this effect and that this application is subsequently approved.

In such an application, Council would have two separate roles, that of the proponent and that of the determining authority.

This report from Council's Civil Services Group, explores Council's options, in its role as the development proponent. This report does not address Council's role as the Determining Authority for a possible future Section 96 Application.

4. Possible Grounds for Seeking an Amendment to the Sound Wall Condition

4.1 Change to NSW Road Noise Policy

The NSW Government, July 2011, approved a document titled "NSW road noise policy" (RNP), to replace the previous ERA "Environmental criteria for road traffic noise" which was used as the reference standard in the noise assessment of DA 2010/1045. The RNP advises that "Although the assessment criteria are non-mandatory, they provide the basis for establishing appropriate noise levels that can be incorporated into: conditions in planning approvals issued by authorities such as local councils". The RNP criteria, Table Three, for impacts on residential areas are reproduced below:

Table 3 - Road traffic noise assessment criteria for residential use

Road Category	Type of project/land use	Assessment criteria - dB(A)	
		Day (7am-10pm)	Night (10pm-7am)
Freeway/arterial/sub-arterial road	1. Existing residences affected by noise from new freeway/arterial/sub-arterial road corridors	L _{Aeq} , (15 hour) 55 (external)	L _{Aeq} , (9 hour) 50 (external)
	2. Existing residences affected by noise from redevelopment of existing freeway/arterial/sub-arterial roads	L _{Aeq} , (15 hour) 60 (external)	L _{Aeq} , (9 hour) 55 (external)
	3. Existing residences affected by additional traffic on existing freeway/arterial/sub-arterial roads generated by land use developments		
Local roads	4. Existing residences affected by noise from new local road corridors	L _{Aeq} , (15 hour) 55 (external)	L _{Aeq} , (9 hour) 50 (external)
	5. Existing residences affected by noise from redevelopment of existing local roads		
	6. Existing residences affected by additional traffic on existing local roads generated by land use developments.		

Table Three criteria specifically apply to noise impacts on "Existing residences" and provide no criteria for future/planned residences or zoned residential land.

Whilst no explanation is given in the document why only "Existing" residences are specified for noise criteria, there are a number of likely reasons why the policy is stated in these terms, which include:

- Existing residences are "captured" at their location and cannot reverse the adverse impact of additional road noise. The residents may be able to ameliorate some of the impacts by expensive building noise insulation or residents can relocate. Existing residents being particularly vulnerable to new road noise impacts, need high levels of consideration in the planning process.

11.5 Land Acquisition - Shared Path

- The situation is different for vacant land that is zoned or approved for residential development. In these circumstances, the future purchaser can know in advance of the proposed busy road and associated road noise. The future purchaser is not captured and can choose to buy/build elsewhere, or they may still choose to buy/build adjacent to the noisy road because on balance of trade-offs (price, location, building noise insulation options, other urban amenity issues) it is still their preferred choice.

Currently, the land adjacent to the missing 167m of sound wall, is vacant and contains no "existing residences", therefore the noise criteria in the current "NSW road noise policy" do not literally apply.

It would be open to Council to submit a S96 amendment application for DA 2010/1045 requesting a change to the noise wall consent conditions to remove the requirement to construct the remaining 167m of noise wall on the grounds that based on the current RNP, NSW policy does not require consideration of noise limit criteria for future residences, therefore the sound wall should not be required.

This can be supported by further argument that as Ballina Heights Drive is now open, future purchasers may make an informed decision on whether to purchase these lots, based on their assessment of the price and future noise and other amenity issues impacting the land.

4.2 Revised Noise Assessment (TTM December 2014)

The TTM noise review commissioned by the Developer of Ballina Heights has reviewed the road traffic noise impacts on the subject section of Ballina Heights Drive. It references the same 1999 EPA "Environmental Criteria for Road Traffic Noise" as used in the CRG report for DA 2010/1045.

The report concludes/recommends:

"Without acoustic barriers, noise levels are predicted to exceed the criteria by approximately 3 - 4 dB when assessed at the centre of the lots. With a 1.8m high acoustic barrier, compliance is achieved at the ground floor receiver height with only slight noise reduction achieved at elevated and upper floor levels. Given the sloping terrain of the site the majority of dwellings on lots C1 to C9 will be elevated above ground. Based on this, the attenuation from an acoustic barrier will be minor and a satisfactory alternative for noise attenuation could be achieved through building facade treatments....."

The degree of noncompliance is generally minor for both modelled scenarios (with/without 1.8m high sound wall) however we recommend that dwellings are designed to achieve indoor sound levels recommended by NSW Department of Planning document *Development near Rail Corridors and Busy Roads - Interim Guideline*

The TTM report goes on to recommend that if an acoustic barrier is chosen, it should be 1.8m high (CRG and DA 2010/1045 required 2.4m high).

It would be open to Council to submit a S96 amendment application for DA 2010/1045 requesting a change to the noise wall consent conditions to remove the requirement to construct the remaining 167m of noise wall, or to amend the height to 1.8m based on the findings of the TTM report.

