



## 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 22 October 2015 commencing at 9.00am.**

### 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 any position in the public gallery.

## Table of Contents

1.	Australian National Anthem .....	1
2.	Acknowledgement of Country .....	1
3.	Apologies.....	1
4.	Confirmation of Minutes.....	1
5.	Declarations of Interest and Reportable Political Donations.....	1
6.	Deputations .....	1
7.	Mayoral Minutes .....	1
8.	Development and Environmental Health Group Reports.....	2
8.1	DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road	2
8.2	DA 2015/377 - Four Lot Residential Subdivision, Blue Seas Parade	39
8.3	Development and Public Infrastructure Consents - September 2015	47
8.4	Development Applications - Works in Progress - October 2015	48
9.	Strategic and Community Facilities Group Reports.....	53
9.1	Pop Denison Park - Master Plan	53
9.2	Cumalum Precinct B Locality Naming	58
9.3	Classification of Land - Avalon Avenue Wollongbar	64
9.4	LEP Amendments and Planning Proposals - Status	67
10.	General Manager's Group Reports .....	72
10.1	Use of Council Seal	72
10.2	Investment Summary - September 2015	73
10.3	Disclosure of Interest Returns	78
10.4	Code of Conduct - Reporting	80
10.5	Annual Financial Statements - 2014/15	82
10.6	Delivery Program and Operational Plan - 30 September Review	85
10.7	Capital Expenditure Review - 30 September 2015	89
11.	Civil Services Group Reports.....	97
11.1	Lake Ainsworth Precinct - Eastern Road Closing	97
11.2	Main Street Proposed Footpath Construction	102
11.3	Ballina Heights Drive - Contract Variation Claim	105
11.4	Tender - Provision for Internal Audit Services	107
11.5	Policy (Review) - Dust Sealing of Roads	111
11.6	Policy (Review) - Urban Water Quality	114
12.	Public Question Time.....	118
13.	Notices of Motion.....	119
13.1	Notice of Motion - Surf Jet Ski Patrols	119
14.	Advisory Committee Minutes .....	122
14.1	Commercial Services Committee Minutes - 15 October 2015	122
15.	Reports from Councillors on Attendance on Council's behalf.....	128
15.1	Mayoral Meetings	128

16.	Questions Without Notice .....	129
17.	Confidential Session.....	130
17.1	Ballina Heights Drive - Contract Variation Claim	130

1. Australian National Anthem
  2. Acknowledgement of Country
  3. Apologies
  4. Confirmation of Minutes
  5. Declarations of Interest & Reportable Political Donations
  6. Deputations
  7. Mayoral Minutes
- 

**1. Australian National Anthem**

The National Anthem will be performed by St Joseph's School Choir.

**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 24 September 2015 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 24 September 2015.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

## **8.1 DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road**

---

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

#### **8.1 DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road**

---

<b>Applicant</b>	Newton Denny Chapelle (on behalf of G and P Rooke)
<b>Property</b>	Lot 5 DP 606566, No. 1 Johnston Road, Newrybar
<b>Proposal</b>	To undertake the conversion of an approved dual occupancy development to a dwelling house, the use of the dwelling house for Tourist and Visitor Accommodation and the Temporary Use of the Land as a Function Centre (via Clause 2.8 of the Ballina Local Environmental Plan 2012)
<b>Effect of Planning Instrument</b>	The land is zoned RU1 Primary Production under the provisions of the Ballina LEP 2012
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

#### **Introduction**

Council is in receipt of Development Application 2015/300 for the conversion of an approved dual occupancy development to a dwelling house, the use of the dwelling house for Tourist and Visitor Accommodation and the Temporary Use of the Land as a Function Centre (via Clause 2.8 of the Ballina Local Environmental Plan 2012) at Lot 5 DP 606566, No. 1 Johnston Road, Newrybar. Refer to Attachments 2 and 3.

The purpose of this report is to seek Council's determination of the subject application. Of particular consideration in the determination of this application is the use of Clause 2.8 – Temporary Use of Land to enable a prohibited land use (Function Centre) to operate within the RU1 zone.

#### **Details of Proposal**

The proposed development involves three components:

1. The conversion of an approved dual occupancy development to a dwelling house

Note: Council's records indicate that BA 1977/703 was issued on 7 November 1977 for the erection of a four bedroom dwelling house (original dwelling), DA 1989/201 was approved on 11 August 1989 and BA 1989/645 was issued on 31 August 1989 for the erection of a second dwelling house to create a dual occupancy development.

The floor plans provided within the Statement of Environmental Effects (SEE) accompanying DA 2015/300 (and as confirmed during an inspection of the site by Council staff), indicate that changes have been made to the floor plan of the approved dual occupancy development to convert the building to a single dwelling house (which includes a substantial reconfiguration of the original dwelling house approved via BA 1977/703).

The applicant, via letter dated 31 August 2015, has advised that the unauthorised works to convert the approved dual occupancy on the land to a dwelling house occurred prior to purchase of the property by the current owners. The applicant has also advised that the current owners will be seeking to lodge a Building Certificate Application with Council in relation to these unauthorised works and have engaged a Building Consultant (Tecton Pty Ltd) to prepare a Building Code of Australia (BCA) report to accompany such application. The Building Certificate Application and report are yet to be submitted to Council for assessment.

2. Use of the dwelling for the purpose of Tourist and Visitor Accommodation

The applicant has advised that the dwelling house at "Newrybar Downs" is the permanent home of the current owners, however from time to time, the dwelling is proposed to be let, in its entirety, to a single group, for the purpose of short term holiday accommodation. Up to 10 persons would be accommodated in the dwelling. (Note: The plans of the dwelling house provided in the SEE depict five bedrooms).

The owners of the dwelling do not propose to reside in the dwelling house whilst it is being utilised as tourist and visitor accommodation.

The applicant has stated that whilst the proposal does not include a manager's residence, the Newrybar Downs property manager will greet each group of guests on site. Guests are to be provided with telephone contact details for the property manager, who is then 'on call' 24 hours a day for any issues or requests that may arise. The property manager lives within a 20 minute drive of Newrybar Downs.

Upon departure, the client(s) will be checked out of the property by the property manager and a quick inspection walk through will be completed. A more detailed inspection will occur after the guests have departed prior to the refund of the security deposit.

Civil works are proposed to be carried out to the site in the form of:

- A new driveway to Johnston Road, in order to provide Australian Standard compliant vehicular egress from the site for guests staying at the accommodation.
- A minor expansion of the existing gravel surfaced driveway areas in order to accommodate a turning circle bay for Rural Fire Service Vehicles.

There will be the nominal provision of three car parking spaces (either within the existing double garage and/or in front of the garage), for use by guests.

**3. Temporary Use of the Land as a Function Centre**

The application for the Temporary Use of the property as a Function Centre, has been lodged pursuant to Clause 2.8 of the Ballina Local Environmental Plan 2012. The applicant has stated that they are seeking approval to operate for a five year period (i.e. a five year limited consent).

The main details of the operation of the proposed function centre are as follows:

- A maximum of 13 functions in any 12 month period, with not more than two functions in any four week period.
- Functions proposed on the site will typically comprise weddings, however flexibility is sought to enable other gatherings, such as 'corporate events' to also occur on the property.
- Each wedding/function will have up to 150 people (guests) in attendance.
- It is expected that people will wander over the grounds, however the main activities/focus of the function centre use will be confined to the areas adjacent to the dwelling house and driveway.
- Functions to be held on site will usually, but not always, involve the erection of a marquee. This will typically comprise a wedding involving both the ceremony and reception on the grounds of Newrybar Downs.
- The weddings held on site will be marketed to the 'destination wedding' industry (Note: Destination weddings are those where the bridal party and the majority of guests reside outside of the local area, with attendees travelling to the Northern Rivers and staying in holiday accommodation in the area).
- The majority of weddings will occur between September and May (wedding season).
- All catering is to be prepared by off-site caterers who will then set up food service areas in the nominated location. The existing kitchen in the dwelling will not be used during functions.
- The proposed Function Centre will be operated in accordance with an Operational Management Plan (OMP). Refer to Attachment 4. It is noted that the OMP includes such requirements as
  - Requiring the engagement of an agreed wedding/function planner to oversee the event and ensure compliance with the OMP.
  - Requiring a representative of Newrybar Downs to be on site throughout the event. Contact details of the representative to be provided to neighbouring property owners.
  - Requiring a nominated security guard to be on site throughout the event.
  - Requiring all guests to arrive by mini bus
  - Limitation on function times and noise generation in accordance with the terms and conditions of the development consent.
  - Future clients (i.e. bride and groom) will be required to sign contracts linked to compliance with the OMP.

*Note: the applicant has advised that the draft OMP will be updated to reflect any applicable conditions of consent.*

- A typical 'Ceremony and Reception' Wedding event is to involve:



**8.1 DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road**

- Commencement between 2 and 4pm (dependent on individual function) – guests to arrive on site via mini busses (20 seaters)
  - Guests to gather around pool before moving to chosen ceremony location (the noise consultant has identified 3 preferred locations – refer to Attachment 5).
  - Wedding ceremony to be held in chosen location on site.
  - Following ceremony, drinks and canapés would be served in the area surrounding the pool.
  - Meals are then to be served in the marquee, with speeches and background music also to be provided.
  - Post dinner dancing will occur in the marquee. Performers are to be set up in a specialised sound shell within the marquee. Speakers are to face the dwelling house and volumes are to be limited in accordance with the Operational Management Plan (OMP).
  - Amplified or live music is to cease at 10:30pm (limited to post-dinner for a maximum of four hours).
  - Wedding guests (other than those being accommodated on site) are to depart the site by 11:30pm.
  - The existing dwelling house (including the kitchen and bathroom facilities) is to be off limits during the function to all persons (other than those staying in the dwelling). The applicant has verbally confirmed that aged and/or disabled persons and parents of babies/young children may also utilise bathroom facilities within the dwelling house during the function.
- Each function will involve up to four days of activity, resulting in a total of 52 days a year (13 functions x 4 days) as follows:

<b>SET UP AND PACK UP ACTIVITIES</b>	
<b>DAY 1: Set Up (Typically Thursday)</b>	
Delivery and set up of marquee, caterer's tent, generator and lighting	1 x Pantech (small covered) truck
Delivery of chairs, tables, styling items, glassware	1 x Pantech truck
Delivery and placement of portaloos and waste bins	1 x ute with trailers
Delivery and placement of cool room	1 x ute with trailer
<i>By the end of Day 1, the marquee and caterer's tents are set up, tables and chairs are in place, lighting in marquee is set, generator, cool rooms and portaloos are in their designated spot.</i>	
<b>DAY 2: Set Up (Typically Friday)</b>	
Delivery and set up of flowers for marquee and ceremony site	1 x car or van
Music and entertainment set up	1 x car or van
Set up and Styling	1 x car
<i>By the end of Day 2, the marquee is fully set up and decorated</i>	
<b>DAY 3: Wedding Day (Typically Saturday)</b>	
Makeup Artist (morning)	1 x car
Catering and Waiting Staff –	1 x van

<b>SET UP AND PACK UP ACTIVITIES</b>	
Set up and pack upon day of wedding	2 x cars
Musicians – Take away their equipment on the night of the wedding	1 x car or van
<i>By the end of Day 3, all caterers, musicians' equipment and caterers' equipment (including plates etc.) removed.</i>	
<b>DAY 4: Pack Up (Typically Sunday) -</b>	
Marquee and catering tent packed away and removed along with generator and waste bins.	1 x Pantech truck
All hired furniture removed	1 x Pantech truck
Portaloos, cool room removed	2 x Utes with trailers
Note: The applicant has advised that the owners have written confirmation from the approved suppliers that pack down and removal of marquee and other equipment can occur on a Sunday.	

The Operational Management Plan (and Terms and Conditions of hire of the property for the function centre use) requires that the tourist and visitor accommodation be booked concurrently with the use of the property for the function/event.

The application proposes a total of 18 car parking spaces as being required for a typical larger function, comprising 10 spaces to accommodate the various persons employed on site during the course of a typical event, five overflow spaces for function attendees who do not arrive by mini bus (elderly persons and families with very young infants) and three spaces for house guests (persons attending the function). The spaces in the SE corner of the site are proposed to be all weather (granular) construction

In relation to toilet facilities for functions, the proposal is to provide 1 portaloos per 20 persons in attendance at the function (including staff).

Note: The proposal also involves the removal of some vegetation to enable the location of the marquee, pedestrian pathways and the new driveway (as required for both the tourist and visitor accommodation use of the dwelling house and for the proposed function centre use). Some minor earthworks will also be required to enable the provision of the marquee pad. These works are classed as exempt development and do not require the prior development consent of Council.

**Description of the Subject Site**

The subject land is located at the corner of Brooklet Road and Johnston Road, Newrybar, approximately 700 metres from the village of Newrybar.

## **8.1 DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road**

---

The property has a total area of 3.87ha and is currently utilised for rural residential purposes.

The property contains a large five bedroom single storey dwelling house with attached double garage, in-ground swimming pool and associated pool house, a large level pad surfaced with astro turf (used previously as a 'bowling green') and a small shed in the south eastern corner.

The property also includes extensive domestic landscaping around the dwelling house.

The surrounding locality is characterised by properties that are either utilised for horticultural and/or grazing purposes (ranging in area from 8ha to 73ha) or smaller rural residential properties (ranging in area from 8000m<sup>2</sup> to 4ha).

### **Background**

In December 2014, Council staff carried out an inspection of the subject property after receiving complaints from neighbouring properties in relation to noise (associated with the hosting of weddings/functions) being generated from the site (Newrybar Downs). As a result of these complaints and the investigation work undertaken by Council staff, a letter was issued to the property owners in early January 2015, about the un-approved use of the property for the purpose of tourist and visitor accommodation, the operation of a function centre and the existence (and subsequent use) of a helipad on the site. As part of this process the owners were requested to cease taking any future bookings for the unauthorised land uses until Council approval had been sought. It was also required that the owners outline what actions they had taken (and would take) to minimise the impacts of the unauthorised land uses and the details of the remaining functions booked at the subject premises.

In late January 2015, Council received correspondence from Newton Denny Chapelle in relation to their engagement as planning consultants for the lodgement of a future development application for the occasional use of the property for a wedding venue. Subsequent to this written advice, the owners of the property and Newton Denny Chapelle met with Council staff in February 2015 to discuss the possibility of lodging a development application for tourist and visitor accommodation, a function centre and also the operation of the helipad. The minutes of this meeting (as provided by the applicant) are provided at Attachment 6.

The owners of the property provided a formal response to the notice via email on 9 March 2015 advising that there were a further 12 bookings of the property from 7 March onwards (until November 2015) and that an update had been made to their Operational Management Plan to go some way towards minimising any disturbance to surrounding properties.

Council staff subsequently wrote to the owners (via letter dated 17 March 2015) and advised consideration may be given to allowing the weddings booked until the 30 May 2015 to continue as "one off" events (total of 4 weddings, one of which was a ceremony only). This consideration was given as there were a number of third parties who had invested substantial time, money, and effort, in good faith, planning their weddings and that those third parties shouldn't have these thrown into disarray at short notice. The owners

## **8.1 DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road**

---

were instructed to formally advise the surrounding residents prior to listed functions about the event, the number of guests being hosted, and the hours of the event, to have on-site supervision and to provide to local residents the contact telephone number of the on-site event manager that they can ring should any function cause them excessive disturbance.

Council staff also wrote to concerned residents in the locality in relation to the actions that had been taken in relation to their complaints and the requirements placed on the owners of the property with respect to the "one off" events.

On 31 March 2015, Council received a further submission from Newton Denny Chapelle (on behalf of the owners), requesting an additional four weddings to be held as "one off events" in September/October/November. Refer to Attachment 7. Council staff wrote to the owners of the property on 20 April 2015 and advised that:

- as the request had been made on the basis that a significant number of the guests and members of the bridal party have made substantial commitments and will be travelling from interstate and overseas; and
- Newton Denny Chapelle will be in a position to lodge a development application towards the end of May 2015,

consideration had been given to the request and Council would not take action to prohibit the four weddings booked between September 2015 and November 2015 from taking place, providing that the functions operate strictly in accordance with the owner's event management plan.

In relation to the wedding held on 26 September 2015, Council received a phone call complaint during the event and also a number of email complaints afterwards from local residents with respect to the noise of the function. A copy of these submissions can be provided to the Council upon request. The applicant has supplied some information from the security contractor employed for that event. Refer to Attachment 8.

Note: The unauthorised functions held at the subject property to date (and those planned for October and November 2015) have been and are to be held at the "Bowling Green" site to the west of the dwelling house. The application, as lodged, proposes to resite the marquee and wedding reception area to the north of the dwelling house.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The application was placed on public exhibition from 1 July 2015 to 16 July 2015. A total of 19 submissions in support of the proposal and 10 submissions raising concern and/or objecting to the proposal were received during this period.

## **8.1 DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road**

---

Following receipt of additional information from the applicant on 31 August 2015, a further notification period from 31 August 2015 to 25 September 2015 was provided to those submitters who raised concerns and/or objected to the proposal. A further seven submissions raising concern and/or objecting to the proposal were received during this additional period.

It is noted that an additional four submissions in support of the proposal have been received since 29 September 2015.

A copy of all submissions is provided in Attachments 9 and 10.

A summary of the issues raised are provided below.

### Support submissions

- Employment and economic benefits of the destination wedding industry – to Newrybar and the wider region.
- Employment opportunities for local contractors associated with the ongoing maintenance and upgrade of the property.
- Support for low impact, high quality tourist and visitor accommodation (as provided by Newrybar Downs)
- The demand for high quality facilities (as provided by Newrybar Downs)
- The need to attract additional people to the village of Newrybar after the completion of the Pacific Highway upgrade.
- Support for increase in tourism numbers and associated flow on economic impacts.
- The business credentials of the current owners of the property and their willingness to modify their current business (function centre and accommodation) to address community concerns.
- The proposed Operational Management Plan includes a range of initiatives to ensure offsite impacts are managed in a way to minimise disturbance on the surrounding locality.
- Current management of functions on site with respect to noise and security are satisfactory.
- A degree of change to the locality should be accepted as long as it is sympathetic with the rural charm of the area.
- The highest level of standards are to be met for every single event in relation to noise and other behaviours.