4.3 Residential Amenity and Urban Design Impacts

Construction of the required 2.4 m high sound wall will have a number of negative amenity impacts for future residences which include:

- excessive shading and loss of solar access
- Loss of view corridors to the scenic landscapes to the west
- Oppressive size/scale of the walls on allotment boundaries which are inconsistent with the softer design features of dwellings and associated landscaping

The negative urban design impacts include:

- Loss of active frontage along Ballina Heights Drive
- Physical and visual isolation of Ballina Heights Drive from the community it services
- Loss of passive surveillance and attendant increased crime risk along Ballina Heights Drive
- Size and scale of the wall is unsympathetic with the rest of the landscape and considered to be unattractive by some observers

It would be open to Council to submit a S96 amendment application for DA 2010/1045 requesting a change to the noise wall consent conditions to remove the requirement to construct the remaining 167 m of noise wall, on the grounds that the minor noise benefit of the wall is more than offset by the wall's negative residential amenity and urban design impacts.

4.4 Change in Predicted Traffic Volumes on Ballina Heights Drive

Both the CRG and TTM report base the noise generation of Ballina Heights Drive on a predicted future volume of 6,681 vpd.

The most recent traffic modelling commissioned by Council in 2014 predicts the volume for 2036 (with full development and occupation of Ballina Heights, CURA A and CURA B) to be 5,857 vpd.

The lower predicted traffic volume is mostly due to a downward revision of the ultimate lot yield for these growth areas.

The predicted decrease in traffic volume would result in some decrease in predicted noise generation, however further noise modelling would be required to quantify any decrease.

A decrease in noise generation may also be grounds for submission of a S96 amendment application for DA 2010/1045 requesting a change to the noise wall consent conditions.

5. Options

The options for Council, as the proponent of DA 2010/1045, Construction of Ballina Heights Drive, in regard to its remaining sound wall construction obligation are:

Option One

Allocate funds to complete the remaining 167m of 2.4m high sound wall as required by the consent. Arrange for immediate tendering and construction of the works so that the sound wall is completed, as required by the consent, prior to release of Stage 8a of the Ballina Heights subdivision.

Option Two

Based on the grounds put forward in Part 4 of this report, and if necessary supported by a further noise impact assessment based on the revised predicted future traffic volumes, submit a Section 96 application seeking either removal or amendment (lower height) of the current sound wall consent conditions for the remaining 167m of wall.

6. Review of Options

Option One - Build the Remaining 167m of 2.4m high Sound Wall

Option One will facilitate timely compliance with the current consent conditions. Due to the consent being issued in July 2011 and the roadworks being completed and in use, there is a likely community expectation that Council, as a responsible public authority, will act in good faith and complete the remaining required section of wall. The construction of the wall will bring sound attenuation benefits to future residences and negate/minimise the need for future purchasers to provide expensive sound proofing measures in their new homes.

On the negative side, the remaining section of wall is estimated to cost Council and therefore the community \$267,000 which could be used to fund other worthwhile community infrastructure. The TTM report suggests that the sound attenuation benefits of the sound wall are minimal and therefore may not be cost effective. There are also negative residential amenity and urban design impacts arising from construction of the wall which include:

- Excessive shading of residential lots and loss of solar access
- Loss of view corridors for residences of the scenic landscapes to the west
- Oppressive size/scale of the walls on allotment boundaries viewed from within which are inconsistent with the softer design features of dwellings and associated landscaping
- Loss of active frontage along Ballina Heights Drive
- Physical and visual isolation of Ballina Heights Drive from the community it services
- Loss of passive surveillance and attendant increased crime risk along Ballina Heights Drive

11.5 Land Acquisition - Shared Path

- Size, scale and texture of the wall viewed from outside the protected allotments is considered by some to be unsympathetic with the rest of the landscape and visually unattractive

Option Two - Seek Removal of Conditions Requiring the Remaining Sound Wall

Option Two, if ultimately successful in receiving planning approval to remove the remaining sound wall condition, would deliver an estimated cost saving to Council of \$267,000. It would also avoid the negative residential amenity and urban design impacts detailed for Option One.

On the negative side:

- The Section 96 amendment process has a significant risk of being unsuccessful. If unsuccessful, it would delay resolution of the issue by several months, and could result in Council defaulting on its consent obligation to have the wall built concurrently with Stage 8a of the Ballina Heights subdivision.

Further If the Section 96 application is unsuccessful, not only will the expenditure of an estimated \$267,000 for construction of the wall still be required, there will also be additional costs for the application and any amended road noise impact assessment report.

- Future residences would not receive the noise attenuation benefits of the wall and may be required to provide expensive sound proofing measures in the buildings. This would ideally be identified through a Section 88 b instrument on the subject lots, however this could not be imposed by Council without the land developer's consent. Extra sound proofing costs would offset the benefits of Council's land buyer's subsidy scheme for lower income purchasers of land in Stage 8a of Ballina Heights.
- There may be a community perception that Council should act as a responsible public authority and not seek to avoid its responsibilities for providing sound wall infrastructure that have been part of the conditions of consent since June 2011.