### Objection issues

1. Inconsistency with the RU1 Primary Production zoning of the land.

COMMENT: Refer to BLEP 2012 section of this report for discussion.

2. Number and frequency of functions/events

COMMENT: The application originally proposed the use of the land for the purpose of a function centre for up to 52 days in any 12 month period, with not more than two functions in any four week period (equating to a maximum of 26 functions per year).

As part of the additional information received on 31 August 2015, the application was amended such that the proposal now involves the hosting of 13 events with no more than two events in any four week period.

Given the applicant has identified that the wedding season is between September and May (total of nine months), it is possible that all 13 events will be held within this period (equating to an average of one event every three weeks).

Further discussion in relation to this issue is provided in the BLEP 2012 section of this report.

3. A five year term of approval is objected to (with a trial period of 1 to 2 years more preferable if the development is approved)

COMMENT: Refer to the BLEP 2012 section of this report for discussion.

4. The proposed maximum number of guests for each function

COMMENT: Refer to the BLEP 2012 section of this report for discussion.

5. Impact on rural character, amenity and quality of life

COMMENT: Refer to the BLEP 2012 section of this report for discussion

6. Off-site noise impacts associated with the wedding receptions

COMMENT: Refer to the BLEP 2012 section of this report for discussion.

7. Accuracy of noise assessment

COMMENT: The applicant has responded to this issue and commented that "Tim Fitzroy and Associates are reputable acoustic consultants who have completed the noise impact modelling in accordance with the applicable industry standards"

Council's Environmental Health Officer has confirmed that the assessment has been carried out in accordance with the Industrial Noise Policy (as prepared by the Environmental Protection Authority in 2000), which is the applicable noise document in assessing the proposed development. If the proposed function centre use were to be approved by Council, certain noise levels would be applied at the property boundary, so all on-site noise would need to be adjusted accordingly to ensure compliance at the boundary.

8. Lack of information with respect to the details and location of the proposed sound shell

COMMENT: The Noise Impact Assessment, prepared by Tim Fitzroy and Associated within Appendix 7 of the SEE, states the following in relation to the sound shell:

"Entertainment is to occur within a 3 sided structure with a roof. The basic design can be achieved with low cost, standard solutions, usually of overlapping timber boards or plywood panels. Infill panels can be timber, plywood etc. with a minimum density of 12.5kg/m<sup>2</sup>. For example, 100 x 25mm timber slats with a minimum 25mm overlap will be effective. Posts can be 100mm minimum dimension (i.e. 100 x 100).

## 8.1 DA 2015/300 - Dwelling House and Facilities, 1 Johnston Road

---

- Timber should have a minimum 25mm overlap so shrinkage does not affect the acoustic performance of the barrier;
- Structural plywood should be Stress Grade F14 or better;
- Plywood panels above ground need to be treated to Hazard Level 3 or better. Panels in contact with the ground need to be treated to Hazard Level 4.

Materials other than timber can be used such as concrete, masonry, glass fibre reinforced concrete, steel sheet, glass, etc. given that the material provides the minimum density of 12.5kg/m<sup>2</sup>.

The size and location of openings under or through the barrier must be kept to a minimum. The effect of a continuous gap of approximately 50mm at the base of the noise barrier will degrade the performance of the barrier by approximately 1dB(A)."

The applicant has further advised in the SEE that the barrier is to be housed inside the marquee during events.

It is noted that actual dimensions etc. and a plan showing where the sound shell/acoustic barrier is to be located within the marquee have not been provided with the application. The lodgement of these details can be required as a condition of any consent granted.

### 9. Noise Management Plan has not been submitted with the application

COMMENT: The applicant has stated that in the event that Council approves the application, it is envisaged that a Noise Management Plan will be a condition of consent. This plan would include the range of noise management measures documented in the Noise Impact Assessment prepared by Tim Fitzroy and Associates (as provided in the Statement of Environmental Effects) as well as any conditions of consent applied by Council.

In assessing the application, Council planners have not required the submission of a draft/proposed Noise Management Plan for the function centre use of the property. This plan would be typically required to be provided to Council as a condition (with the condition outlining the specific requirements of the plan) in the event the proposal was to be granted development consent. The plan would be required to be approved by Council prior to the use of the property for the function centre use.

### 10. The criteria set for outdoor music events should be applied to this development

COMMENT: Council's Environmental Health Officer has commented that there are no set criteria for outdoor music events and that the application of the Industrial Noise Policy is appropriate.

### 11. Need for monitoring of noise impacts

COMMENT: Refer to the BLEP 2012 section of this report for discussion.

### 12. Management of guest behaviour – Singing, shouting etc. and resultant noise impacts.

COMMENT: Refer to the BLEP 2012 section of this report for discussion.

13. Safety concerns associated with wedding guests leaving the premises

COMMENT: Concerns have been raised in relation to guests at the function (including those who are intoxicated) wandering the locality during and after functions. The applicant has advised that the owners "have engaged a security contractor to be present on site for the duration of each event. This contractor routinely patrols both the premises and the perimeter of the site. Any guests found off-site will be instructed to immediately return to the function."

It is noted that guests will be leaving the function/wedding between 10:30pm and 11:30pm at the latest, with the majority of guests to leave via a 20 seater mini busses. The mini busses will pull up at the internal turn around area on the driveway (adjacent to the dwelling house) for guests to enter the bus. It is also noted that all parking areas for guests not able to arrive/depart via bus is at the rear of the dwelling house, away from the Johnston Road entry to the property. In this regard, there should not be guests leaving the property in any other manner to that which has been proposed by the applicant.

It is also considered that the engagement of a security firm should assist in keeping guests on the subject property at all other times.

14. Future compliance with conditions of consent – function centre use

COMMENT: In the event that the proposed temporary use of the property as a function centre is granted development consent, there will be a requirement to operate the use in accordance with the conditions of consent. In the event that any conditions are not complied with, Council is able to take compliance action in accordance with the relevant provision of the Environmental Planning and Assessment legislation.

The issue that does arise with respect to assessing compliance, is that the functions are to be held at times primarily when the relevant technical staff are not at work. In the event that Council staff are required to comprehensively assess whether the development is in compliance or not with the conditions of consent (particularly relating to the operation of the function centre), there would need to be work undertaken during weekends and at night.

Also of note, is that each function is to be, for the most part, hosted by a different party (i.e. different bride and groom each time), therefore what may be an issue for one event, may not be an issue for another.

Further discussion in relation to noise and compliance is provided in the BLEP 2012 section of this report.



15. Litter resulting from events

COMMENT: The applicant has advised that on the day following the function, Newrybar Downs Management will inspect the perimeter of the site and remove any rubbish that may be present.

It is considered that the security patrols of the property during events should eliminate this issue, in that all guests will be kept to the area of the function, rather than being able to wander the property. Also of relevance, is that the majority (if not all) guests will be required to be transported to and from the site via mini busses, rather than by private vehicles, so there would not be a need for guests to go to the perimeter of the property for any purpose.

16. Additional traffic, further parking required and road maintenance

COMMENT: Refer to the DCP 2012 section of this report for discussion.

17. Conflict with Rural Land Uses

COMMENT: Refer to the BLEP 2012 section of this report for discussion.

18. There will be further applications for function centres within the Ballina Shire (precedence set through approval of this application).

COMMENT: It is acknowledged that this is the first application that has been lodged with Council for a temporary use of land as a function centre via the provisions of Clause 2.8 of the BLEP 2012. In the event that the subject application is approved, it is possible that Council may receive other development applications for similar or other landuses, under the provisions of Clause 2.8, as those uses are prohibited within their respective zones.

Council needs to consider each application on its individual merits, as in some instances those land uses (as prohibited in their respective zones) may have value and be able to achieve the requirements of Clause 2.8. Council will need to be mindful of these matters in their consideration of this application.

19. The owners of the property cannot realistically occupy the residence in any meaningful way, given the frequency of proposed functions.

COMMENT: The applicant has commented in the SEE that the subject property is the permanent home of the owners. Council does not have any information to suggest otherwise. It is, however, up to the owners as to whether they actually reside at the subject property or not, as long as the property is being used legitimately and in accordance with its approval.

20. Definition of Tourist and Visitor Accommodation

COMMENT: Refer to the BLEP 2012 section of this report for discussion

## **Report**

### **Applicable Planning Instruments**

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

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

Under the provisions of the Ballina Local Environmental Plan (BLEP) 2012, the proposal is best defined as follows:

*"Dwelling House" means a building containing only one dwelling.*

*"Tourist and Visitor Accommodation" means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:*

- (a) Backpackers' accommodation,*
  - (b) Bed and breakfast accommodation,*
  - (c) Farm stay accommodation,*
  - (d) Hotel or motel accommodation,*
  - (e) Serviced apartments,*
- But does not include*
- (f) Camping grounds, or*
  - (g) Caravan parks, or*
  - (h) Eco-tourist facilities.*

The proposed development does not specifically involve any single one of the landuses (a) to (e) as stated above. However, the definition of tourist and visitor accommodation does reference "and includes any one of the following", which therefore does not preclude other forms of tourist and visitor accommodation, such as the proposed development (holiday letting).

*"Function Centre" means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.*

The subject land is zoned RU1 Primary Production under the provisions of the BLEP 2012. It is noted that both Dwelling Houses and Tourist and Visitor Accommodation are uses which are permissible with the prior development consent of Council within the RU1 Zone. Function Centres are prohibited development.

The BLEP 2012 section of this report has been structured such that the Dwelling House and Tourist and Visitor Accommodation components of the proposal are discussed first, in relation to the objectives of the RU1 zone and Clause 7.9 – Rural and Nature-Based Tourism Development. The proposed Function Centre is discussed secondly with respect to Clause 2.8 – Temporary Use of Land.

The objectives of the RU1 zone 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.*

In relation to the proposed conversion of the dual occupancy development to a single dwelling house, it is considered that the proposal is not inconsistent with the objectives of the zone.

In relation to the proposed use of the dwelling house for tourist and visitor accommodation, it is considered that the proposal is generally consistent with the objectives of the zone. The subject property is not currently utilised for productive agricultural pursuits and in relation to land use conflicts with adjoining landuses, Council's Environmental Health Officer has not raised a concern with the proposed tourist and visitor accommodation and the nearby macadamia plantations, with a sufficient distance provided between these two land uses.

Subject to sufficient management of the proposed Tourist and Visitor Accommodation, this component of the proposal should maintain the rural and landscape character of the Newrybar locality. Further discussion in relation to this matter is provided below (Clause 7.9 – Rural and Nature-Based Tourism Development and also within Chapter 7 – Rural Living and Activity of the Ballina Shire DCP 2012).

The proposed tourist and visitor accommodation is of a relatively minor scale, being the use of a dwelling house on an occasional basis for short term holiday accommodation. As stated above, appropriate management of the visitor and tourist accommodation should ensure that this component of the proposal is generally compatible with the rural and environmental nature of the land.

There is not expected to be any unreasonable or uneconomic demands for the provision of public infrastructure.

Clause 7.9 – Rural and Nature-Based Tourism Development

- (1) *The objective of this clause is to ensure that services and facilities provided for tourists in rural and natural areas do not adversely impact on the agricultural production, scenic or environmental values of the land.*
- (2) *This clause applies to land in the following zones:*
  - (a) *Zone RU1 Primary Production,*
  - (b) *Zone RU2 Rural Landscape.*
- (3) *Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that:*

- (a) *there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and*
  - (b) *the development is small scale and low impact, and*
  - (c) *the development is complementary to the rural or environmental attributes of the land and its surrounds, and*
  - (d) *the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.*
- (4) *Development consent must not be granted to development for the purpose of tourist and visitor accommodation on a lot that is land to which this clause applies unless:*
- (a) *a lawfully erected dwelling house or dual occupancy (attached) is situated on the lot, or*
  - (b) *a dwelling house may be erected on the lot under this Plan.*
- (5) *Development consent must not be granted to development under subclause (4) if the development:*
- (a) *includes an ancillary caretaker's or manager's residence, or*
  - (b) *is for the purpose of more than 1 bed and breakfast accommodation.*
- (6) *In this clause:*

**small scale** means a scale that corresponds to that of residential uses in a rural or environmental locality.

**tourism development** means development for any of the following purposes:

- (a) *caravan parks,*
- (b) *cellar door premises,*
- (c) *charter and tourism boating facilities,*
- (d) *home industries that provide services, or the sale of goods, on site to visitors,*
- (e) *information and education facilities,*
- (f) *kiosks,*
- (g) *markets,*
- (h) *recreation facilities (major),*
- (i) *recreation facilities (outdoor),*
- (j) *rural industries that provide services, or the sale of goods, on site to visitors,*
- (k) *tourist and visitor accommodation.*

As stated above, the subject land is zoned RU1 Primary Production and as such this clause applies to the tourist and visitor accommodation component of the proposed development.

In addressing subclause (3):

- (a) Council's Civil Services Group has advised that the existing external road network, with some minor widening of Johnston Road, is constructed to a suitable standard to service the proposed development.

- (b) The proposal comprises the use of the existing dwelling house and in this regard, the proposed tourist and visitor accommodation is relatively small scale and low impact. No additional structures are proposed or required to be constructed, the property contains only one dwelling house (subject to the approval of the conversion of the approved dual occupancy development to a single dwelling house), which can continue to be utilised for permanent residential accommodation at times when it is not being occupied for tourist and visitor accommodation. Subject to appropriate management of the tourist and visitor accommodation, it is considered that the proposal is relatively low impact.
- (c) The existing dwelling house is considered to be complementary to the rural/environmental attributes of the land and its surrounds. It is not considered that the proposed use of the dwelling house for tourist and visitor accommodation will impact upon the relationship of the existing building with the rural and environmental attributes of the locality.
- (d) It is considered that the proposed tourist and visitor accommodation will not have a significant adverse impact upon agricultural production, amenity or any significant features of the natural environment. As previously stated, Council's Environmental Health Officer has not raised any land use conflict issues with the proposed use of the existing dwelling house for tourist and visitor accommodation, given the distances between the building and surrounding agricultural uses.

In relation to amenity, whilst there are no real physical changes to the property to enable its use for tourist and visitor accommodation (other than the provision of a new driveway – refer to the DCP section of this report for further discussion), the management of the tourist and visitor accommodation is directly related to its overall impact on the amenity of the area.

The application, as lodged, does not include a manager's residence, and as such is reliant on an off-site manager during the times the dwelling house is to be utilised for tourist and visitor accommodation. The applicant has advised that guests will be given an induction to all facilities located on the property and given phone contact details of the property manager should any issues arise and/or incidences occur.

It is acknowledged that any tourist and visitor accommodation has the potential to impact on the amenity of a locality, however the manner in which the accommodation is managed (i.e. ability to appropriately and sufficiently respond to matters raised by guests and/or complaints from surrounding properties) is an important consideration. Overall, however, it is not considered that this would be a significant adverse impact.

Council staff has raised concerns with the applicant (via letter dated 20 July 2015) in relation to the management of the proposed tourist and visitor accommodation, given a manager's residence does not exist on the property. It was advised to the applicant that the presence of an on-site manager is considered important for tourist and visitor accommodation within a rural area, given there is limited access to

urban services and facilities, for safety and security purposes, to enable swift resolution of maintenance issues (particularly relevant for septic systems) and any conflicts (including noise from guests) that arise in relation to surrounding landuses.

Whilst not expressly provided for/stated as a requirement, within the BLEP 2012, Chapter 7 – Rural Living and Activity of the Ballina Shire Development Control Plan (DCP) 2012 provides that tourist and visitor accommodation must include a manager's residence on the site (comprised of either the primary residential dwelling or one dwelling in a dual occupancy arrangement). Further discussion in relation to this matter is provided in the DCP section of this report, including the applicant's response as to how the tourist and visitor accommodation will be managed.

In addressing subclause (4), a lawfully erected dual occupancy (proposed to be converted to a single dwelling house as part of this application) exists on the subject land. The purpose of this clause is to prevent the lodgement of applications for tourist and visitor accommodation where no dwelling opportunity (under Clause 4.2A) exists for the land. It is noted that the subject property does enjoy a dwelling entitlement.

In addressing subclause (5), the proposal does not involve the provision of an ancillary caretaker's or manager's residence and is not for the purpose of more than one bed and breakfast accommodation. It is considered that the intention of subclause (5) (a), is to ensure that the manager/caretaker's residence is not subservient/ancillary to the tourist and visitor accommodation (i.e. the tourist and visitor accommodation is not the main use or component of the property) and that a further dwelling in the form of a manager's residence is not enabled in addition to the principal dwelling house or dual occupancy.

Clause 2.8 – Temporary Use of Land

- (1) The objective of this clause is to provide for the temporary use of land if the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land.*
- (2) Despite any other provision of this Plan, development consent may be granted for development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.*
- (3) Development consent must not be granted unless the consent authority is satisfied that:
  - (a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and*
  - (b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and*
  - (c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and**

- (d) *at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.*
- (4) *Despite subclause (2), the temporary use of a dwelling as a sales office for a new release area or a new housing estate may exceed the maximum number of days specified in that subclause.*
- (5) *Subclause (3) (d) does not apply to the temporary use of a dwelling as a sales office mentioned in subclause (4).*

The function centre component of the proposed development has been lodged via the provisions of Clause 2.8 – Temporary Use of Land.

In relation to the objective of this clause, the applicant has stated:

“The proposed temporary use of land as a function centre will not result in any detrimental economic, social, amenity or environmental impacts on the land. In this regard, the proposal only involves minor earthworks to accommodate the marquee (with these works meeting the criteria of ‘exempt development’) and the establishment of pathways through the existing landscaped grounds. A gravel parking area will also be established. Effluent disposal will be via the provision of portaloos and accordingly, no environmental impacts are expected on site associated with this aspect of the proposal. At the conclusion of each event, all temporary structures will be removed from the site and the grounds will revert to their character as was existing immediately preceding the event.”

The statements made by the applicant are generally agreed with. In terms of the subject property, it is expected that the proposed function centre use, as proposed within the application, will not compromise its future development or have detrimental economic, social, amenity or environmental effect on such.

Subclause (2) provides that despite any other provision of the BLEP 2012 (even provisions which prohibit certain developments), Council has the ability to grant development consent for development on land in any zone for a temporary use. The subclause then goes on to state that this temporary use must be for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months.

In this regard, as Function Centres are not permissible (i.e. are prohibited) within the RU1 zone, this clause enables Council to grant development consent to that proposed temporary use of the subject land, subject to the remaining provisions of the clause being satisfied.

Of relevance in considering the provision of this subclause, is whether the proposal can be considered a temporary use. The proposal, as lodged, appears to present as more of an ongoing intermittent (or permanent/part-time) use of the property, with the applicant seeking a five year approval. It is acknowledged that the use of the property for functions/events is dependent on bookings made and demand for properties of this nature for such events. This will be an ongoing use of the property for five years, if the proposal, as lodged, is granted development consent. An important consideration for the Council is whether “temporary use” under Clause 2.8 covers ongoing intermittent uses, or does the use of the word “temporary” anticipate that the use will be on a once off, or not ongoing, basis.

The case law regarding the definition or meaning of ‘temporary use of land’ is relatively underdeveloped and rests largely with *Lowe v Sutherland Council* (2005). This case considered an application to use the grounds of a local school for a market every 2<sup>nd</sup> and 4<sup>th</sup> Sunday of each month. The use of the site was only permissible as a temporary use of land under Clause 9 of the Sutherland LEP 2000. This Clause 9 allowed for a similar temporary use of land as in Clause 2.8 (2) of the BLEP 2012 but providing for a maximum period of 28 days, whether or not consecutive days, in any period of 12 months.

A question that the Court considered in that case was whether, in light of the words “in any period of 12 months” it was permissible for the Council to grant consent to the development as the development was intended to continue for more than one year. Senior Commissioner Roseth found that:

*‘temporary use means a maximum of 28 days in any one year and not just during the year following the consent. If I were wrong, the recipients would have to re-apply every year and the Council would need to re-assess and re-issue consents for all temporary uses every year.’*

There has been no case law since *Lowe v Sutherland Council* upholding this decision or considering temporary uses which continue on an ongoing (permanent/part time) basis beyond the initial 12 month period. If Council is concerned that allowing a temporary use on an ongoing basis over a period of a number of years would lend a sense of permanency to the use, Council may consider granting consent for a trial period, causing a further application to be made after the temporary use had some time to function, giving Council an opportunity to assess the impacts of the temporary use.

The applicant has requested that a five year approval be granted by Council with respect to the Temporary Use – Function Centre, and has stated the following in relation to their request:

*“Our clients advise that they require a 5 year approval for the function centre in order to make the project viable. Council will appreciate that there are a range of works required to upgrade the premises to the required standards, including the provision of the new driveway access and various other works. The need to pay for these works combined with the extended lead time for wedding bookings mean that a 5 year approval is required. We note also that the revised proposal substantially reduces the number of events in any given year from that possible via the original application. Given the above it is considered that the granting of a five year consent is reasonable.”*

Whilst the applicant and owners requests are acknowledged, Council will need to carefully consider the overall proposal in context with what a five year approval will mean. A five year approval will enable a total of 65 functions, with up to 260 days of activity over this time. The contention that the five year approval is required to make the proposal viable, is questionable, based on the actual physical works (new pathways through landscaping, marquee pad site levelling and provision of gravelled parking area) required for this aspect of the proposal (it is noted that the driveway works are required for the tourist and visitor accommodation use of the dwelling house and therefore the cost of these works should not be a basis for this statement).



In relation to the number of days identified in this clause, the applicant has amended the original application (52 days in any 12 month period – a maximum of 26 functions per year) to now involve the hosting of 13 events per year, with not more than two events in any four week period. The 13 events involve up to four days of activities associated with the function centre use (the actual event, set up and pack up activities included). In this regard, the total number of days that the property is proposed to be utilised for the function centre use is  $13 \times 4 = 52$  days in a 12 month period.

Therefore, even though a temporary use of land on an ongoing basis beyond the initial 12 month period may fall within the meaning of 'temporary use' in Clause 2.8, Council must also ensure that the temporary use complies with the other requirements of Clause 2.8 (3).

In addressing subclause (3):

- (a) The proposed Temporary Use – Function Centre does not appear to prejudice the subsequent carrying out of development on the subject property in accordance with the BLEP 2012 and any other applicable environmental planning instrument (EPI). The subject property has been previously utilised for rural residential land uses (notwithstanding the unauthorised tourist and visitor accommodation and function centre uses), with its area being such that it does not appear large enough for viable agricultural production (area of 3.87ha).

The proposal involves some minor works to accommodate the temporary structures, with all works being contained to the area surrounding the existing dwelling house. Given all structures associated with the function centre use are proposed to be removed at the conclusion of the four day event period, there does not appear to be any restriction on the ability to develop the north-western areas of the property (which is the only area of the property with any potential for another use) for any other use permissible in the RU1 zone or other Environmental Planning Instrument.

- (b) In order to satisfy (b), the proposed Temporary Use – Function Centre must demonstrate that it does not adversely impact upon any adjoining land or the amenity of the neighbourhood.

In terms of adjoining land, the subject property is surrounded by both rural residential type allotments and agricultural properties used for grazing and/or horticultural pursuits. In terms of the actual appearance and physical positioning of the structures to be located on the property during the use of the property as a function centre, it is considered that there are no real impacts to be experienced by adjoining properties. For the most part, the structures (marquee, portaloos, catering areas, generator etc.) will be screened by existing domestic landscaping (to the north and west). The structures may be somewhat visible from Brooklet Road (glimpses through the existing landscaping); however the structures will be on site for a maximum of four days.

It is noted that the structures are not entirely rural in character and are not characteristic of the existing rural locality. In the event that Council supported the proposal, consideration could be given to applying conditions to any consent granted requiring the provision of additional landscaping on the eastern side of the existing driveway to further screen the structures when on site.

The potential and real impacts of the submitted proposal on adjoining land and the amenity of the neighbourhood, result primarily from the hosting of the actual function. A range of issues have been raised in the submissions received as part of the notification periods, including the level of noise generated by the functions (and the resulting impact on the rural character of the locality and adjoining properties), quality of life being compromised, safety concerns for nearby properties, guest behaviour etc. One of the submitters has also raised concern with the behaviour of guests and the music played at the functions in relation to the impact on their young family. All of these issues are intrinsic in the consideration of whether the proposal can meet the requirements of subclause (b).

The proposal, as lodged, provides for an event/wedding to commence on site from approximately 2pm, with all guests on site until 11:30pm (at the latest). As provided for in the description of the development, there will be a ceremony (with microphone) at three possible locations around the property, drinks and canapés around the pool area of the dwelling house and then a reception (with dinner, speeches, music, dancing). There are also other activities, such as food preparation, generator and cold room operation, guests arriving and leaving the property, which are not normally undertaken or contained upon the subject property.

The proposal also provides for a maximum of 150 guests (in the circumstance of a wedding, this is not anticipated to include the wedding party) to be on site during this time, along with the caterers, wedding/function planner, celebrant, photographer, entertainers/musicians, property manager, security guard etc. In this regard, the actual number of people on site could be closer to 165 people.

The applicant has made a specific comment as to their clients wishes to obtain approval for up to 150 guests, but that this would be a maximum, with their experience being that functions are considerably smaller than this number (with 100 guests being the average on previous occasions).

In relation to noise generation and the proposed function centre, which is the primary amenity concern, the following comments are made.

A Noise Impact Assessment (NIA) has been prepared by Tim Fitzroy & Associates, dated 31 May 2015, to assess the potential impacts of the proposed development. The NIA has identified Project Specific Noise Criteria (PSNC) of 42 dB(A) Day, 37 dB(A) Evening and 37 dB(A) Night. This has been determined generally in accordance with the requirements of the Industrial Noise Policy.

To determine the potential impacts of the proposed development, noise modelling was undertaken and a maximum noise level of 86 dB(A) at 3 metres from noise source has been set to achieve the PSNC at all the sensitive receivers.

An enclosed three sided acoustic structure is proposed to enclose the entertainment (musicians and speakers etc.) and a number of other recommendations are made within the acoustic assessment to achieve compliance with the PSNC, many of which are management measures.

These measures include the implementation of a Noise Management Plan which would detail:

- Identification of nearby residences and other sensitive landuses;
- Assessment of expected noise impacts;
- Detailed examination of feasible and reasonable work practices that will be implemented to minimise noise impacts;
- Clear and defined acceptable rules of behaviour for patrons;
- Adherence to responsible service of alcohol regulations;
- Strategies to promptly deal with and address noise complaints;
- Details of performance evaluating procedures (for example, noise monitoring or checking work practices and equipment);
- Procedures for notifying nearby residents of forthcoming works that are likely to produce noise impacts; and
- Reference to consent conditions.

Comprehensive details of the proposed acoustic “sound shell” and the proposed Noise Management Plan have not been provided as part of the development application. These details could reasonably be submitted as part of any post approval process, should the proposal be granted consent.

In relation to the location of the cold rooms, generators, catering areas and portaloos, Council’s Environmental Health Officer has advised that the location as proposed on the site layout plan and as described in the NIA should address any noise concerns and conditions can be imposed on any consent granted (to ensure these structures are located as proposed and do not become a noise concern for surrounding properties).

However, of importance in the assessment of this proposed function centre use is the noise generated by the crowd or function attendees. This is not as easy to mitigate and can create (and previously has created from complaints received) nuisance noise, as the sound of the crowd dominates as the background noise levels fall in this rural location during the night.

The location of the marquee and the inclusion of an acoustic shell therein, do not address or mitigate the impacts of the crowd noise. It is noted that the nearest dwelling house (noted in the NIA as Receiver 1), will be subject to some benefits or reduced impacts as this property will be shielded by the existing dwelling house on the subject property.

The NIA has included some assessment in relation to voice noise levels for both male and female, from casual speaking to a shout. The voice levels used for the assessment were from a loud category with an associated noise level of 75dB(A) for an individual male. In this regard, the assessment did not comment on whether there would be an increase noise level for an additional number of wedding guests speaking at the loud category. It is expected that this would be the case.

The NIA has made comment that “the overall maximum voice source levels from the proposed Outdoor Function Centre that may impact on residential receivers are dependent on the number of patrons/visitors. A key consideration in managing patron noise is the responsible service of alcohol”.

The reliance on the security guard, function manager and property manager to keep the crowd noise to an acceptable level is considered to be unrealistic and unachievable, given the proposed number of guests (up to 150 people). This comment is made with particular regard to the progression of the event (into the evening) and the potential for intoxication levels to increase, with background noise levels decreasing.

The concerns raised by submitters as part of the public exhibition and notification periods regarding the noise generated from proposed functions to be held at the property are valid concerns, particularly given the owners are not present or residing on site during the functions and are placing all responsibilities for the control of noise generated on the property manager, wedding planner and security guard. The reliance on management measures to control noise may result in the generation of excessive noise levels, and significant potential for unreasonable amenity impacts to neighbours with costly and difficult regulation by Council.

Also, it is worth noting that the cost of any non-compliance (with any consent granted for the proposal) may be passed on by the owners to the function organiser (or bride and groom) by way of contractual agreement, thereby removing any onus on the owner to ensure compliance with Council's requirements.

If non-compliances are experienced and reported to Council, it may not be possible to investigate until the next week, when gathering evidence may be difficult or staff or police may be called out after hours, resulting in increased staffing costs to the Council.

- (c) In relation to the location of structures (marquee, portaloos, catering area, cold room and generator area), these structures will be able to be removed at the conclusion of each event. It is not considered that the actual structures themselves will adversely impact on the environmental attributes of the land.

In relation to the preparatory works to be carried out to facilitate the location of the temporary structures (i.e. minor earthworks for marquee pad, removal of selected garden planting and pathways through existing garden beds, expansion of gravel/blue metal area in the south eastern corner of the site for future car parking), it is considered that these works will not adversely impact on the environmental attributes of the land or any significant vegetation.

In relation to the use of the property for a function centre, all guests (and in the case of a wedding, the bridal party also) will be for the most part, confined to the southern areas of the property at the location of the function. There may be instances where the western section of the property is traversed (e.g. for photographs etc.), however these areas would be accessed by foot and would have limited disturbance. Therefore, the proposed use will not have an adverse impact on the environmental attributes or features of the land.

In relation to natural hazards, the subject property is located within a bushfire prone area and the development application was referred to the NSW Rural Fire Service for a Bush Fire Safety Authority (under Section 91A of the Environmental Planning and Assessment Act 1979 and Section

100B of the Rural Fires Act 1997), via letter dated 22 June 2015. On 15 September 2015, Council received a response from the NSW Rural Fire Service, including the issue of a Bush Fire Safety Authority (refer to Attachment 11).

- (d) At the end of each of the proposed function (i.e. four day event), the subject property, will be restored to the condition in which it was prior to the commencement of the function centre use, with the property to be utilised for rural residential purposes. It is noted that the marquee pad, new pathways through existing garden beds and expanded gravel/blue metal area in the south eastern area of the site will be the only remnants of its function centre use. No concerns are raised in relation to this.

It is noted that subclauses (4) and (5) are not applicable.

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

#### **Chapter 2 – General and Environmental Considerations**

##### *Clause 3.1 – Land Use Conflict*

Table 2.1 within Clause 3.1 specifies the following buffers are to be achieved, with respect to the proposal:

- Dwelling houses – minimum of 150m from ‘intensive plant agriculture’ (which includes horticulture – macadamia plantations)
- Rural tourist facilities – minimum of 200 from ‘intensive plant agriculture’.

Variations to these distances may be considered subject to the preparation of a Land Use Conflict Risk Assessment (LUCRA).

It is noted that the existing dwelling house is located approximately 140m from existing macadamia plantations.

Council’s Environmental Health Officer has not raised a concern with the proposed use of the existing dwelling house for tourist and visitor accommodation, with respect to land use conflict, and has stated that there is a sufficient distance between the nearby macadamia plantations and the dwelling house, such that issues are unlikely to be experienced.

In relation to land use conflict and the proposed function centre use of the property, Council’s Environmental Health Officer has provided the following comments:

“A LUCRA has been prepared by the applicant and included in the SEE. The LUCRA has considered the impact of the adjoining intensive plant industry on the Function Centre and the impact of the function centre on the surrounding rural residential dwellings. By allowing a function centre in the manner proposed, in the subject rural zone (RU1 Primary Production), there is a risk of sterilising the rural area through allowing a use that would create conflict with normal farming practices that produce noise, dust, odour and spray drift.

The impact of the function centre on the nearby residential dwellings is mainly from the creation of noise that is not consistent with agricultural activities. Further comments in relation to this issue are provided in the BLEP 2012 (Clause 2.8 – Temporary Use of Land) section of this report. Other areas of conflict that have been raised within submissions to the proposed function centre use include litter, antisocial behaviour, lack of privacy etc.

The LUCRA concludes that the separation distances, the existing vegetation on the subject property and the temporary nature of the use are sufficient to manage any potential land use conflict. This conclusion is not supported, with particular emphasis placed on the expected (and previously experienced) noise impacts on adjoining properties.”

*Clause 3.7 – Waste Management*

In relation to Waste Management, the applicant has advised that:

- Waste associated with the tourist and visitor accommodation component of the development requires two mixed waste bins and two recycling bins (for the maximum 10 persons to be accommodated), in accordance with the requirements of Council's DCP. The premises have three mixed waste bins and three recycling bins permanently on site. Waste is to be placed in the bins by guests at the accommodation or by the manager of the facility and is disposed of via Council's regular rural waste collection service.
- Waste associated with the function centre use has been calculated as 1 x mixed waste bin/40 guests and 1 x recycling bin/25 guests. The required number of bins will be transported to the site by a waste contractor before the function commences (Thursday) and collected on the day after the function (Sunday). The waste is then to be disposed of at a lawful waste disposal point.

Council's Environmental Health Officer has commented that there will be minimal construction waste in association with the establishment of the new marquee site and associated works (new pathway). The use of the property for the function centre use will involve the set-up of infrastructure (portaloos, catering areas, etc.) that are to be removed after the function has concluded. No construction waste would be associated with these activities.

In relation to an ongoing waste management plan for the use of the property for tourist and visitor accommodation, standard conditions can be applied to any consent granted.

In relation to the function centre use, waste from each function will be collected and removed from the site, with the organiser of the function to be responsible. Standard consent conditions can be applied to any consent granted to ensure this occurs.

It is noted that a new driveway will be required for both the tourist and visitor accommodation and also the function centre use. There will be some waste generated as part of this activity and standard conditions can be applied to any consent granted in relation the management of this waste during construction.

*Clause 3.8 – On Site Sewage Management Systems*

In relation to On Site Sewage Management, the applicant has stated:

- The proposed Tourist and Visitor Accommodation will be serviced by the existing waste water management facility servicing the dwelling house.
- The proposed function use will involve the provision of portaloos, at the rate of one per 20 persons in attendance at the function (including staff). The report prepared by Tim Fitzroy and Associates (included with the SEE) concludes that this arrangement is a reasonable economic and environmental solution to the collection and treatment of waste water from short term events such as weddings.

Council's On Site Sewage Management System (OSSMS) Officer reviewed the information submitted with the development application and conducted a site inspection in relation to the existing systems on the property. An additional information request was sent to the applicant on 6 July 2015, as a second system was identified on the property, which had not been subject to any assessment as to whether it is performing satisfactorily or not.

Additional information was received from the applicant via letter dated 28 July 2015, which advised that the second system (original system for the original dwelling house) shows no evidence of failing, however the land application area is located in an area proposed for the gravel car parking areas (associated with the proposed function centre use) and therefore would be required to be relocated.