7. Integrated Assessment of Road Noise Impacts

The sound wall issue at Ballina Heights Drive has identified the need for consultant's road noise impact recommendations to be critically considered in the mix of many other residential amenity and urban design issues.

It may be in the public interest, in a range of urban settings, to reject/modify noise consultant's recommendations for construction of sound walls, because on balance, their negative residential amenity and urban design impacts outweigh noise attenuation benefits.

This approach is supported by the 2011 "NSW road noise policy" (RNP), which advises that noise abatement measures should be feasible and reasonable and "Selecting reasonable measures from those that are feasible involves judging whether the overall noise benefits outweigh the

11.5 Land Acquisition - Shared Path

overall adverse social, economic and environmental effects, including the cost of the abatement measure."

In planning new urban areas there is the opportunity for minimising road noise impacts caused by major arterial roads by locating sensitive land uses (residences, schools, hospitals etc) further from these roads or by segregating major arterial roads in sound walled corridors.

An example of this is the provision of sound walls at the Ferngrove estate which segregate the residential area from the old highway.

The situation becomes more complex further down the road hierarchy at the collector road level (eg. Montwood Drive, Rifle Range Road, North Creek Road etc). These roads are an integral part of and provide local internal access within new and existing urban areas.

There are significant residential amenity and urban design reasons why these collector roads should have active frontages and not be segregated by sound walls from the community or become barriers that isolate and fragment the community.

Reports by expert noise consultants will often find that the residences along the higher traffic volume collector roads (as happened at Ballina Heights Drive) will be subjected to noise levels that exceed the "existing residence" criteria in the RNP and will therefore recommend installation of sound walls along these roads.

These reports and recommendations need to be critically considered in the context of all the other residential amenity and urban design issues when planning and determining approvals for urban areas. In many situations it will be found that the negative impacts of sound walls recommended by noise consultants for collector roads will outweigh their noise attenuation benefits.

It may assist the critical consideration and application of noise assessment recommendations for an assessment framework to be provided in Council's Development Control Plan. This assessment framework would assist Council's planning and development assessment by complementing the Government's RNP.

The assessment framework could include:

- guidance for integration and appropriate weighting of road noise assessment/control in the mix of all other amenity and urban design issues being considered in strategic design and development approval of new urban areas.
- guidance on urban settings and associated road typologies (arterial, collector, local roads) where sound walls may or may not be appropriate
- guidance for selection of road noise attenuation techniques that are appropriate for diverse urban settings and adjacent road typologies.

11.5 Land Acquisition - Shared Path

Such an assessment framework would also assist developers and their consultants by providing more clarity and certainty on Council's road noise management requirements.

Sustainability Considerations

- **Environment**

The need to consider and weigh the importance of road noise impacts and controls as one element in the mix of other residential amenity and urban design issues.

- **Social**

As above

- **Economic**

Consideration of sound wall costs and benefits to the community

Legal / Resource / Financial Implications

Council's has obligations as proponent of DA 2011/1045 to comply with the conditions of development consent.

The \$267,000 is currently not funded and Council will need to defer other road construction projects to finance this work.

Section 94 contributions may also be available to help offset part of the cost of this work.

Consultation

Consultation has occurred with the landowners.

Options

a) *Ballina Heights Drive*

A - Option One

Allocate \$270,000 to complete the remaining 167m of 2.4m high sound wall as required by the consent. Arrange for immediate tendering and construction of the works so that the sound wall is completed, as required by the consent, prior to release of Stage 8a of the Ballina Heights subdivision.

A - Option Two

Based on the grounds put forward in Part 4 of this report, and if necessary supported by a further noise impact assessment based on revised predicted future traffic volumes, submit a Section 96 application seeking either removal or amendment (lower height) of the current sound wall consent conditions for the remaining 167m of wall.

The estimated cost of preparing and lodging the Section 96 application is approximately \$10,000.

This cost could increase if the assessment process then seeks additional information.

b) *Integrated Assessment of Road Noise Impacts*

B - Option One

Prepare a Council policy (which could be achieved through a DCP amendment) to guide integration of road noise assessment/control in the mix of all other amenity and urban design issues being considered in strategic planning and development approval of urban areas and associated public infrastructure.

B - Option Two

Do not prepare a Council policy to guide integration of road noise assessment and control.

In respect to the Ballina Heights Drive noise wall there is no clear preferred outcome as it ultimately depends on the weighting that is placed on various factors such as urban design, residential amenity and the allocation of limited financial resources. Based on this both options are included in the recommendations that follow to allow Councillors to determine the preferred approach.

In respect to the integrated assessment of noise impacts the preference is to have this work completed to improve our planning outcomes into the future.

RECOMMENDATIONS

Ballina Heights Drive – Noise Wall

Option 1

1. That Council confirms the preferred outcome is to comply with the existing consent conditions for DA 2011/1045 and authorises the General Manager to call tenders for the construction of the noise wall. The funding of this work, through the deferral of other road construction projects along with the possible use of Section 94 developer contributions, is to be confirmed at the June 2015 Ordinary Meeting as part of the adoption of the 2015/16 Operational Plan.

OR

Option 2

1. That Council lodge a Section 96 application in respect to DA 2011/1045 to determine whether the requirement to provide a noise wall as detailed in this report can be offset by alternative more cost effective measures.

Integrated Assessment of Road Noise Impacts

2. That Council prepare a policy via a draft Development Control Plan amendment to guide integration of road noise assessment/control in the mix of all other residential amenity and urban design issues being considered in strategic planning and development approval of urban areas and associated public infrastructure.

Attachment(s)

Nil

11.5 Land Acquisition - Shared Path

11.5 Land Acquisition - Shared Path

Delivery Program Asset Management

Objective To obtain Council approval for a land acquisition for the shared path, being Part Lot 1 DP 791644, corner Amber Drive and North Creek Road, Lennox Head.

Background

The Ballina to Lennox Head shared path project is a Council project comprising of the formalisation and partial construction of a 2-2.5m wide shared path for pedestrian and recreational use with a total length of approximately 6km. The shared path project is divided into three sections:

- Section 1 – Angels Beach Drive to Headlands Drive (completed)
- Section 2 – Skennars Head Road to North Creek Road (completed) and
- Section 3 – North Creek Road from Tara Downs to Amber Drive (under construction)

Geolink was engaged by Council to undertake a concept design of Sections 1 to 3 of the shared path project which was completed in 2011. Geolink has since undertaken the detailed design of Section 1 and Section 2 in early 2014 which is now constructed. Council has undertaken the detailed design of Section 3.

This report is requesting approval to acquire land to widen the road reserve area at the intersection of Amber Drive and North Creek Road to provide adequate width to construct the shared path.

Key Issues

- Widen road reserve
- Determine compensation amount

Information

The intersection of Amber Drive and North Creek Road historically has poor sight distance in observing through traffic and for vehicles pulling out from Amber Drive onto North Creek Road. The existing boundary is set close to the existing eastern kerb line of North Creek Road such that the width of the road verge (from kerb to boundary) is too narrow to achieve adequate sight distance for vehicles at the intersection and too narrow for the new shared path.

Council has previously worked with the corner property owner of Lot 1 DP 791644, known as 2 Victor Place, Lennox Head to set back the fence line up to 2.7m from the property boundary and trim vegetation to improve sight distance at the intersection. Although this set back achieves the function of widening the road verge, no land acquisition has previously been undertaken.

11.5 Land Acquisition - Shared Path

Realigning the kerb to the west has been investigated to provide the additional width for the shared path to be constructed without boundary adjustment, however in doing so would narrow the carriageway width of North Creek Road to the point where it would compromise road safety at the intersection.

Council has subsequently been in contact with the owners of 2 Victor Place to acquire approximately 57m² of land to ensure that the shared path can be located on Council owned land, and the existing sight lines can be maintained without requiring access to privately owned land.

The proposed area to be acquired is shown on the site plan as per attachment one to this report.

The second attachment is a more comprehensive plan of the proposed engineering work for the shared path project with works encroaching into the adjoining property up to the existing fence line (proposed new boundary).

The owners have consented to the land acquisition occurring based on an agreed valuation. The provisions of the Land Acquisition (Just Terms Compensation) Act 1991 require the land to be valued and an agreement reached with the landowners.

Two valuations have now been undertaken by Council with one of the Valuers being nominated by the owner. The valuations are \$23,500 (excl GST) and \$25,000 (excl. GST).

No subsequent negotiations to reach an agreed compensation value have been undertaken.

Sustainability Considerations

- **Environment**
Not Applicable
- **Social**
The acquisition is necessary for the construction of the shared path project.
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

Council will need to negotiate with the landowners regarding a compensation amount and the acquisition of the land will be under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991. There will be additional costs involved in the acquisition including legal fees, surveying and registration charges and these will be at Council's cost.

As this acquisition relates to a land acquisition for the shared path project, it is recommended that the funding be sourced from the shared path budget which is 50/50 joint funded by RMS. RMS have agreed to 50% funding of up to \$35,000. This means the total cost of the land acquisition to Council will be around \$15,000 to \$17,500.

Consultation

Council has been in discussions with the landowners of the property who have consented to the acquisition on the basis of an agreed negotiated compensation amount with the vegetation in the road reserve fronting their property be maintained by Council.

Options

1. Council supports the request to enter into negotiations with owners of Lot 1 DP 791644 for compensation amount for land acquisition to construct the shared path, with the funding estimated at up to \$35,000 to be 50-50 joint funded by Council and RMS.