Council's OSSMS Officer has reviewed the information from the applicant and has advised that conditions can be imposed on any consent granted for the proposed function centre use, requiring the installation of a new septic trench away from the proposed gravelled car parking area.

*Clause 3.19 – Car Parking and Access*

Refer to the discussion provided below in Chapter 7 – Rural Living and Activity (Clause 3.8 – Roads, Vehicular Access and Parking)

*Clause 3.21 – Bushfire Management*

The subject property is located within a bushfire prone area and the development application was referred to the NSW Rural Fire Service for a Bush Fire Safety Authority (under Section 91A of the Environmental Planning and Assessment Act 1979 and Section 100B of the Rural Fires Act 1997), via letter dated 22 June 2015. On 15 September 2015, Council received a response from the NSW Rural Fire Service, including the issue of a Bush Fire Safety Authority (refer to Attachment 11).

Chapter 7 – Rural Living and Activity

*Clause 3.1 – Residential Development in Rural Areas*

The conversion of the dual occupancy development to a single dwelling house is considered generally consistent with the provisions of this clause, with respect to the design of the building and its siting.

Clause 3.3 – Rural Tourist and Visitor Accommodation

The objectives of this clause state:

- a. *Provide for the establishment and operation of diverse small scale tourist and visitor accommodation within rural and environmental protection areas within Ballina Shire;*
- b. *Ensure that facilities are designed and constructed so as to maintain rural character and amenity, productive agricultural use of land and environmental values;*
- c. *Encourage visitor interaction with the rural and natural environment;*
- d. *Ensure the provision of a satisfactory level of service to guests and that such premises meet acceptable access, community health and fire safety standards; and*
- e. *Encourage environmental repair, restoration and management activities in conjunction with rural tourist development.*

It is considered that the proposal is generally consistent with objectives a, b, c and e. In relation to objective d, refer to discussion below.

It must be noted that the development controls within Section 3.3 of Chapter 7 have been formulated to support and expand on the provisions of Clause 7.9 – Rural and Nature-Based Tourism Development of the BLEP 2012.

- i. *Tourist and visitor accommodation uses, where permissible with consent in the applicable zone, may only occur on land that is subject to a dwelling entitlement in accordance with the provisions of the Ballina LEP;*

As discussed in the BLEP 2012 section above, tourist and visitor accommodation is permissible in the RU1 zone and the subject property enjoys a dwelling entitlement.

- ii. *Tourist and visitor accommodation must be small scale and compatible with the characteristics of the site and its surrounds (particularly with respect to agricultural land use and environmental values);*

The proposed tourist and visitor accommodation is considered to be of a relatively small scale (use of an existing dwelling house, with no additional buildings to be constructed) and is generally compatible with the characteristics of the site and the surrounding locality. The accommodation is proposed to be let in its entirety to a single group, with no sub-letting involved. As stated above (Chapter 2, Section 3.1 – Land Use Conflict), the proposed use of the dwelling house for tourist and visitor accommodation should not impact upon the nearby macadamia plantations, with a sufficient distance provided between these two land uses. It is not considered that the proposed tourist and visitor accommodation use would impact on any other agricultural uses (grazing etc.) undertaken on nearby properties.

- iii. *Tourist and visitor accommodation must comply with the disability access provisions under the Building Code of Australia;*

In Council's additional information request to the applicant (dated 20 July 2015), it was advised to the applicant that the disability access



provisions of the Building Code of Australia (BCA) would be required to be complied with, including access into the dwelling house and the provision of an accessible bathroom.

The applicant has provided a response to this requirement (via letter dated 31 August 2015), as follows:

“With respect to tourist and visitor accommodation in urban areas, Council’s DCP applies the same design requirements that are applied to permanent residential accommodation. The planning objective for this control is to enable the ready conversion between permanent and temporary accommodation. These urban DCP controls do not require compliance with disabled access provisions in the BCA. Given this, it would appear inconsistent that Council’s DCP requires disabled access upgrades for a rural property, when such requirements are not also applied to urban areas.

Notwithstanding the above, our clients have received technical advice from Techton Pty Ltd that the premises are readily able to be upgraded to a 1B standard by way of providing a disability access compliant bathroom, bedroom and car parking space. These works will all occur within the southern ‘wing’ of the house. Plans illustrating the proposed upgrades will be submitted to Council in due course.

Our client’s request, however, that Council provide for flexibility with respect to the timing of these upgrades. In this regard, our clients request that they be provided with 9 months from the date of any future development consent to complete these works. This will enable our clients to ‘stagger’ the costs associated with complying with any future development consent issued for the site. In the event that this arrangement is not satisfactory to Council, it is requested that this matter be appropriately conditioned, rather than being treated as a grounds for refusal of the application”.

It is considered appropriate to impose a condition on any consent granted requiring the disability access provisions of the Building Code of Australia (BCA) to be complied with prior to use of the dwelling house for tourist and visitor accommodation. This condition would not include a nine month delay in providing these requirements.

- iv. Tourist and visitor accommodation must be temporary and shall not be utilised or let for long term or permanent accommodation. Guests must not be accommodated for more than 42 consecutive days with an interval of at least 14 days between occupancies, or for more than a total of 90 days in any 12 month period;*

The applicant has advised that the current proposal is for tourist and visitor accommodation and when not utilised for this purpose, the building will be utilised as a dwelling house.

The requirements of this clause are able to be imposed as a condition on any consent granted for the proposed tourist and visitor accommodation.

- v. *Tourist and visitor accommodation must include a manager's residence on the site, comprised of either the primary residential dwelling or one dwelling in a dual occupancy arrangement. The manager's residence must be in a location suitable to facilitate on site management of the accommodation units;*

As stated previously in this report, the proposal does not include a manager's residence on the property.

In Council's additional information request to the applicant (dated 20 July 2015), Council staff raised concerns with the proposal and the absence of an on-site manager's residence. These concerns related to the ability to satisfactorily manage the accommodation, given its rural location, for safety and security purposes, to enable swift resolution of maintenance issues (particularly relevant for septic systems) and any conflicts that arise in relation to surrounding landuses.

The applicant has provided a response to this issue (via letter dated 31 August 2015), as follows:

"The issue of whether or not a manager's residence is required needs to be considered in the context of the type of development proposed and a merit assessment of the project. In this instance, the following comments are made:

- When the existing dwelling is used for tourist and visitor accommodation without an associated function, it is being used by a small group of people in a manner that is similar, if not identical, to its use as a residential dwelling. The only aspect of its use that characterises it as being 'tourist and visitor accommodation' is its short term use – say a weekend or a holiday week.
- Guests are screened by our clients prior to a booking being accepted. Clear rules are established for guests upon booking, with all guests aware of the management structure for the premises when signing and agreeing to the Terms and Conditions. The Terms and Conditions include a requirement to pay a security deposit.
- At no time is the property let to more than one party at a time. The guests typically comprise extended family groups. Unlike a B&B or holiday cabin scenario, there is only ever one group using the premises and as such there is no 'competing interests' requiring resolution with respect to separate groups utilising the premises.
- Unlike many 'holiday rentals' (where guests pick up keys from a real estate agent), the Newrybar Downs property manager greets each group of guests on site. The property manager then provides a tour of the house and grounds explaining matters such as TV operation, kitchen, toilets, swimming pool etc. prior to providing guests with a list of 'Need to Knows' for the property.

- Guests are provided with telephone contact details for the property manager, who is then 'on call' 24 hours a day for any issues or requests that may arise. The property manager lives within a 20 minute drive of Newrybar Downs.
- Upon departure, the client is then checked out of the property by the property manager and a quick inspection walk through is completed. A more detailed inspection occurs after the guests have departed prior to refund of the security deposit.
- The premises are provided with two On Site Wastewater Management Systems which collectively have significantly greater capacity than is required to service 10 guests. In addition, commercial sanitary bins are provided in each room containing a toilet. These facilities are maintained on a regular basis in accordance with the manufacturer's specifications. The 'welcome tour' of the property includes advice with respect to the use of these bins. An added incentive for guests to appropriately dispose of sanitary items is a lease condition that any plumbers costs associated with failure due to blockages, will be charge at full cost to the responsible party.
- The premises are located a short distance from the village of Newrybar, which includes a corner store for basic supplies for guests as well as dining opportunities. Guests arrive by motor vehicle and have ready access to nearby towns and attractions.
- When the existing dwelling is used for tourist and visitor accommodation associated with a function, both the bridal party and the property owners will separately retain managers/planners and security (respectively) to ensure that the function is conducted with regard to the amenity of the neighbourhood, that any operational management plan is observed and the conditions of any consent are also observed. The land will be used for the purposes authorised by the consent and appropriately managed. That is, the necessary 'managers' will be appointed to ensure that the land is used in a lawful manner and any issue that arises can be promptly addressed.

Given the above, it is reasonable to assume that a single group of responsible adults (and associated children) is fully capable for 'managing' their stay within a self-contained dwelling. As such, it is considered that there is a legitimate case to vary the DCP requirement for a manager's residence as part of the tourist and visitor accommodation proposed in the particular circumstances of this current application.

Furthermore, we note that the public submissions to the Development Application have raised only one concern with respect to the proposed tourist and visitor accommodation, being an issue associated with music emanating from the house. In response to this, our clients advise that they will install a noise limited sound system for use by future holiday guests and mandate use of this system by guests as part of the Terms and Conditions.

In addition, nearby residents will be provided with contact details for the Newrybar Downs manager, in the unlikely event that future disturbance occurs.”

A full copy of the applicant’s response letter is provided in Attachment 12.

The above information provided by the applicant has been submitted in order to address how the proposal will achieve a satisfactory level of service to guests, despite not having an on-site manager’s residence (i.e. a request for a variation this development control). It is considered that the manner in which the proposed tourist and visitor accommodation is to be operated will ensure that the accommodation is appropriately managed. Conditions should be applied to any consent granted to ensure that the above points made by the applicant (installation of a noise limited sound system and the provision of contact details of manager to nearby properties) are fulfilled.

Also, conditions should be imposed requiring a copy of the Operational Management Plan (or Terms and Conditions) to be provided to Council prior to the use of the dwelling house for tourist and visitor accommodation. This plan should outline the involvement of the property manager for the tourist and visitor accommodation, including the check in/check out process, 24 hour contact to be available, the property to be let to one group per booking period etc.

These conditions would be structured such that any future property owner would need to resubmit these plans and details to ensure the tourist and visitor accommodation is managed satisfactorily prior to their use of the property for that purpose.

vi. *Tourist and visitor accommodation facilities are subject to the following configuration and design requirements:*

- *Clustering of buildings within the area established by the radius specified in Table 3.1 (unless it can be demonstrated that a dispersed arrangement provides for a more efficient use of the site and does not adversely impact on the use of productive agricultural land or the environmental characteristics of the land, both on site and off site);*

There is only one building on site and it is to be used in its entirety for the tourist and visitor accommodation use. In this regard, this requirement is not relevant to the proposed development.

- *Utilisation of a single access point from the public road network to service both the accommodation and residential use of the site;*

The proposal seeks to utilise the only access point from Johnston Road to the property. As previously stated, this access point is required to be relocated in order to comply with Australian Standards.

- *Total internal floor area not exceeding 75m<sup>2</sup> per accommodation unit;*

This control is more commonly applied to developments that involve the erection of new accommodation. The proposal seeks the use of an entire existing dwelling house, rather than the erection of a new accommodation unit, and therefore a variation to this control is deemed appropriate. It is noted that this control has been previously varied by Council staff in the assessment of development applications for tourist and visitor accommodation involving the use of an existing building.

- *Maximum of 2 bedrooms and 1 kitchenette per accommodation unit; and*

As stated above, this control is also more commonly applied to developments that involve the erection of new accommodation. The proposal seeks the use of an entire existing dwelling house, rather than the erection of a new accommodation unit, and therefore a variation to this control is deemed appropriate. It is noted that this control has been previously varied by Council staff in the assessment of development applications for tourist and visitor accommodation involving the use of an existing building.

- *Provision of at least one defined car parking space per accommodation unit.*

The proposal complies with this requirement, with a double garage attached to the existing building and adequate space in front of the garage for additional parking, if required.

#### *Clause 3.8 – Roads, Vehicular Access and Parking*

The proposal involves:

- The provision of three car parking spaces for use by guests for the tourist and visitor accommodation component of the development (either within or adjacent to the existing garage).
- The provision of 18 gravelled spaces (to the south and east of the dwelling house) associated with the function use, comprising 10 spaces to accommodate the various persons employed and on site during the course of a typical event, five overflow spaces for function attendees who do not arrive by mini bus (i.e. elderly persons and families with very young infants) and three spaces for house guests (persons attending the function). All other function guests are to arrive at the property via a 20 seater mini bus.
- Vehicles to be used by party hire contractors associated with the proposed function centre use will consist of a Pantech truck or car/ute and trailer.

The application also involves the provision of a new driveway to Johnston Road, in order to provide Australian Standard compliant vehicular egress from the site for guests staying at the accommodation and for the proposed function centre use.

Council's Civil Services Group have advised that:

- The existing external road network, with some minor widening works to Johnston Road, is constructed to a suitable standard to service the proposed development.
- The current driveway location is not satisfactory, given it is at a road junction (Johnston Road and Brooklet Road). The access therefore, must be relocated beyond the functional area of the intersection. This is required for both the proposed tourist and visitor accommodation and function centre uses.
- No objections are raised with respect to the types of vehicles (Pantech truck, car/ute and trailer and mini buses) used to access the property as part of the proposed function centre use.
- The car parking assessment provided by the applicant, which concludes that 18 all-weather car parking spaces should be provided is considered reasonable for the proposed development.

The following request has been received from the applicant with respect to Council's requirements regarding the closure of the existing driveway:

"Our clients are of the view that the permanent closure of the existing driveway access to Johnston Road would reduce the visual appeal of the entrance to the property. As such, our clients respectfully suggest that an alternate approach could involve closing and locking the existing gates to the property and marking them "For Emergency Use Only". This would provide emergency vehicles such as fire trucks/ambulances and the like unobstructed alternative entry to the venue, whilst retaining the existing visual presence of Newrybar Downs in the landscape."

The above request is acknowledged, but the closure and locking of existing gates is not considered appropriate, given the gates could be re-opened and used at any time, not necessarily during times of the function centre use, but also during the tourist and visitor accommodation use of the property. The purpose of the proposed conditions from Council's Civil Services Group is to ensure the safety of both road users along Johnston and Brooklet Roads and those vehicles entering and exiting the subject property. No objection is raised to the retention of the actual physical driveway form inside the property, as shown on the development plans lodged with the application. The driveway from the subject property (three metres inside the boundary) to Council's road network will be required to be permanently removed and the road reserve reinstated (with the boundary fence permanently extended to close the opening at the existing driveway). These requirements will be imposed as conditions of any consent granted.

### **Conclusions**

The proposal, as lodged, involves three components, two of which are more easily dealt with and straightforward from an assessment and determination perspective than the other.

In relation to the conversion of the approved dual occupancy development to a single dwelling house, no concerns or issues are raised with respect to this component of the proposal. The works have already been undertaken (prior to the current owner's purchase of the property) and Council can regularise these works through the lodgement of a building certificate application and assessment of a BCA report (prepared by a suitably qualified building consultant). Conditions can be applied to any consent granted to ensure the application and report is submitted.

In relation to the proposed use of the dwelling house for tourist and visitor accommodation, the proposal is compliant with the BLEP 2012 and largely compliant with the Ballina Shire DCP 2012. It is noted that the use of the dwelling house for this purpose has been carried out in an unauthorised manner to date, and the subject application will regularise this use also. There are several matters that will need to be attended to prior to the use of the dwelling house for this purpose including the provision of a driveway access off Johnston Road; and compliance with the disability access provisions of the Building Code of Australia (BCA).

Whilst the proposal does not include a manager's residence on the property, it is considered that there is scope to grant approval to the proposal (as discussed previously in this report), subject to conditions being imposed requiring:

- The installation of a noise limited sound system;
- Provision of contact details of manager to nearby properties
- The preparation and approval of an Operational Management Plan (or Terms and Conditions) prior to the use of the dwelling house for tourist and visitor accommodation. This plan should outline the involvement of the property manager for the tourist and visitor accommodation, including the check in/check out process, 24 hour contact to be available, the property to be let to one group per booking period etc.

Note: these conditions would be structured such that any future property owner would need to resubmit these plans and details to ensure the tourist and visitor accommodation is managed satisfactorily prior to their use of the property for that purpose.

In relation to the temporary use of land – function centre component, there are two main issues that need to be considered in relation to the proposal as submitted and its ability to comply with Clause 2.8 of the BLEP 2012.

1. Does the proposal meet the requirements of Clause 2.8 with respect to a use that is temporary?

The proposal as lodged, appears to be more of an ongoing intermittent (permanent/part time) use, with 13 events to be held each year (each lasting a maximum of four days – with event, set up and pack up activities included). Over the five year period, as requested by the applicant/owners, this enables a total of 65 separate events and up to 260 days of activity. Should these events be weddings held in the typical wedding season (September to May), this will result in an average of one wedding held on the property every 3 weeks.

2. Impacts on adjoining properties and amenity of the locality

The combination of the maximum number of guests (150 persons), the number of functions in a 12 month period (13 – with four days of activity associated with each function), the hours of the function (all guests off site by 11:30pm) and the reliance on management measures to control crowd noise and associated behaviours, raise concern as to whether the proposal, as lodged, can ensure the function centre will not adversely impact upon any adjoining land or amenity of the neighbourhood.

The provision of an acoustic shell inside the marquee for entertainment/musicians and speakers can address noise issues associated with those elements of a function, however the crowd noise cannot be contained within an acoustic shell/barrier or similar and as such there is a complete reliance on management measures to address crowd control. As previously stated, the reliance on the security guard, function manager and property manager to keep the crowd noise to an acceptable level is considered to be unrealistic and unachievable, given the proposed number of guests (up to 150 people).