This option is recommended as it enables Council to complete the full planned length of the shared path and ensure it is located on Council owned land.

2. Council does not support the request to proceed with the land acquisition. This option is not recommended as it leaves a short length of narrow footpath, which will not be to "shared path" standard and will have to be a "dismount section" for cyclists and would compromise the standard of the path way.

RECOMMENDATIONS

1. That Council approves the land acquisition of an area of approximately 57m² being portion of Lot 1 DP 791644, Lennox Head for road reserve widening, as identified within this report.
2. That Council approves a budget of up to \$35,000 (\$17,500 by Council) for this acquisition with those funds to be sourced from the shared path budget.
3. That Council authorises the General Manager to negotiate the agreed compensation amount with the land owner of Lot 1 DP 791644.
4. That Council authorises the Council seal to be attached to any documents associated with the land acquisition.

Attachment(s)

1. Plan Showing Area of Acquisition
2. Engineering Plan of Shared Path Alignment

11.6 Tender - Hire of Truck, Plant and Traffic Control

11.6 Tender - Hire of Truck, Plant and Traffic Control

Delivery Program Asset Management

Objective To consider the Tender for the Hire of Truck, Plant and Traffic Control

Background

Council recently called tenders for the Hire of Truck, Plant and Traffic Control. This tender was advertised in the Northern Star, Daily Telegraph and Advocate beginning on the 28 February 2015 and closing at 3.00pm on 31 March 2015. The contract commences on 1 July 2015 and remains effective for a period of two years to 30 June 2017.

The tender submissions have been used to develop a database of pre-qualified services providers in relation to the wet hire only of Truck, Plant and Traffic Control. Council has historically called tenders for this contract and it is considered essential in regards to our resources for the delivery of works and services.

Under this contract all tenders are given the opportunity of altering their tendered hire rates every six months. This ensures Council does not pay a premium for the risk to contractors for changes in their input costs such as fuel. Increasing the frequency of this opportunity is not preferred due to the increase in administration costs.

Key Issues

- Compliance with regulations.
- Ensuring a fair, value for money and appropriate procurement arrangement is in place for these services.

Information

A total of 42 submissions were received prior to tender closing time with various items of plant available under a wet hire arrangement.

Prior to commencement of the contract tenderers have to demonstrate that they have an appropriate Work Health and Safety Management system in place.

Any contractor that has failed to meet legislative requirements in respect to their WH&S management system, has been notified in writing with a request to address the outstanding issue.

While a tender may be accepted, Council will not use any contractor that has not appropriately responded to these requests.

When Council requires the services of plant and trucks, contractors will generally be contracted in rank order of assessment based on the tendered prices.

11.6 Tender - Hire of Truck, Plant and Traffic Control

It should be noted however that price will not be the only factor used to determine the most suitable contractor or item of plant procured at any given time. Availability, overall value for money and quality of work performed will all be considered.

The engagement of contractors shall be based on an assessment of the contractor's ability to provide the services. The main criteria used for the engagement of contractors will include but not be limited to:

- Price
- Age, condition, and capacity of the plant and operator
- Fitment of onboard weighing systems on haulage trucks
- The availability of certain plant attachments
- Proven reliability of the contractor
- Experience and performance of the contractor.

Whilst this process provides Council a list of preferred services providers, Council is not bound to hire from the database and may invite separate quotations or tenders for specific works.

Sustainability Considerations

- **Environment**
As reported in Tender Specifications, contractors were reminded of their responsibilities and obligations. Section 7 of the Tender Specification highlighted the contractors Environmental responsibilities with respect to plant and equipment and also in respect to the operator.
- **Social**
Not Applicable
- **Economic**
Not Applicable

Legal / Resource / Financial Implications

The process ensures Council meets the requirements of the Local Government Act and Tendering Regulations, and obtains best value for money through a competitive process for plant hire. Each successful contractor will be presented with a "Letter of Engagement" highlighting term and condition of the contract.

Some engagements under this contract, on an annual cumulative basis, can represent significant expenditure by Council.

The costs to hire contractors under the contract are costed against individual budget allocations, which are monitored by the various program managers to ensure appropriate budget controls and use of the contract is in place.

Consultation

11.6 Tender - Hire of Truck, Plant and Traffic Control

As advertised within the Tender specifications, Tender information workshops were held in the Council Chamber at 7.00pm on 10 and 17 March 2015. Information was presented by Council staff to the contractors regarding Council's requirements. WorkCover also attended and presented to the meeting information in regards to the legislative requirements for all parties involved in the tender.

Options

The recommendation to this report seeks for Council to endorse the process undertaken by staff. This tender has been in place for many years and staff continue to develop the process to ensure the arrangements represent the best advantage to Council. The Council can elect to amend or discontinue the process, however this is not recommended due to the previous successful outcomes from this tender as a source of resources for the Council. The advantage of this tender is that it provides a competitive market and establishes an efficient procurement system with appropriate probity arrangements in place.