The concerns raised by submitters as part of the public exhibition and notification periods regarding the noise generated from proposed functions to be held at the property are valid concerns, particularly given the owners are not present or residing on site during the functions and are placing all responsibilities for the control of noise generated on the property manager, wedding planner and security guard. The reliance on management measures to control noise may result in the generation of excessive noise levels, and significant potential for unreasonable amenity impacts to neighbours with costly and difficult regulation by Council.

Also, it is worth noting that the cost of any non-compliance (with any consent granted for the proposal) may be passed on by the owners to the function organiser (or bride and groom) by way of contractual agreement, thereby removing any onus on the owner to ensure compliance with Council's requirements.

If non-compliances are experienced and reported to Council, it may not be possible to investigate until the next week, when gathering evidence may be difficult or staff may be called out after hours, resulting in increased staffing costs to the Council.

It is noted that the submitters (and possibly others in the locality) who have objected to/raised concern with the proposed function centre use have been subject to a number of functions over the past 12 months at the subject site. In this regard, the amenity of the locality is considered to have been impacted upon over this time, with a particular issue of noise emanating from the property during functions.

The applicant/owners have sought to address these noise concerns by relocating the marquee from the 'bowling green' to a new pad site on the northern side of the dwelling house, with the inclusion of an acoustic shell/barrier therein for entertainment/musicians and speakers. Whilst the noise assessments carried out for the applicant/owners do provide conclusions as to the effectiveness of this change in location (and additional acoustic barrier) for the entertainment and speakers, it is very clear in stating



that the overall maximum voice source levels from the proposed Outdoor Function Centre that may impact on residential receivers are dependent on the number of patrons/visitors and that a key consideration in managing patron noise is the responsible service of alcohol.

In view of the above, it is considered that this component of the proposal, as submitted, has not adequately addressed the requirements of Clause 2.8 of the Ballina Local Environmental Plan 2012 and therefore support for and approval of this aspect of the proposal cannot be recommended.

Note: Under the provisions of Section 80 (4) of the Environmental Planning and Assessment Act 1979, Council has the ability to issue a partial development consent. Section 80 (4) states:

*(4) Total or partial consent*

*A development consent may be granted:*

- (a) for the development for which the consent is sought, or*
- (b) for that development, except for a specified part or aspect of that development, or*
- (c) for a specified part or aspect of that development.*

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

**Option One**

That Council approve the development application subject to standard conditions of consent for this type of development, including those specifically outlined in this report and a number of additional noise specific conditions for the function centre use (certification of acoustic shell, submission and approval of a Noise Management Plan, restricted hours for noise generation associated with set up and pack up activities, operation of the development in accordance with the submitted Noise Impact Assessment and the requirement for a suitably qualified noise consultant to attend the first two functions and monitor acoustic performance). Council may also consider a condition of consent which limits the time period for the consent (i.e. trial period). This would require a further application to be lodged after a period of operation (say two years). Should Council choose to proceed with this option, it must be satisfied that the proposal is consistent with the provisions of the Ballina Local Environmental Plan 2012 and the Ballina Shire Development Control Plan 2012.

OR

**Option Two**

That Council approve the conversion of the approved dual occupancy development to a single dwelling house and the use of the dwelling house for tourist and visitor accommodation only, in accordance with the provisions of Section 80(4) of the Environmental Planning and Assessment Act 1979. This option does not include an approval for the proposed temporary use – function centre, in consideration of the matters raised in this report.

In view of the above, Option Two is recommended, for the reasons outlined in this report.

### **RECOMMENDATIONS**

1. That DA 2015/300 for the conversion of an approved dual occupancy development to a dwelling house, the use of the dwelling house for Tourist and Visitor Accommodation and the establishment of a temporary use for a Function Centre at Lot 5 DP 606566, No. 1 Johnston Road, Newrybar be given **PARTIAL APPROVAL** for the conversion of an approved dual occupancy development to a dwelling house, and the use of the dwelling house for Tourist and Visitor Accommodation, subject to the imposition of standard development consent conditions (building, planning, environmental and engineering) for this type of development and the non-standard conditions as referenced in the report.
2. That the temporary use for a function centre is **REFUSED**.

### **Attachment(s)**

1. Locality Plan
2. Aerial Photo and Plans of Subject Property
3. Proposed Development Plan
4. Draft Operational Management Plan
5. Potential Wedding Ceremony Locations
6. Applicants Notes of Prelodgement Meeting
7. Applicants Letter regarding Four Additional Weddings
8. Information from Security Contractor - Wedding on 26/09/2015
9. Submissions - Support
10. Submissions - Objections
11. NSW RFS General Terms of Approval
12. Applicant's response to Council's 20 July 2015 letter - amendment to proposal

## 8.2 DA 2015/377 - Four Lot Residential Subdivision, Blue Seas Parade

---

### 8.2 DA 2015/377 - Four Lot Residential Subdivision, Blue Seas Parade

---

<b>Applicant</b>	Complex Field Pty Limited ATF James Holdings
<b>Property</b>	Lots 32 and 33 DP 1168665, No.'s 51 and 53 Blue Seas Parade, Lennox Head (Coastal Grove Estate)
<b>Proposal</b>	To undertake the torrens title subdivision of two existing residential allotments into four residential allotments
<b>Effect of Planning Instrument</b>	The land is zoned R2 Low Density under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

#### Introduction

The allotments that are the subject of this report form part of the recently created Coastal Grove Residential Estate (the Estate) approved by the NSW Department of Planning and Environment (DoPE) in 2007 and as amended 2011. A number of allotments within the Estate, including those the subject of this report, have been created having areas well above the minimum lot area standard of 600m<sup>2</sup>, notwithstanding the R2 Low Density zoning applied to the majority of the Estate which allows for a minimum of 600m<sup>2</sup>.

Council's Development and Environmental Health Group have recently received sale enquiries from prospective purchasers of the allotments about their potential for further subdivision (in the manner proposed by the current application). People have been advised that, although subdivision would be able to meet the minimum lot size standard provided in the Shire Plan, it should be understood that a number of allotments in the estate were created with the current configuration and size based on a consideration of various local constraints and that they were not well suited to further subdivision. The constraints referred to included geotechnical (land slip) characteristics, stormwater drainage, infrastructure provision, slope, access gradient difficulties for future driveway construction, and visual impact (particularly from The Coast Road and Survey Street).

Notwithstanding this cautionary advice, Council has received the current application to subdivide two existing lots length wise along their centrelines to create four lots (refer attached subdivision plan). A summary of the proposal is outlined in the table below.

Existing Lot	Proposed Lot	Proposed Area (m <sup>2</sup> )	Proposed Lot Width (m)
Lot 32 – 2025	Lot 3	981.3	17.5
	Lot 4	1043.2	17.5
Lot 33 - 1892	Lot 1	932	18.37
	Lot 2	959.5	18.37

## **8.2 DA 2015/377 - Four Lot Residential Subdivision, Blue Seas Parade**

---

The subject sites are 2025m<sup>2</sup> and 1892m<sup>2</sup> in area and are located on the eastern ridgeline (that runs north to south) of the Estate located along the coastal escarpment. There are another six allotments immediately south of the subject sites that have similar site areas, being three times the minimum lot area of 600m<sup>2</sup>, with only the southern-most allotment approved for higher density dual occupancy (refer attached Estate plan) development.

This southern portion of the subdivision along the ridgeline (i.e. where the allotments are approximately 1900m<sup>2</sup> or greater) is the steepest section of the estate and the most visually prominent from The Coast Road and surrounding elevated lands.

Consequently, it is evident that the both the developer and the consent authority (DoPE) had a clear intent to require/provide larger, lower density allotments in this section of the estate having regard for potential impacts of future dwelling houses and particular constraints identified at the rezoning and subdivision stages. If this was not the case, the lot yield would have been higher via the creation of more allotments having areas similar to those of lots in other less constrained and less visually prominent portions of the estate (i.e. closer to the 600m<sup>2</sup> minimum).

Council should note that the two subject allotments are still under the ownership of the original developers, Mr and Mrs Dossor. The other six larger allotments immediately to the south have been on-sold and are all in separate ownerships and remain vacant (other than one allotment which currently has a dwelling house under construction).

It is for this potential precedent creating reason (and public submissions received during exhibition) that the application is presented to Council for determination.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The proposal was placed on public exhibition during August and four letters of objection were received from residents in the locality.

The grounds for objection were generally as follows:

- Due to the history of this development, further subdivision will add to issues regarding hard surfaces, stormwater and the two natural springs in the vicinity.
- The land is too steep and unstable for four future dwelling houses.
- Increased use of services (water, sewage), traffic generation and safety in Blue Seas Parade and Survey Street.
- Effect on privacy, overshadowing, and fences of four future dwelling houses on surrounding properties.

## 8.2 DA 2015/377 - Four Lot Residential Subdivision, Blue Seas Parade

---

- The development will create a different landscape and reduce the space and tranquility which people have recently bought into and will also devalue surrounding properties.
- Will set a precedent for further subdivision of other allotments.
- The original Coastal Grove developer had to reduce the number of allotments in the Estate, including dual occupancy allotments. The proposal goes completely against the original approval.

### Report

As assessment of the application under Section 79C(1) of the Environmental Planning and Assessment Act 1979 and associated instruments has been undertaken and this report focusses on the following crucial issues.

### Density/Minimum Lot Size Provisions

During the assessment of the original Major Project subdivision application, in late 2006, Council advised the DoPE about various matters that should be incorporated into a site specific DCP for the Estate.

One of these requested that:

*“...As the minimum subdivision requirement of L2 Control Plan area is 600sqm, there is the potential of Lots 34 to 41 to be further subdivided. It is suggested that these Lots be identified as L1 Lots to remove this further potential for subdivision.”*

This position was put in a report to Council's Ordinary Meeting of 23 November 2006 which was supported by Councillors at the time.

Although the Lot references are now different, they related to the eight southern-most allotments (other than the southern-most dual occupancy allotment), including those that are the subject of this report.

Consequently, the Council identified concerns about this development issue almost 10 years ago and requested that the allotments be given a 1200m<sup>2</sup> minimum lot size due to the impacts that subdivision into smaller area allotments would have on the amenity of the new estate. Under this approach, the current application, and any similar application to subdivide the eight lots in question, would have been non-compliant.

The Coastal Grove Lennox Head Draft Development Control Plan dated September 2006, which formed part of the original Minister's Approval at Schedule 4, also noted the various constraints of these allotments. It required minimum front dwelling setbacks of 11 metres for these allotments (rather than 6 metres), single storey construction, and specific landscaping treatments at the front of dwellings to reduce their visual impact when viewed from the Coast. It should be considered, however, that the site specific DCP was deleted from the consent in 2011 via a Minister approved modification application.

Recently, Council's Strategic Services Group has advised that:

*“...a review of the planning provisions applied at Coastal Grove under the Ballina Local Environmental Plan 2012 in relation to minimum lot*

*size for subdivision indicates that the standard applied is consistent with the original site specific DCP for the land. That is, the previous Ballina Shire Combined DCP nominated the majority of residential lots for an L2 Low Density designation.*

*The L2 designation included a minimum lot size for subdivision of 600m<sup>2</sup> and this was transferred into the new LEP. The 600m<sup>2</sup> minimum lot standard for subdivision that was applied is also consistent with a general approach taken in the BLEP 2012 to apply this standard to new residential areas unless there were existing provisions in place to the contrary.”*

Therefore, as the 1200m<sup>2</sup> minimum lot size has not been applied to these eight allotments as originally assessed, and based on the submission of this application and the issues it raises, (particularly the precedent issue and further impact on limited infrastructure capacity), it is considered that amendment by the Council of the Lot Size Map referenced in clause 4.1 of the BLEP 2012 to be a minimum of 1200m<sup>2</sup> for Lots 27 to 34 (inclusive) is warranted. This would make it clearer to others contemplating making applications to subdivide these allotments that the planning assessment considered them too steep and visually prominent.

### **Precedent**

As outlined in the introduction of this report, there are eight adjoining allotments which have sufficient land areas that would allow further subdivision not intended to be achieved as part of the original Major Project approval and not supported by assessment of the characteristics of the sites in the context of the estate’s design, construction and planned amenity.

If Council approves this subdivision, there is a potential for the six remaining allotments (five of which are vacant), to lodge similar applications. This has the potential to turn eight lots into 16 lots and create an urban outcome not intended by the Minister’s approval and Council’s resolution of 23 November 2006 (i.e. a doubling of the dwelling houses along the visually prominent ridgeline).

### **Geotechnical/Land slip**

The sites have slopes in the range of 28-32% falling from the elevated eastern boundary to the lower lying western boundary and moderately reactive soils. This is considered to be Class B: Significant Hazard under Australian Standard 1726 that addresses geotechnical site investigations.

A Geotechnical Site Investigation report prepared by Australian Soil and Concrete Testing in mid-2011 was provided by the applicant as part of the current proposal. This follows geotechnical investigations undertaken for the original subdivision proposal by Coffey and Partners.

The current report concludes that there were no signs of slip or settlement at the time of investigation (2011) and the sites have been assessed as being stable and not susceptible to landslide or subsidence provided that, when a building is constructed, good engineering practices are employed.

Council's Civil Services Group have raised no concerns regarding geotechnical/land slip issues as part of the proposed development of a further two allotments.

#### **Traffic Generation/Safety**

An assessment of the adequacy of the North Creek Road/Blue Seas Parade intersection was requested to demonstrate that it will be adequate in terms of capacity and safety as the sole access point for this subdivision (including the cumulative impacts of traffic from currently created allotments when fully developed), plus traffic generated from this proposed subdivision and any other possible future subdivisions that will use the intersection.

The applicant provided the approved Traffic Assessment and Parking Implication Report undertaken for the original Estate approval which assumed a total of 49 dwellings (45 residential allotments and 4 allotments to be developed as dual occupancies). The original subdivision approval approved 39 allotments, four of which were identified as dual occupancy.

Council's Civil Services Group have advised that the existing external road network is constructed to a suitable standard to service the proposed development of an additional two allotments.

#### **Future Driveway Access and Garage Construction**

Due to the steepness of the landform and the upslope location of Blue Seas Parade, difficulties will be encountered in the future with providing suitable and safe access onto the proposed allotments.

Council's driveway gradient standards require between a 1:4 and 1:6 driveway grade over the private parcel of land. This will be difficult to achieve on these allotments and would involve substantial filling or the elevation of driveways and garage floors. Garages and access driveways may require significant suspended platform design and construction.

#### **Stormwater Management**

An assessment of the capacity of the downstream stormwater conveyance, treatment, and attenuation infrastructure was requested to demonstrate that the cumulative impacts of stormwater runoff, collection, and conveyance from the existing allotments when fully developed, plus any additional stormwater discharges from this and other possible future subdivisions can be acceptably managed.

The applicant provided the approved Water Cycle Management Plan from the original subdivision application which had assumed a greater number of allotments being created than that approved by the DoPE.

Council's Civil Services Group have advised that there is existing capacity to service the proposed development of a further two allotments in this part of the estate.

### **Water Supply**

An assessment of the capacity of the water supply system to meet any additional demand (quantity and pressure) generated by this and any other possible future subdivisions that will place demands on the local water supply system was requested of the applicants.

Council's Civil Services Group have advised that there is existing capacity to service the proposed development of an additional two allotments.

### **Sewerage System**

An assessment of the capacity of the downstream sewerage system to accommodate the additional cumulative flows of sewage that would be generated by the proposal was also requested.

Council's Civil Services Group have advised that there is existing capacity to service the proposed development of a further two allotments.

### **Privacy/Overshadowing/Fences**

The creation of an additional two allotments, and at least two additional dwelling houses (or possibly four if secondary dwellings are also proposed), does have the potential to create additional impacts such as overshadowing/privacy issues on surrounding allotments/dwellings; particularly those located downslope.

Notwithstanding this, Council has development standards that any future dwelling houses and ancillary structures need to meet that would guide development of a generally acceptable standard.

It should be noted, however, that current development standards in relation to front setbacks and building heights will not reduce the potential visual impact the additional dwellings would have on the scenic landscape.

### **Bush Fire**

The development comprises Integrated Development being the subdivision of bush fire prone land.

The NSW Rural Fire Service via letter of 21 September 2015 (attached) raised no objection to the subdivision subject to an advising that adjacent lands contain grasslands that may present a bush fire hazard and future dwelling houses should have regard for Australian Standard 3959 Construction of Buildings in Bush Fire Prone Areas.

### **Conclusions**

People are not able to presume that, because a proposal is permissible in a zone of the Shire Plan, and meets a range of development standards, it will receive development consent. There is a clear requirement that applications be assessed on merit and it is the Council's regard for the particular merits of the case that will determine whether any consent will be issued and what terms and conditions will be applied. In the subject case, the assessment has identified a number of concerns that, in the opinion of the assessment



planners, warrant the Council refusing this application. These are outlined in this report.

Additionally, although the subdivision application is compliant with the 600m<sup>2</sup> minimum area set by the Lot Size Map of the Shire Plan, planning assessment has highlighted the need for Council to amend this Map to indicate clearly to the community that the further subdivision of the larger lots approved in the original subdivisional consent will not be supported.

There has been no material change to constraints on the sites from those originally considered by the DoPE in the approval of the Major Project.

Consequently, although the 600m<sup>2</sup> minimum area requirement may be suitable for the majority of the Estate, it is considered that the eight allotments within what was described as "Zone 3" for the assessed slope stability zoning plan should remain in their current size and configuration to allow sufficient scope for good hillside building practice to occur; particularly having regard for earthworks (reduction of cut and fill), retaining wall construction, driveways and vehicle accessibility, and flexibility in dwelling house design due to the steep slopes.

Most critically, an amendment and increase in the minimum allotment size to 1200m<sup>2</sup> will reduce the potential doubling of future dwelling houses along this visually prominent ridgeline and protect the quality of the residential development as originally designed and approved. This action would also assist to ensure that infrastructure capacities are not exceeded, and that people who have bought into the estate, particularly those immediately downslope, will maintain their anticipated planned residential amenity.

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

**Option One**

That Council approves the development as submitted subject to applicable conditions of consent normally applied to urban residential subdivision.

**Option Two**

That Council approves the development and subsequently revises the minimum lot size mapping incorporated into the BLEP 2012 from the current minimum 600m<sup>2</sup> to 1200m<sup>2</sup> for all eight allotments identified in this report so that further subdivision is not possible for the remaining lots.

**Option Three**

That Council refuses the development and subsequently revises the minimum lot size mapping incorporated into the BLEP 2012 from the current minimum 600m<sup>2</sup> to 1200m<sup>2</sup> for all eight allotments identified in this report so that further subdivision is not possible for the remaining lots.

**Option Four**

That Council refuses the development application on the basis of issues raised in this report, particularly due to significant slope and visual impact.

Option Three is recommended as the proposed subdivision of the two lots that are the subject of this report, and the other allotments in the immediate locality, is not supported for the reasons outlined in this report.

### **RECOMMENDATIONS**

1. That DA 2015/377 to undertake a four lot residential subdivision at Lots 32 and 33 DP 1168665, being No.'s 51 and 53 Blue Seas Parade, Lennox Head, be **REFUSED** for the following reasons:
  - a. Lots 32 and 33 have steep slopes that do not allow sufficient scope for good hillside building practices if the subdivision were approved
  - b. Approval of the application will set a precedent that will lead to other similar subdivisions on steep allotments in the immediate locality
  - c. The subdivisions would adversely impact the design and planned amenity of the residential estate
  - d. Future dwelling houses constructed on the subdivided allotments will have an adverse impact on the setting of the prominent ridgeline
  - e. The construction of additional houses on the subject land will have a substantial adverse impact on the amenity of the downslope allotments and
  - f. Approval of the application is not in the public interest.
2. That the Lot Size Maps of the Ballina Local Environment Plan 2012 as they apply to Lots 26 – 33 in D.P. 1168665, be amended from a 600m<sup>2</sup> minimum area to 1,200m<sup>2</sup> minimum area.

### **Attachment(s)**

1. Locality Plan
2. Minister Approved Estate Subdivision Plan
3. Subdivision Plan
4. NSW Rural Fire Service Letter of Response
5. Letters of Objection

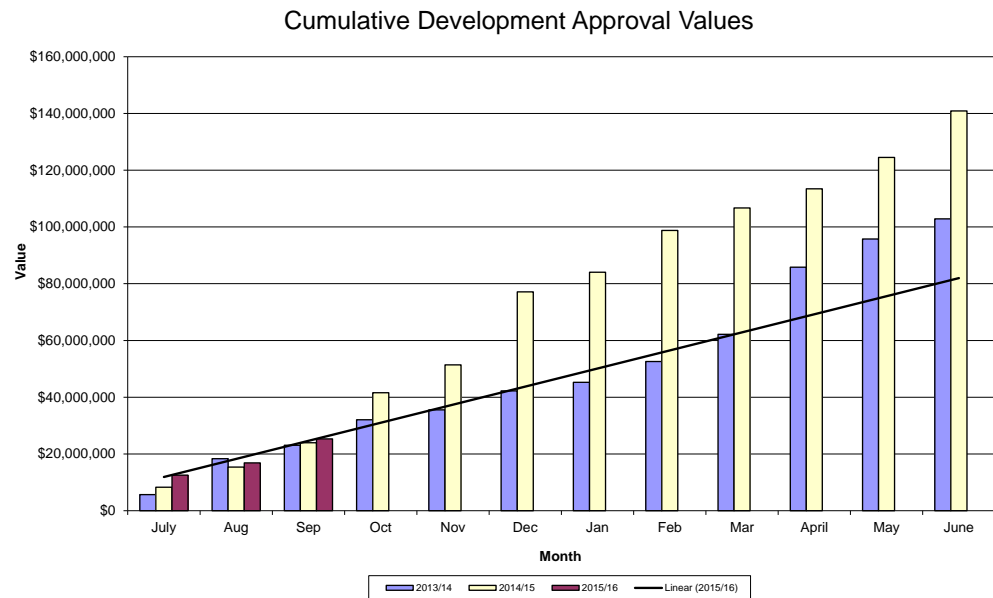
### 8.3 Development and Public Infrastructure Consents - September 2015

### 8.3 Development and Public Infrastructure Consents - September 2015

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

Number of Applications	Value of Work
69 Other Building Related	\$ 3,074,000
22 Dwelling/Duplexes/Residential Flat Buildings	\$ 5,386,000
1 General Developments	\$ 0
<b>Total Value</b>	<b>\$ 8,460,000</b>

The following chart details the cumulative consent figures for 2015/16 as compared to 2014/15 and 2013/14.



There have been no Public Infrastructure / Civil Construction Works applications received for the 2015/16 year.

#### RECOMMENDATION

That Council notes the contents of the report on development consent and public infrastructure approvals for 1 September 2015 to 30 September 2015.

#### Attachment(s)

Nil

#### 8.4 Development Applications - Works in Progress - October 2015

---

#### 8.4 Development Applications - Works in Progress - October 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.

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
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	Awaiting Additional Information
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
2015/211	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	Awaiting additional information
2015/302	15/06/2015	Newton Denny Chapelle	Three Lot Torrens Title Subdivision to Create 1 x 1920sqm and 1 x 2510sqm allotments and associated works – 19 Bullinah Crescent, East Ballina	Awaiting additional information

#### 8.4 Development Applications - Works in Progress - October 2015

2015/351	15/7/2015	Newton Denny Chapelle	To undertake a residential subdivision comprising 22 residential lots and associated infrastructure works, earthworks and vegetation clearing - Plateau Drive & 93 Rifle Range Road, Wollongbar	Awaiting Additional Information
2015/373	27/7/2015	MJ Lacey	Strata Title Subdivision of an Approved Dual Occupancy – 18 Chilcott Circuit, Cumbalum	Referred to Government Departments
2015/387	31/7/2015	Milestone (Aust) Pty Ltd	Installation of New Business Identification Signage (Dan Murphy) - 89-93 Kalinga Street, West Ballina	Being assessed
2015/393	4/8/2015	Ardill Payne & Partners	Alterations and Additions to the Ballina RSL Club – First Floor Renovations - 238-240 River Street, Ballina	Awaiting additional information
2015/398	5/8/2015	D Kilpin	Erection of a 2 <sup>nd</sup> Tourist and Visitor Accommodation Unit – 320 Picadilly Hill Road, Newrybar	Awaiting Additional Information
2015/403	7/8/2015	Newton Denny Chapelle	Shopping Centre including Woolworths Supermarket and Specialty Shops, Ballina Heights – Ballina Heights	Awaiting Additional Information

## 8.4 Development Applications - Works in Progress - October 2015

			Drive & Euroka Street, Cumbalum	
2015/409	11/08/2015	Ardill Payne & Partners	Alterations & Additions to Existing Residential Aged Care Facility (Crowley Village) -	Being assessed
2015/434	21/8/2015	Ardill Payne & Partners	Boundary Adjustment Subdivision to Create Two x 27ha allotments - 572 & 530, Uralba Road, Lynwood	Referred to Government Departments
2015/451	27/8/2015	Ballina Christian Education Association	Additions to existing school including additional primary and secondary classrooms and ancillary building and works – 7 Gallans Road, Ballina	Being assessed
2015/461	31/8/2015	Newton Denny Chapelle	Boundary Adjustment subdivision to create one x 5.7ha and one x 60.86ha allotments and associated works - 400 Houghlahans Rd & Majors Lane, Fernleigh	Awaiting additional information
2015/468	2/9/2015	Ardill Payne & Partners	Residential Subdivision to create 179 residential lots and two residue lots and associated infrastructure works – Lot 389 DP 1199596 & Lot 409 DP	Referred to Government Departments

#### 8.4 Development Applications - Works in Progress - October 2015

			1202454, Unara Parkway & Deadmans Creek Road, Cumbalum	
2015/475	7/09/2015	Marc Mittag	Erection of a four space garage – 12 Shelly Beach Road, East Ballina	Awaiting Additional Information
2015/476	7/9/2015	Northern Rivers Land Solutions	To establish farm stay accommodation within an existing farm shed and associated works – 81 Shaws Lane, Tuckombil	Awaiting additional information
2015/485	9/9/2015	Allan P Corke Pty Ltd	To erect new shade structures within the existing car park – 95-105 Fox Street, Ballina	Being Assessed
2015/493	10/09/2015	Chris Abbott Surveying	Boundary Adjustment Subdivision to Create one x 9.8ha and one x 10.7 ha allotments – 42 & 66 Fishery Creek Road, Ballina	Referred to Government Departments
2015/497	11/09/2015	Crosier Scott & Associates Pty Ltd	Alterations to shop front and installation of new signage – 38-44 Links Avenue, East Ballina	Determination pending
2015/521	18/09/2015	LJ Signs	Proposed Advertising Signage – 565-589 River Street, Ballina	Being assessed

## 8.4 Development Applications - Works in Progress - October 2015

---

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

DA No.	Date Rec'd	Applicant	Proposal	Status
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
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	Referred to Government Departments

### Major Development (Determined by Minister)

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
Nil				

### RECOMMENDATION

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

### Attachment(s)

Nil



## 9.1 Pop Denison Park - Master Plan

---

### 9. Strategic and Community Facilities Group Reports

#### 9.1 Pop Denison Park - Master Plan

**Delivery Program** Strategic Planning

**Objective** To seek the Council's endorsement to invite community feedback on a draft master plan for Pop Denison Park at East Ballina.

---

#### **Background**

Council commenced preparation of the Pop Denison Park Master Plan project in April 2015. At its Ordinary Meeting held on 23 April 2015, the Council (including Council as Manager for the Ballina Shaws Bay Reserve Trust) resolved to proceed with the Pop Denison Park Master Plan project [Minute No. 230415/1]. The aim of the project was to provide a framework for the establishment of Pop Denison Park as a regional park facility.

Council staff subsequently engaged Jackie Amos, landscape architect, to prepare a draft master plan for Pop Denison Park at East Ballina. The plan preparation process included community consultation events held in June and August 2015. These events, attended by in excess of 130 people, were designed to gain an appreciation for the way the park has been traditionally used and to identify the type of future facilities and park character that the community preferred.

Councillors, at a briefing held on 17 August 2015, considered a number of park concept option sketch designs. These were developed in response to community feedback and taking into account site constraints and opportunities. Council's consultant landscape architect then proceeded to develop the preferred concept plan into a draft park master plan, a copy of which is contained in Attachment One to this report.

Attachment One contains a copy of the full consultant's report, including the draft master plan, as well as information in relation to project background, design rationale and community engagement outcomes.

Direction is now sought from the Council (including the Council as Reserve Trust Manager) concerning the public exhibition of the draft master plan.

#### **Key Issues**

- Draft master plan
- Community and stakeholder engagement
- Provision of community infrastructure
- Public exhibition

### Information

Pop Denison Park is located on the north eastern foreshore of Shaws Bay at East Ballina, as illustrated by the red outline on the map below. Pop Denison Park has an area of 6.865 hectares and is zoned RE1 Public Recreation under the provisions of Ballina LEP 2012. The park comprises Crown land which has been managed by Ballina Shire Council since 1982 as the appointed Reserve Trust Manager of the Ballina Shaws Bay Reserve Trust (Reserve 88004).

Figure 1 - Map showing Pop Denison Park (outlined in red)



The draft master plan has been prepared taking into account the following main factors:

- Site planning to date including the draft Shaws Bay Coastal Zone Management Plan (CZMP),
- Council's roles and responsibilities as Reserve Trust Manager,
- Community, Government agency and Councillor input,
- Site characteristics,
- Costs and budget.

Five initial sketch options were developed following the site analysis and community engagement. These options were discussed in a briefing with the Council (Trust) in August 2015. Following examination of these initial options, the draft master plan set out in the report in Attachment One has been compiled. The draft master plan (without the legend and explanatory details) is also shown below as a guide to its content.

## 9.1 Pop Denison Park - Master Plan

Figure 2 - Draft Master Plan Pop Denison Park



The park has been designed to ensure it retains a character with emphasis on retention of bush and native planting areas, and to create a family park with a water focus incorporating large playgrounds.

Key built features of the draft master plan include:

- Specialised junior and senior children's playground areas,
- Extension of the internal road network and additional car parking within the reserve and off Fenwick Drive,
- A network of walking and cycling pathways including a children's cycle path,
- A pathway connection along the eastern foreshore of Shaws Bay,
- A boardwalk along the north eastern edge of Shaws Bay,
- New amenities, shelters, barbeques and seating,
- Interpretive and entry signage, and
- Exercise stations,

It is proposed that the works in the draft master plan would be undertaken in three stages between 2015 and 2028. Implementation of the improvement program could be accelerated if external funding sources were able to be secured. The estimated cost for the works is \$1.65 million, which is within the indicative project budget (see below).

A staging plan and cost estimates are contained in the draft master plan documentation in Attachment One.

### **Sustainability Considerations**

- **Environment**

The embellishment of the reserve in a manner consistent with the Shaws Bay CZMP will provide environmental benefit. The proposed upgrade works include retention of substantial areas of native vegetation.

- **Social**

The embellishment of open space and provision of regional level park facilities in a prime location is anticipated to provide significant social benefits to Ballina Shire. The nature of facilities proposed to be provided should ensure that the social benefits derived from a well designed and constructed park are available to a broad demographic group from the very young, to families and our older residents.

- **Economic**

The nature of park facilities proposed to be provided is anticipated to enhance the drawing power of Ballina as a tourist destination. This in turn will provide economic benefits to Ballina and the broader shire.

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

To meet Council's legal obligations relating to Crown land held in trust, the Council must consider this matter in its capacity as the Reserve Trust Manager. In addition, formal consultation with NSW Crown Lands should be undertaken to ensure that the State Government is kept informed of long term proposals impacting its land.

There are no significant immediate resource implications arising from the recommendations of this report. In the longer term the master plan will be used as the basis for the allocation of financial resources.

The indicative budget for this project was set at \$1.675 million to 2028. This was based on the Council's adopted 2008 s94 Contributions Plan allocating \$1.5 million to major park upgrade works over a 20 year period. The remaining \$175K was proposed to be sourced from grant funding associated with the implementation of the Shaws Bay CZMP.

Current indications are that the s94 Fund will be able to contribute approximately \$500,000 for park improvement works in 2016/17, with an additional \$100,000 being set aside for the reconstruction of park amenities.

Council currently has \$100,000 allocated in the 2015/16 to 2018/19 Delivery Program for the construction of park facilities within Pop Denison Park during 2016/17 as part of the Public Amenity Improvement Program.

As the park is developed, an increase in cleaning and general park maintenance funding will also be required to ensure that the level of service provided is commensurate with its upgraded status.

### Consultation

The draft master plan has been prepared based on extensive community and stakeholder engagement. Local residents, park users, State Government agencies, the broader community and school-aged children have been invited to contribute to the master planning process to date. Details of the engagement undertaken in the development of the draft master plan are contained in the draft master plan documentation in Attachment One.

If the Council is now comfortable to proceed with the public exhibition of the draft document, consultation is proposed to be undertaken with local Shaws Bay residents (letters to approximately 300 property owners), the broader shire community (Advocate press release, advertisements and Council's web site) as well as other relevant stakeholders, for a period of 28 days.

### Options

The Council has been presented with a draft master plan for the development of Pop Denison Park at East Ballina. The Council may endorse the draft plan as presented for exhibition purposes, propose amendments to the plan, decline to endorse the plan or request a further briefing to discuss aspects of the plan.

It is suggested that at this stage of the process, and having regard for the consultation already undertaken, the preferred option is for the Council to endorse the draft plan as attached as being suitable for exhibition (subject to minor adjustments for presentation and explanation purposes). Following the exhibition period, a report will then be prepared for the Council's further consideration.

### RECOMMENDATIONS

1. That Council (including Council as Reserve Trust Manager) endorses the draft Pop Denison Park Master Plan, attached to this report, for the purpose of seeking community feedback.
2. That the draft Master Plan be exhibited for public comment for a minimum period of 28 days and that a further report be prepared for the Council (and Reserve Trust) following the exhibition period.

### Attachment(s)

1. Draft Pop Denison Park Master Plan (Under separate cover)



## 9.2 Cumbalum Precinct B Locality Naming

---

### 9.2 Cumbalum Precinct B Locality Naming

**Delivery Program** Strategic Planning

**Objective** To invite the Council's further consideration of a proposal for the renaming of the Cumbalum Precinct B locality, including the adjustment of existing locality boundaries.

---

#### **Background**

At its Ordinary Meeting held on 21 January 2014, the Council requested that staff investigate the processes associated with adjusting the existing boundaries of the formal Tintenbar and Cumbalum localities.

A rationalization of these boundaries would avoid a situation where the substantial planned urban area of Cumbalum "Precinct B" would straddle a number of locality boundaries and potentially create confusion as that new estate develops. Aligning locality boundaries with the constructed Ballina Bypass was also seen as being beneficial.

Subsequent to its January 2014 decision, the Council has received and considered several reports concerning this matter. Following extensive community engagement and consideration of submissions, the Council determined to proceed with the locality boundary adjustment, and to endorse the name Kinvara for a new locality which would be established. A map illustrating the proposed new locality boundaries will be on display at the Council Meeting.

The decision by the Council to proceed with this initiative was made at its Ordinary Meeting held on 26 March 2015. The Council's decision was communicated to the NSW Geographical Names Board which is the authority responsible for matters of this kind. This report outlines what has transpired since the Council's commitment to proceed.

#### **Key Issues**

- Procedures for locality naming for future planning
- Engaging with community

#### **Information**

By letter dated 3 August 2015, the Geographical Names Board notified Council that the Board had determined to authorize, for the purpose of public exhibition, the arrangement that the Council had proposed.

Even though a comprehensive community engagement had preceded the Council's earlier determination, the Board itself was also required to obtain community feedback about the proposal, to satisfy its own legislative obligations and operational practices.

## 9.2 Cumbalum Precinct B Locality Naming

---

The Board advertised the proposed changes in our local newspaper and in the NSW Government Gazette during the period 19 August to 21 September. Council also facilitated an exhibition of the material supplied by the Board in the foyer of our Customer Service Centre.