The recommendation to this report endorses all submissions to be accepted, however as per the information in this report, the amount and frequency of work offered, if any, to individual contractors will be implemented in accordance with the provisions in the specification.

RECOMMENDATIONS

1. That in relation to RFT788 – Tender for the Hire of Truck, Plant and Traffic Control, Council confirms that all submissions received as conforming tenders are to be accepted on the basis of the unit rates supplied in the tender, and the tender be implemented on a “best advantage to Council” basis in accordance with the specification and other related tender documents.
2. That Council seal is authorised to be attached to any contract documentation associated with this tender.

Attachment(s)

Nil

12. Public Question Time

12. Public Question Time

13.1 Notice of Motion - Ballina Heights Access

13. Notices of Motion

13.1 Notice of Motion - Ballina Heights Access

Councillor Cr Meehan

I move that Council

1. Seek an urgent commitment from the NSW Roads Minister for the Government to modify the Ballina Bypass for the purpose of rectifying the negative impact it has caused in reducing the level of access for Ballina Heights and the adjoining residential precincts during major storm events.
2. That Council take no further action in respect of its decision to lower Deadman's Creek Road until the upgrade to Tamarind Drive proposed in point one above is implemented.

Councillor Comment

In major storm events the Ballina Heights Estate and adjoining residential areas can be isolated due to water across Tamarind Drive and Deadman's Creek Road as a result of major storm events.

While it is the case that the former Pacific Highway would be affected on these occasions, the construction of the Ballina Bypass has had two principle effects. Firstly, the location of the water over the road has shifted to the north of Deadman's Creek road to a point adjacent to the new roundabouts which provide the connection to the motorway. This means access to the north is now prevented and this can occur at a time when access to the south is not available due to water over Deadman's Creek Road, thereby isolating this major residential area. Secondly, in the opinion of residents, the frequency of the inundation has increased.

I understand Council has previously been advised by RMS that the road level of Tamarind Drive was fixed to ensure compliance with the development approval for the construction of the motorway. The purpose of the relevant conditions was to ensure the motorway did not create a negative impact on the outcomes associated with a 1 in 100 year flood event.

However, in constructing the Bypass, the RMS has failed to comply with the approval in a manner which does not negatively impact on the existing local drainage conditions.

Therefore, to ensure access from the adjoining residential area is not compromised, it is reasonable for the Council to expect the RMS to rectify the deficiency of this new infrastructure. Even if it is the position of the RMS that they have achieved full compliance with the terms of the approval, the approval was provided by the NSW Government and therefore it is the Government's responsibility to address this concern.

COUNCILLOR RECOMMENDATIONS

1. That Council seek an urgent commitment from the NSW Roads Minister for the Government to modify the Ballina Bypass for the purpose of rectifying the negative impact it has caused in reducing the level of access for Ballina Heights and the adjoining residential precincts during major storm events.
2. That Council take no further action in respect of its decision to lower Deadman's Creek Road until the upgrade to Tamarind Drive proposed in point one above is implemented.

Attachment(s)

Nil

13.2 Notice of Motion - Application of Step Two Water Charges

13.2 Notice of Motion - Application of Step Two Water Charges

Councillor

Cr Cadwallader

I move that Council receive a report to the June 2015 Ordinary meeting, as part of the adoption of the 2015/16 fees and charges, on the merits of only charging the step one for water consumption, where a concealed water leak has been confirmed for residential properties.

Councillor Comment

I remain concerned that where a resident has had an unforeseen concealed water leak that results in high water consumption, once their annual consumption is over 350 kilolitres they pay a 50% premium on any water consumed for the remainder of the financial year. This can be particularly disadvantageous if that water leak occurs during the first quarter of the year.

Council has revoked the "Concealed Water Leaks Policy" which now means that owners have to pay for all water consumed. However a report on the merits of allowing owners who may have complied with the original Concealed Water Leaks Policy to pay the water consumed at step one (assuming their historical usage is based on step one consumption levels) for the year in question would be of interest.

COUNCILLOR RECOMMENDATION

That Council receive a report to the June 2015 Ordinary meeting, as part of the adoption of the 2015/16 fees and charges, on the merits of only charging the step one for water consumption, where a concealed water leak has been confirmed for residential properties.

Attachment(s)

Nil

14.1 Commercial Services Committee - Minutes 19 May 2015

14. Advisory Committee Minutes

14.1 Commercial Services Committee - Minutes 19 May 2015

Attendance

Crs David Wright (Mayor - in the chair), Jeff Johnson, Sharon Cadwallader, Keith Johnson, Susan Meehan, Ken Johnston, Paul Worth, and Ben Smith.

Paul Hickey (General Manager), John Truman (Civil Services Group Manager), Rod Willis (Development and Environmental Health Group Manager), Paul Tsikleas (Commercial Services Manager), Steve Barnier (Strategic and Community Facilities Group Manager) and Sarah Carden (Secretary) were in attendance.