By letter dated 24 September, the Board advised Council that the public exhibition of the proposed locality boundary adjustments and the proposal to name a new locality as Kinvara had elicited five community responses – one in favour of the proposed changes and four against.

The Board has now asked the Council to consider a summary of the submissions received, and to provide any comment it wishes to make. The Board advises that it relies heavily on the views of councils in determining addresses, locality names and boundaries.

In its letter to Council, the Board has emphasised that all information from the submission summaries it has provided is for Council's in-house use only, and must not be disclosed to a third party or made publicly available.

Given this, and the fact that Council's Business Paper is publicly available, the following is a copy of the information provided by the Board, with the names and addresses of those who made the submissions omitted.

1. Comment summary: *"I would like to see the new locality encompass Kinvara Ridge Road (soon to be changed to Hinterland Way)."*
2. Comment summary: *"I would like to retain the name Tintenbar respecting and acknowledging our Indigenous heritage. I have lived in the area for many years and enjoy the connection and community of Tintenbar. The Teven Tintenbar School, Tintenbar Hall and the Oval all have a firm place on our family and local history."*
3. Comment summary: *"Seems to have little to do with the heritage of the region other than Kinvara being close to Ballina in Ireland. I think a name associated with local aboriginal heritage would be better."*
4. Comment summary: *"Dear Secretary, I am sending this email to make you aware that I am very concerned regarding the proposed name change in Tintenbar and Cumbalum to Kinvara. I acknowledge that there was a significant early Irish settlement in that area however I am also very aware that the developer of that said land is Irish and the Aboriginal Community have not been fully consulted. I am gravely concerned that this land has significant Aboriginal heritage and this firstly needs to be addressed. I have spoken to the CEO of the Jali Land Council who supports this also. Could you please consult with the local Aboriginal Community in regard to this name change before any decision be made."*
5. Comment summary: *"From the time of early settlement, the land being renamed formed part of Tintenbar and has only recently been divided by the new Pacific Highway. Records define that early Irish immigrants settled at Tintenbar. Births, deaths and marriages were recorded as Tintenbar. The settlers worshipped at Tintenbar, held their annual Irish balls at Tintenbar and their children attended school at Tintenbar."*

*Why do we need to rewrite and distort history? The village of Tintenbar was named after the Aboriginal word Chin-Chin-Bar meaning short-tailed pademelon that is native to the area.*

*With all due respect to some of the finest pioneers to ever grace the shores of this country, why do we need to copy Irish geography as inspiration for our place names. And if we do, surely it should be copied in geographic accuracy since the name is based on Kinvara located to the south of the Irish Ballina, when the proposed new suburb is north. Further to this, Tintenbar originally came under the auspices of the Tintenbar Shire Council with its head office at Alstonville. At the time both Alstonville and Tintenbar were far removed by distance from Ballina and travel was only by boat up Emigrant Creek when swamps formed barriers to travelling overland. Basing the new place name on an ill-suited Irish reference to Ballina highlights the importance of Ballina while having no real significance to the history of Tintenbar, nor to its Irish pioneer settlers.*

*Irish immigration in the area was not tied to Kinvara as the immigrants hailed from various counties throughout Ireland. Many pioneer settlers are already honoured in the Tintenbar area through street names such as Dufficys Lane and Crosbys Lane.*

*Rather than cut off and rename a part of Tintenbar that has existed since the beginning of our settlement, we could simply name the new area Tintenbar East, retain our local history and honour pioneer settlers by using family names in the streets of the new locality.”*

During the Board's exhibition period, a submission from a resident/landowner was also made directly to Council. Whilst technically, disclosure of the identity of the author of this submission could be made under the Council's policies, such identity is withheld here to be consistent with the other submissions above. This additional submission is as follows:

*Comment summary: “Mr Hickey, I want to register my complete and utter objection to the proposed name change of our suburb, namely Tintenbar.*

*We have already experienced one name change from Lennox Head to Tintenbar. The proposed new name bears no relevance to the area, historical or indigenous nomenclature. At least the change to Tintenbar had some relevance with other locales in the area namely Newrybar, Wollongbar etc.*

*Who's 'half brained idea' was this? What a complete waste of funds and bureaucrats time or is that how this Council tries to function? Why not address some of the more serious relevant issues like road repair and upgrades, removal of Cinnamomum Camphorum 'Camphour Laurel' and other weed eradication.*

*If there was any change at all surely something simple like East Tintenbar or Tintenbar East, would be more appropriate.”*



### **Staff Comment**

Submission No.1 – It is agreed that part of the western boundary of the proposed Kinvara locality should be adjusted very slightly to include Kinvara Ridge Road.

Submission No. 2 – Whilst the sentiment is appreciated, the proposed locality boundary adjustments and the proposed additional locality are intended to accommodate a substantial future urban area (ie Precinct B) as well as responding to the recent re-routing of the Pacific Highway. The changes will not detract from the values of the public infrastructure items mentioned in the submission.

Submission No.3 – The concept of acknowledging the Aboriginal heritage of the locality in place naming is highly desirable, and is consistent with the Geographical Names Board's guidelines for place naming. Regrettably however, the Council's previous attempts to obtain a consensus view from our Aboriginal community over a period of approximately six months were unsuccessful.

Submission No.4 – As above. Unfortunately, it appears that the Board's public exhibition of the proposal (as with Council's earlier community engagement, including public notices) did not elicit a response from local Aboriginal community organizations or members.

Submission No.5 – The historical perspectives provided in the submission are appreciated. The alternative suggested name in this submission was considered by the Council, but declined, at the time of selecting its preferred name of Kinvara. It is noted that the guidelines for the determination of place names endorsed and utilized by the Geographical Names Board state that the use of cardinal points of the compass as a prefix or suffix to an existing name is not favoured.

Submission made directly to Council – The submission is noted. Also, refer above to comments concerning the use of cardinal points of the compass in place-naming.

Having regard for the background to this matter, including the extensive level of community engagement which has occurred, involving both Council and the Board, it is suggested that the Council's earlier decision to implement the adjustments to existing locality boundaries, to establish a new (additional) locality and to have it named Kinvara, remains appropriate.

Whilst the information and views conveyed by those who have responded to the Board's most recent consultation are appreciated, no issue has been raised which would warrant discontinuing with the action taken. The only qualification would be that part of the western boundary of the proposed new locality is adjusted very slightly so as to capture Kinvara Ridge Road.

### **Sustainability Considerations**

- **Environment**  
Not Applicable

- **Social**

Place naming is important as a means of promoting community cohesion. Whilst some residents/property owners have expressed their concern with the proposed change, overall the boundary rationalization will be beneficial as the locality transitions to a new urban centre. Also, the new configuration is logical, having regard for the revised alignment of the Pacific Highway Ballina Bypass.

- **Economic**

Not Applicable

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

The procedures associated with the review of the boundaries of the relevant localities and the proposed establishment and naming of an additional locality have been applied within the resources of the Council and the Geographical Names Board respectively.

### **Consultation**

As outlined in the above report and the earlier reports which have been presented, there has been extensive community engagement undertaken in relation to this project. Both the Council and the Geographical Names Board have earnestly tried to involve the community in the decision-making process, and to communicate the longer term benefits to be derived in making the changes to accommodate the efficient longer term urbanization of this part of the Cumbalum Ridge.

### **Options**

The Council's earlier decision to support the changes to the localities has previously been communicated to the Geographical Names Board. Following its own community engagement, the Board is now asking Council if there is any issue which has been raised in submissions which warrant a departure from that earlier decision (ie: to defer or decline proceeding with the proposal).

Though the matters raised by submitters are noted and acknowledged, it is suggested the Council's earlier position remains sound, and the Geographical Names Board should be asked to proceed to finalise the matter. The only modification would be to slightly realign part of the western boundary of the proposed new locality to include Kinvara Ridge Road.

It is suggested that public interest will be best served, particularly for the purpose of long term planning in this part of the shire, through the adjustment to the localities, as envisaged by the Council's earlier decision.

The other options are to either discontinue or defer the proposal. However, given the Council's initiative in wishing to avoid potential future conflict or uncertainty as planned urban development occurs in this area, the preference is to ask the Geographical Names Board to finalize the matter.

**RECOMMENDATIONS**

1. That Council notes the contents of this report concerning the proposal to adjust the boundaries of the existing localities of Tintenbar and Cumbalum and to establish a new locality.
2. That the Geographical Names Board be advised that the Council has determined on balance that it wishes to proceed with the proposal as previously submitted, including that the proposed new locality be named Kinvara. Further, that part of the western boundary of the proposed new locality be slightly adjusted to include Kinvara Ridge Road.

**Attachment(s)**

Nil

### 9.3 Classification of Land - Avalon Avenue Wollongbar

---

### 9.3 Classification of Land - Avalon Avenue Wollongbar

**Delivery Program** Strategic Planning

**Objective** To determine the classification of a parcel of land recently acquired by Council, under the provisions of the Local Government Act 1993.

---

#### **Background**

Lot 48 in DP 1210625 is located in Avalon Avenue, Wollongbar, east of Taunton Place, and has recently been registered and dedicated to the public (Council) as a drainage reserve. The subject lot is shown on the locality map in Attachment 1.

The lot comprises part of the stormwater management system in place for the estate which was approved by Council under Development Consent No. 2007/876 and authorised for registration by Council in Subdivision Certificate No. 2015/15 on 29 June 2015.

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

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

#### **Key Issues**

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

#### **Information**

The subject lot has been dedicated to Council as a drainage reserve and contains stormwater management infrastructure provided as part of and servicing the residential development on the adjacent land.

As the lot has been created to contain stormwater management infrastructure and will not function as open space for public recreation it is recommended that it be classified as operational land in accordance with the provisions of the LG Act.

Section 31 of the LG Act provides that before a council acquires land, or within three months after it acquires land, it may resolve that the land be classified as community land or operational land. If the land has not been classified within the three month period then it is taken to have been classified as community land. The subject land was acquired by Council on 28 July 2015 upon the registration of DP 1210625 and therefore the three month classification “window” expires on 28 October 2015.

### 9.3 Classification of Land - Avalon Avenue Wollongbar

---

Section 34 of the LG Act requires that public notice of a proposed resolution to classify land must be given and that a period of not less than 28 days to receive submissions must be provided. A public notice of the proposal to classify the subject land as operational land was contained in the Ballina Shire Advocate on 16 September 2015 in accordance with section 34 of the Act, with submissions invited until 16 October 2015. At the time of finalising this report no submissions were received in response to the notification.

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

#### Sustainability Considerations

- **Environment**

The classification of the subject lot as operational land is not expected to result in any negative environmental, social or economic outcomes. An operational classification is consistent with the proposed and current use of the land for stormwater management purposes.

- **Social**

As above.

- **Economic**

As above.

#### Legal / Resource / Financial Implications

The classification of Lot 48 in DP 1210625 as operational land is a legal mechanism under the LG Act that provides Council with flexibility in the management and maintenance of the land for stormwater infrastructure. The proposed classification will not directly result in adverse resource or financial implications but will enable the efficient management and maintenance of the land for its intended purpose in the long term.

#### Consultation

Public notification of the proposal to classify the land as operational land has occurred in accordance with the requirements of section 34 of the *Local Government Act* 1993. Public submissions were invited, with the closing date being 16 October 2015. At the time of finalising this report no submissions in response to the notification were received. Should submissions be subsequently received these will be tabled at the Council meeting.

#### Options

1. The Council may resolve to classify the lot as operational land.

Under this option, the proposed classification of the lot as operational land would take effect immediately upon the resolution of the Council.

2. The Council may resolve to classify the lot as community land.

### **9.3 Classification of Land - Avalon Avenue Wollongbar**

---

Where land is classified as community land, Council would be obliged to manage the land for community purposes and make provisions for its categorisation and incorporation into a plan of management. Given the intended use of the land is for stormwater management, classifying the land as community land is not recommended.

The classification of the land as operational land as per option one is the recommended approach as the land has been specifically dedicated for a use compatible with an operational classification. Classification as operational land allows for the ongoing management and maintenance of the land for stormwater infrastructure.

#### **RECOMMENDATION**

That Council classify the land identified as lot 48, DP 1210625, Avalon Avenue, Wollongbar as operational land under the provisions of the *Local Government Act 1993* and that this classification takes effect immediately.

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

1. Attachment One - Locality Plan

## 9.4 LEP Amendments and Planning Proposals - Status

---

### 9.4 LEP Amendments and Planning Proposals - Status

**Delivery Program** Strategic Planning

**Objective** To advise the Council of the status of the LEP amendment requests and planning proposals that are currently under consideration and outline the process for the completion of LEP amendments under delegation from the Minister for Planning.

---

#### **Background**

Council has an ongoing program of assessing and processing requests to amend the Ballina Local Environmental Plan (LEP) and associated planning proposals. This report provides an update of those matters for the information of Councillors and the community.

The report also outlines the approach for finalising LEP amendments where this process is delegated to the Council by the Minister for Planning based on the practical experience of staff in administering these amendments to the LEP.

#### **Key Issues**

- Status of rezoning and LEP amendment requests.

#### **Information**

##### *LEP Amendment Requests and Planning Proposals Status*

Table 1 provides an overview of the LEP amendment requests and planning proposals currently being considered and processed by Council. With respect to terminology used in this report, the term planning proposal refers to the documentation prepared to describe a request to amend the Ballina Local Environmental Plan. Requests are typically referred to as planning proposals once the Council has agreed to progress the LEP amendment request and prepared the required planning proposal documentation for Gateway determination by the NSW Department of Planning and Environment.

**Table 1: Status of LEP amendment requests and planning proposals**

Item	Name and Status	Summary and Notes	Completion Due
13/005	Southern Cross Industrial Estate Expansion, Ballina. (Stage 4)	Proposal for the rezoning of land northward of the existing Southern Cross Industrial Estate to enable a mixture of business and industrial land uses. Council is awaiting further information from the proponent to commence third party review process (Council's Commercial Services Section).	30/07/2016

## 9.4 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
14/001	Teven Road, West Ballina. (Stage 4)	Proposal to enable the establishment of freight transport facilities adjacent to Teven Road on the western side of the Ballina Bypass.  Technical assessment of material submitted by the proponent is underway.	07/11/2015
14/002	Reservoir Hill Site, Lennox Head. (Stage 4)	Proposal for the rezoning of land to apply a residential zone to the land known as the Reservoir Hill site in Lennox Head.  Third party assessment of the proposal has been undertaken on behalf of the Council. Council is assessing additional information provided by the proponent and has commenced discussion in relation to the Hutley Drive north road corridor through the site.	21/04/2016
14/004	Tara Downs (No 16), Lennox Head. (Stage 4)	Proposal for the rezoning of land immediately east of the existing Tara Downs Estate for residential purposes.  Technical assessment of material submitted by the proponent is underway.	13/05/2016
14/005	Blue Seas Parade (No 44-52), Lennox Head. (Stage 4)	Proposal for the rezoning of land at the eastern end of Blue Seas Parade for residential purposes.  After previously resolving to discontinue consideration of this proposal at its July 2014 Ordinary Meeting, the Council resolved to recommence processing (January 2015) following the JRPP's review of the matter.  Council has not received submission of technical information from the proponent. The intention of the proponent in relation to this amendment is unclear. Matter is being followed up by staff.	09/02/2016
14/008	Burns Point Ferry Road, West Ballina (Ballina Waterways). (Stage 4)	Proposal for the rezoning of land adjacent to Burns Point Ferry Road and River Street to enable a mixture of employment and residential land uses. The proposal includes implementation of a biobanking scheme over part of the land.  Technical material submitted by the proponent for third party review.	02/04/2016
14/009	Ballina Heights General Amendments. Complete	Proposal to adjust the mix of R2 Low Density and R3 Medium Density residential zoning over undeveloped (but urban zoned) land at Ballina Heights.  This amendment was completed via Amendment No.23 to the Ballina LEP 2012 on 28 August 2015.	Complete



## 9.4 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
14/010	General Amendments (2) - BLEP 2012 twelve month review. Complete	Proposal to undertake primarily "housekeeping" amendments to the LEP following a review of the plan's operation since its commencement in February 2013.  This amendment was completed via Amendment No.22 to the Ballina LEP 2012 on 19 June 2015.	Complete
15/001	Reclassifications, Various Locations. (Stage 4)	Proposal to reclassify several miscellaneous land parcels in Ballina and Lennox Head from community land to operational land under the Local Government Act to reflect current land use/purpose.  Preparation for public exhibition and mandatory public hearing being undertaken.	28/06/2015
15/003	Teven Highway Service Centre. Complete	Proposal to alter the area within which a highway service centre is permitted as an additional permitted use adjacent to the Teven Road Pacific Highway interchange.  This amendment was completed via Amendment No.24 to the Ballina LEP 2012 on 21 August 2015.	Complete
15/004	Greenwood Place, Lennox Head. (Stage 4)	Proposal to rezone land fronting Greenwood Place and The Coast Road for residential purposes.  Technical assessment of material submitted by the proponent is underway.	21/04/2016
#	Private Native Forestry. (Stage 3)	Proposal to amend the Ballina LEP 1987 to require development consent for private native forestry on rural land.  The Department of Planning and Environment initially declined the issue of a Gateway determination to enable this matter to proceed. This decision was reviewed by the Northern JRPP at Council's request. The JRPP recommended that the amendment proceed through Gateway determination to public exhibition. The Department of Planning and Environment has not yet made a decision on the progress of the amendment.	#
#	Stoneyhurst Drive, Lennox Head. (Stage 1)	Proposal to rezone land in Stoneyhurst Drive for residential purposes and enable subdivision of the land.  Review of initial request being undertaken.	#

## 9.4 LEP Amendments and Planning Proposals - Status

Item	Name and Status	Summary and Notes	Completion Due
<p><b><i>LEP Amendment Request/Planning Proposal Processing Stages</i></b></p> <ol style="list-style-type: none"> <li>1. Initial Concept - Proponent submits initial amendment concept for review and reporting to the Council.</li> <li>2. Planning Proposal - Preparation of a planning proposal for the Council's consideration (if the initial concept is supported by the Council).</li> <li>3. Gateway Determination - DP&amp;E determination as to whether the planning proposal may proceed (if the Council resolves to submit the planning proposal for determination).</li> <li>4. Study Preparation - Relevant technical information to enable complete assessment compiled and considered. This step may also involve pre-exhibition public authority consultation.</li> <li>5. Community Consultation - Planning proposal and associated technical assessment material exhibited for public comment.</li> <li>5a. Public Hearing - Public Hearing held, where required.</li> <li>6. Submissions Assessment and Council Decision - Reporting of community consultation outcomes and Council decision regarding finalisation of the planning proposal.</li> <li>7. Finalisation - DP&amp;I finalisation (or Council finalisation under delegation) of the LEP amendment based on the planning proposal. Note: the Minister for Planning and Environment may finalise, alter or terminate the amendment.</li> </ol> <p># Denotes proposal number and due date subject to Gateway determination.</p> <p>The completion due date is a date for completion determined by the Department of Planning and Environment.</p>			

### Sustainability Considerations

- **Environment**  
Environmental, social and economic considerations form part of the Council's assessment of all planning proposals and LEP amendments.
- **Social**  
As above
- **Economic**  
As above

### Legal / Resource / Financial Implications

The work program is being undertaken within existing resources, or on a fee for service basis for specific proposals.