There were three people in the gallery at this time.

1. Apologies

Apologies were received from Crs Robyn Hordern and Keith Williams.

RECOMMENDATION

(Cr Ben Smith/Cr Keith Johnson)

That such apology be accepted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader and Cr Susan Meehan

2. Declarations of Interest

Nil.

3. Deputations

Nil.

4. Committee Reports

4.1 54 North Creek Road, Ballina - Development Options

RECOMMENDATION

(Cr Keith Johnson/Cr Ben Smith)

1. That Council approves the preparation and lodgement of a DA to undertake subdivision of Part Lot 98 DP 1194043, subject to that subdivision plan first being submitted, in draft form, for Council review and approval.
2. That the General Manager establishes a Sound Management Plan (SMP) for the proposed subdivision which has as its purpose the achievement of a subdivision that meets or exceeds the noise attenuation that will be required of it and does so at the least practical cost to the project. This plan to be established immediately.
3. That clearing of the land be undertaken as soon as possible together with removal of the house.
4. That Council approves an allocation of \$30,000 from the Property Development Reserve to finance the cost of points 1, 2 and 3 above.
5. That the General Manager assess other non-commercial sites for the Men's Shed.

Cr Susan Meehan arrived at the meeting at 04:07 pm.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

4.2 Land Acquisition - 9 North Creek Road, Ballina

RECOMMENDATION

(Cr Paul Worth/Cr Ben Smith)

1. That Council approves the acquisition of Part of Lot 6 DP 238894, 9 North Creek Road as outlined within this report.
2. That the land be dedicated for road widening purposes and a licence be granted over the land as per Options One and Two of this report.
3. That Council authorises the Council seal to be attached to the contract for sale and any other related documents including sales transfers and licence agreements.
4. That Council investigate the purchase of a portion of Lot 7 DP238394, 11 North Creek Road, Ballina.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

4.3 Land Sale - Lot 5 Tectona Place Wollongbar

RECOMMENDATION

(Cr Ben Smith/Cr Susan Meehan)

That Council investigate compensatory planting in close proximity for the existing Teak tree to maximise the return on Lot 5 Tectona Place, Wollongbar.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

4.4 Land Sale - Lot 7 Tectona Place, Wollongbar

RECOMMENDATION

(Cr Ben Smith/Cr Paul Worth)

That Council notes the contents of this report in respect to the proposed sale of Lot 7 DP 1204621 Tectona Place, Wollongbar.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

4.5 Land Sale - Lot 87 Cessna Crescent, Ballina

RECOMMENDATION

(Cr Ben Smith/Cr Keith Johnson)

1. That Council approves the sale of Lot 87 DP 1161854 Cessna Crescent, Ballina, as detailed within this report.
2. That Council authorises the Council seal to be attached to the contract for sale and any other related documents including sale transfers.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

4.6 Lease Arrangements - Kentwell Community Centre

RECOMMENDATION

(Cr Ben Smith/Cr Paul Worth)

1. That Council resolves to offer FSG Australia a new five year lease for the occupation of part of the premises known as the Kentwell Community Centre at an initial base rental of \$62,372.30 p.a. + GST, and place the lease proposal on public exhibition in accordance with the provisions of the Local Government Act 1993.
2. That Council authorises the General Manager to finalise negotiations and attach the Council seal to the relevant leasing documents.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

5. Confidential Session

RECOMMENDATION

(Cr Ben Smith/Cr Jeff Johnson)

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.

5.1 Land Acquisition Price - 9 North Creek Road, Ballina (Road Frontage)

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 due to the ongoing commercial negotiations.

5.2 Land Sale Price - Lot 7 Tectona Place, Wollongbar

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

14.1 Commercial Services Committee - Minutes 19 May 2015

open meeting is not considered to be in the public interest due to the ongoing commercial negotiations.

5.3 Land Sale Price - Lot 87 Cessna Crescent, 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 due to the ongoing commercial negotiations.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

(The Council moved into Confidential Session at 4.47pm).

Open Council

RECOMMENDATION

(Cr Keith Johnson/Cr Susan Meehan)

That Council move into Open Council and out of Committee of the Whole.

FOR VOTE - All Councillors voted unanimously.

(The Council moved into Open Council at 4.41pm).

The General Manager reported to the Open Meeting the recommendations made while in Confidential Session:

5.1 Land Acquisition Price - 9 North Creek Road, Ballina (Road Frontage)

RECOMMENDATION

(Cr Ben Smith/Cr Paul Worth)

1. That Council approves the acquisition price negotiated for 9 North Creek Road, Ballina (Part of Lot 6 DP 238894).
2. That the land be dedicated for road widening purposes and a licence be granted over the land as per Options One and Two of this report.
3. That Council authorises the Council seal to be attached to the contract for sale and any other related documents including sales transfers and licence agreements.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

5.2 Land Sale Price - Lot 7 Tectona Place, Wollongbar

RECOMMENDATION

(Cr Ben Smith/Cr Keith Johnson)

1. That Council approves the sale price negotiated for Lot 7 DP 1204621 Tectona Place, Wollongbar, as per Option One of this report.
2. That Council authorises the Council seal to be attached to the contract for sale and any other related documents including sale transfers.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr Sharon Cadwallader

5.3 Land Sale Price - Lot 87 Cessna Crescent, Ballina

RECOMMENDATION

(Cr Ben Smith/Cr Paul Worth)

That Council approves the sale price and terms, negotiated for Lot 87 DP 1161854 Cessna Crescent, Ballina as per Option One of this report.

Cr Sharon Cadwallader arrived at the meeting at 04:40 pm.

FOR VOTE - All Councillors voted unanimously.

Adoption of Recommendations from Confidential Session

RECOMMENDATION

(Cr Ben Smith/Cr Keith Johnson)

That the recommendations made whilst in Confidential Session, be adopted.

FOR VOTE - All Councillors voted unanimously.

MEETING CLOSURE

Meeting closed at 4.41pm.

RECOMMENDATION

That Council confirms the minutes of the Commercial Services Committee meeting held 19 May 2015 and that the recommendations contained within the minutes be adopted.

Attachment(s)

Nil

15.1 Mayoral Meetings

15. Reports from Councillors on Attendance on Council's behalf

15.1 Mayoral Meetings

Councillor David Wright

Activities since the April 2015 Ordinary meeting:

27/4/15 Small Business Meeting Introduction
27/4/15 Small Business Interaction
28/4/15 Briefing – 45-49 Ballina Street Lennox Head
29/4/15 Meeting – Rod Willis – 45-49 Ballina Street Lennox Head
30/4/15 Gallery Launch
2/5/15 Meeting/lunch US Consul General
2/5/15 Ballina Sub Branch Naval Association - Remembrance Day
Coral Sea Battle
4/5/15 Meeting Ballina Hospital Auxiliary
4/5/15 Skate Park Meeting - Alstonville
5/5/15 Meeting Kris Beavis – Election Follow-up
5/5/15 Alstonville Wollongbar Chamber of Commerce
9/5/15 Anglican Fete - Alstonville
9/5/15 Alstonville Lions Club – Plateau Bowling Club
10/5/15 Alstonville Markets
10/5/15 Lennox Head Markets
10/5/15 Walk For Cancer – Mothers’ Day Classic
11/5/15 Briefing Flood Plain Risk Management
12/5/15 Meeting – Tony Gibbs – NBN Co
12/5/15 ‘A’ Ward Committee
12/5/15 Visit – LGNSW – President
12/5/15 Alstonville 150th Committee
13/5/15 Volunteers’ Morning Tea - Surf Club
13/6/15 Meeting - Eddie Loong and others – Uralba NBN Tower
13/5/15 Artist Talk – Grayson Cooke – AgX Project
14/5/15 ‘Love Lennox’ Launch
14/5/15 ‘C’ Ward Committee
16/5/15 Lennox Head SLSC Presentation
16/5/15 Rotary Collectables Fair
16/5/16 Scope – Afternoon Tea By The Sea
16/6/15 Wollongbar Rugby Sponsors’ Day
17/5/15 Opening Palm Lake Resort – Bowls Club
18/5/15 Tony Gibbs, NBN Co
18/5/15 Meeting Darren Rogers
18/5/15 ‘B’ Ward Committee
19/5/15 Meeting - National Ice Taskforce - Lismore
19/5/15 Meeting with RMS
19/5/15 Commercial Services Committee
19/5/15 Cr Briefing on Master Plan for Martin Street Boat Harbour
20/5/15 Photo shoot – Alstonville 150th Celebration
20/5/15 Wollongbar Campus Awards of Excellence – Lismore Workers
21/5/15 Meeting with Management Palm Lakes re signage
21/5/15 Alstonville Community Preschool – ‘Turning the Sod’
22/5/15 CSPC Meeting – Lismore

15.1 Mayoral Meetings

22/5/15	Meeting with MP Tamara Smith
23/5/15	Ballina Lighthouse and Lismore SLISA – Presentation
23/5/15	Koala Concert
23/5/15	Ferry Meeting – Empire Vale
24/5/15	Inspection Lynwood site for NBN Tower
25/5/15	Ballina Rotary RSL
25/5/15	Wardell - Charges and Delivery Program
26/5/15	Briefing Shelly Beach Café
26/5/15	Briefing NBN Tower application
26/5/15	Lennox Head – Charges and Delivery Program
28/5/15	Council Meeting
29/5/15	Dedication of Memorial – Wardell
31/5/15	Alstonville 150 th - Street Markets

RECOMMENDATION

That Council notes the contents of the report on Mayoral meetings.

Attachment(s)

Nil

16. Questions Without Notice

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:

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 McGeary Brothers Pty. Ltd. Quarries - Legal Advice

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

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 it may compromise Council's ability to recoup any Section 94 contributions outstanding.