### Consultation

This report is provided for the information of the community.

### Options

The status of the LEP amendments outlined above is provided for noting only.

**RECOMMENDATION**

That Council notes the contents of this report concerning the status and approach regarding the current LEP amendment requests and planning proposals that are being processed.

**Attachment(s)**

Nil

## 10.1 Use of Council Seal

---

### 10. General Manager's Group Reports

#### 10.1 Use of Council Seal

---

#### RECOMMENDATIONS

That Council affix the Common Seal to the following documents.

US15/14	<p>Northern Rivers Dirty Wheels Mountain Bike Club Inc (NRDWMBC) – Licence for use of part of Gap Road Quarry located at Bruxner Highway, Alstonville – Peppercorn rent – Term of three years.</p> <p>Explanation: Further to the request of the NRDWMBC and In accordance with prior Council resolutions dated 18 December 2014 and 25 July 2015, the NRDWMBC has requested a licence for the portion of the Gap Road Quarry which is currently not being used for operational purposes to establish mountain bike riding trails.</p>
US15/15	<p>Ballina Little Athletics Club Incorporated and Tintenbar East Ballina Football Club – lease for the clubhouse at the Ballina Heights sporting fields, Power Drive, Cumbalum – peppercorn rent – term of three years</p> <p>Explanation: Following a request for expressions of interest for the new facility which were sought during February and March 2015, Council staff accepted submissions by Ballina Little Athletics and Tintenbar East Ballina Football Club.</p>

#### Attachment(s)

Nil

## 10.2 Investment Summary - September 2015

---

### 10.2 Investment Summary - September 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 September 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 September was \$72,288,000. This represents an increase from August of \$3,000,000. Council's investments as at 30 September are at an average (weighted) rate of 3.02%, which is 0.84% above the 90 Day Bank Bill Index of 2.18%.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 September 2015 was \$2,656,028.

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:

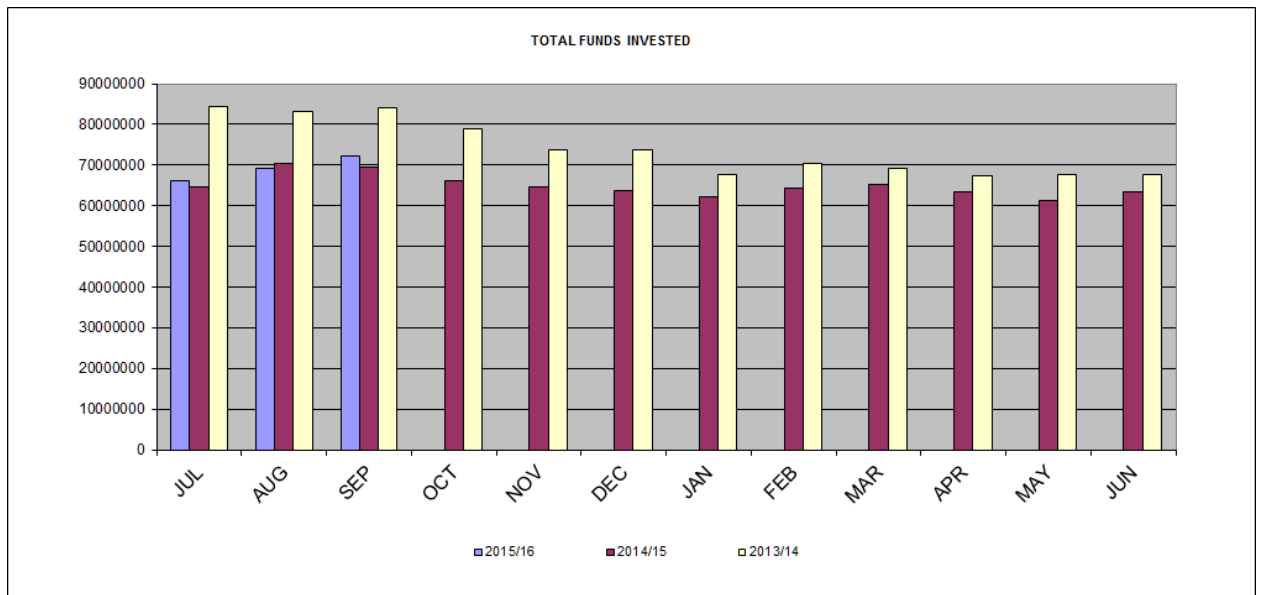
<b>Reserve Name</b>	<b>Internal/External Restriction</b>	<b>% of Portfolio*</b>
Water Fund (incl developer contributions)	External	15
Wastewater Fund (incl developer contributions)	External	22
Section 94 Developer Contributions	External	7
Bonds and Deposits	External	2
Other External Restrictions	External	13
Land Development	Internal	5
Employee Leave Entitlements	Internal	4
Carry Forward Works	Internal	13
Miscellaneous Internal Reserves	Internal	12
Unrestricted		7
<b>Total</b>		<b>100%</b>

\* Based on reserves held as at 30 June 2015

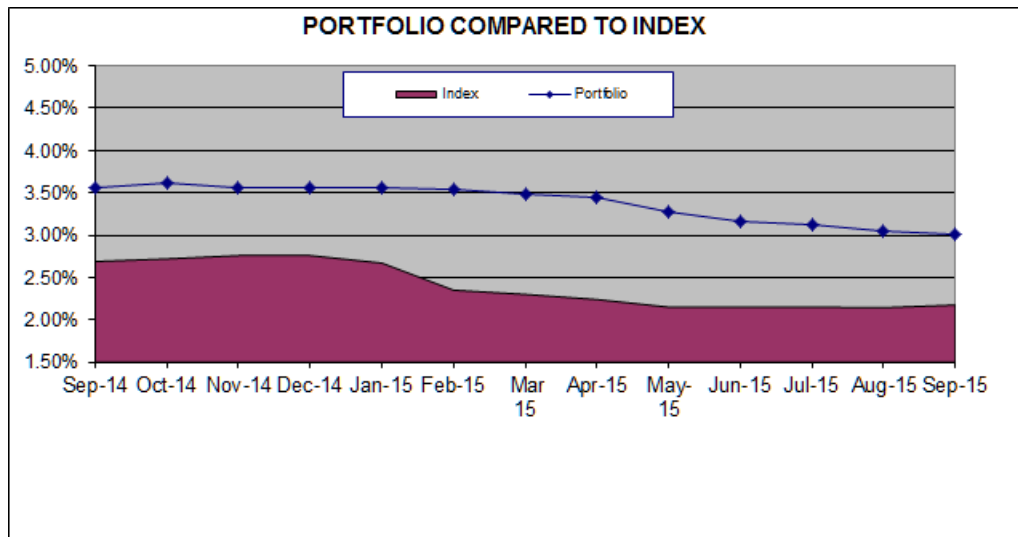
**A. Summary of Investments by Institution**

Funds Invested With	ADI Rating	Previous	Current	% of		Total
		Month \$'000	Month \$'000	Quota %	Total	
<b>Grandfathered Investments</b>						
Goldman Sachs	A	1,000	1,000	0	1.4%	
National Australia Bank	BBB	1,788	1,788	0	2.5%	
National Wealth M'ment Holdings	A-	2,000	2,000	0	2.8%	<b>7%</b>
<b>Rated Institutions</b>						
AMP Bank	A+	6,000	6,000	20%	8.3%	
Bank of Queensland	A-	5,000	5,000	10%	6.9%	
Bank of Western Aust	AA-	11,000	12,000	20%	16.6%	
Bendigo & Adelaide Bank	A-	4,000	4,000	10%	5.5%	
Commonwealth Bank of Australia	AA-	2,500	6,500	20%	9.0%	
Defence Bank Ltd	BBB+	3,000	3,000	10%	4.2%	
Greater Building Society	BBB	2,000	2,000	10%	2.8%	
ING Bank Ltd	A-	1,000	1,000	10%	1.4%	
Members Equity Bank	BBB+	4,000	2,000	10%	2.8%	
National Australia Bank	AA-	10,000	10,000	20%	13.8%	
Newcastle Perm Bld Society	BBB+	1,000	1,000	10%	1.4%	
Suncorp-Metway Bank	A+	12,000	12,000	20%	16.6%	
Westpac Banking Corporation	AA-	3,000	3,000	20%	4.2%	<b>93%</b>
<b>Unrated ADI's</b>				\$1m	0.0%	<b>0%</b>
<b>Total</b>		<b>69,288</b>	<b>72,288</b>		<b>100%</b>	

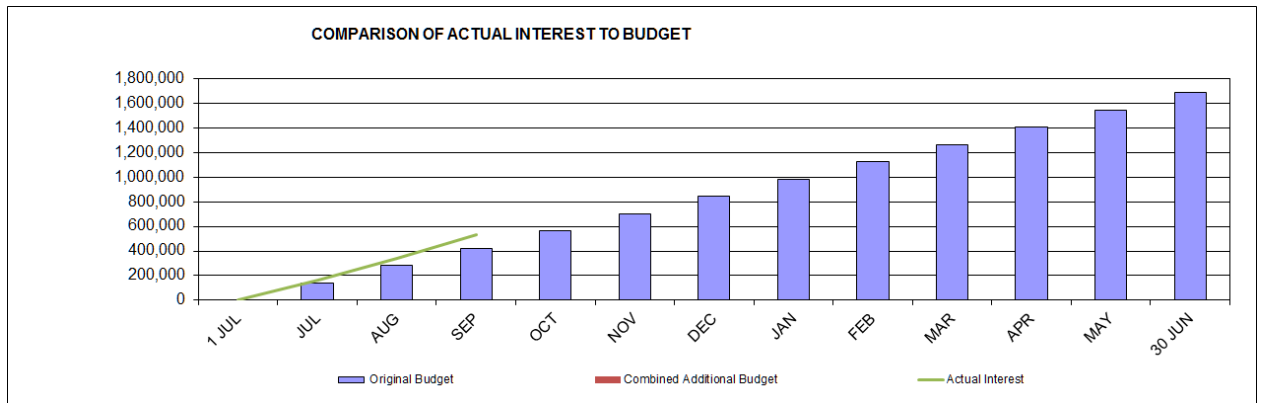
**B. Monthly Comparison of Total Funds Invested**



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



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



## 10.2 Investment Summary - September 2015

### E. Investments held as at 30 September 2015

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURIT Y DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
at call	Commonwealth Bank Of Australia	CDA	1.95%	at call	506	506
20/09/04	National Australia Bank (ASX Listed)	FRN	3.39%	Perpetual	1,788	1,220
12/04/06	Goldman Sachs	FRN	2.66%	12/04/16	1,000	999
16/06/06	National Wealth M'ment Holdings	FRN	2.81%	16/06/26	2,000	1,988
24/01/12	ING Bank Ltd	FRTD	4.09%	24/01/17	1,000	1,000
06/02/12	Westpac Bank	FRN	3.80%	06/02/17	1,000	1,019
25/01/13	Commonwealth Bank Of Australia	TD	4.25%	25/01/18	1,994	2,089
07/06/13	Greater Bld Society	FRN	3.61%	07/06/16	2,000	2,009
25/02/14	Westpac Bank	FRN	3.06%	25/05/19	2,000	2,022
13/04/15	Suncorp-Metway Bank	TD	3.00%	13/10/15	3,000	3,000
04/05/15	Bank of Queensland	TD	2.90%	29/10/15	1,000	1,000
04/05/15	National Australia Bank	TD	2.97%	03/11/15	2,000	2,000
05/05/15	BankWest	TD	2.90%	06/10/15	2,000	2,000
11/05/15	BankWest	TD	2.85%	08/10/15	2,000	2,000
11/05/15	Bank of Queensland	TD	2.95%	11/11/15	1,000	1,000
18/05/15	BankWest	TD	3.00%	19/10/15	1,000	1,000
19/05/15	Bank of Queensland	TD	2.95%	18/11/15	1,000	1,000
25/05/15	National Australia Bank	TD	2.97%	07/12/15	1,000	1,000
25/05/15	National Australia Bank	TD	2.97%	30/11/15	1,000	1,000
25/05/15	Suncorp-Metway Bank	TD	2.95%	02/12/15	1,000	1,000
26/05/15	National Australia Bank	TD	2.97%	22/02/16	1,000	1,000
01/06/15	Suncorp-Metway Bank	TD	2.95%	01/12/15	1,000	1,000
02/06/15	BankWest	TD	2.90%	03/12/15	1,000	1,000
02/06/15	Bank of Queensland	TD	3.00%	06/01/16	1,000	1,000
05/06/15	National Australia Bank	TD	2.97%	12/01/16	2,000	2,000
15/06/15	Defence Bank	TD	3.05%	15/02/16	1,000	1,000
16/06/15	Defence Bank	TD	3.05%	17/02/16	1,000	1,000
17/06/15	Defence Bank	TD	3.05%	22/02/16	1,000	1,000
22/06/15	BankWest	TD	3.00%	22/12/15	1,000	1,000
22/06/15	Suncorp-Metway Bank	TD	3.00%	19/01/16	1,000	1,000
06/07/15	Suncorp-Metway Bank	TD	2.95%	05/01/16	2,000	2,000
13/07/15	Suncorp-Metway Bank	TD	2.90%	11/01/16	1,000	1,000
23/07/15	AMP Bank	TD	2.90%	25/01/16	2,000	2,000
27/07/15	AMP Bank	TD	2.90%	28/01/16	1,000	1,000
29/07/15	BankWest	TD	2.90%	01/02/16	1,000	1,000
29/07/15	National Australia Bank	TD	2.95%	04/02/16	1,000	1,000
30/07/15	Newcastle Permanent Bld Society	TD	2.80%	27/01/16	1,000	1,000
30/07/15	BankWest	TD	2.90%	10/02/16	1,000	1,000
31/07/15	Bendigo & Adelaide Bank	TD	3.00%	01/08/16	2,000	2,000
04/08/15	AMP Bank	TD	2.90%	09/02/16	2,000	2,000
05/08/15	AMP Bank	TD	2.90%	11/02/16	1,000	1,000
17/08/15	Bendigo & Adelaide Bank	TD	2.95%	16/08/16	2,000	2,000
17/08/15	Members Equity Bank	TD	2.85%	19/02/16	2,000	2,000
18/08/15	Bank of Queensland	TD	2.90%	01/03/16	1,000	1,000
25/08/15	National Australia Bank	TD	2.90%	25/02/16	1,000	1,000
28/08/15	National Australia Bank	TD	2.90%	02/03/16	1,000	1,000
31/08/15	Suncorp-Metway Bank	TD	2.85%	03/03/16	2,000	2,000
31/08/15	Suncorp-Metway Bank	TD	2.85%	29/02/16	1,000	1,000
01/09/15	BankWest	TD	2.80%	08/12/16	1,000	1,000
03/09/15	Commonwealth Bank Of Australia	TD	2.84%	07/01/16	1,000	1,000
04/09/15	Commonwealth Bank Of Australia	TD	2.84%	10/02/16	1,000	1,000
08/09/15	Commonwealth Bank Of Australia	TD	2.88%	09/02/16	1,000	1,000
23/09/15	Commonwealth Bank Of Australia	TD	2.90%	23/02/16	1,000	1,000
29/09/15	BankWest	TD	2.90%	28/01/16	2,000	2,000
<b>Totals</b>					<b>72,288</b>	<b>71,852</b>
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 September 2015.

**Attachment(s)**

1. TCorp Local Government Economic Commentary - September 2015

## 10.3 Disclosure of Interest Returns

---

### 10.3 Disclosure of Interest Returns

**Delivery Program** Administration

**Objective** To comply with the provisions of the Local Government Act relating to the tabling of disclosure of interest returns.

---

#### **Background**

Section 449 (3) of the Local Government Act requires Councillors and designated persons to complete a pecuniary interests return within three months of the end of the financial year.

Section 450A (2) (b) then requires the General Manager to table those returns at the first available Council meeting following the completion of the three month period.

This report complies with the above sections of the Local Government Act for the period 1 July 2014 to 30 June 2015.

#### **Key Issues**

- Ensuring compliance with the Local Government Act.

#### **Information**

Returns are to be tabled by Councillors and designated persons. Section 441 of the Local Government Act defines designated persons as the General Manager, Senior Staff and other positions or members of committees that exercise functions that could give rise to a conflict of interest.

To manage the determination of designated positions an internal procedure has been adopted by staff to ensure that:

- all senior staff
- all staff involved in the determination of development applications
- all staff exercising delegations in respect to rezoning requests
- all staff with a purchasing authority above \$55,000 and
- all staff who have secondary employment approvals excluding those that relate to one off events that are for a relatively short term. Examples include elections, festivals etc.

complete the returns.

No committee members, other than Councillors, are required to complete returns, as all Council's committees, other than those consisting entirely of Councillors, have no delegated authority.

The completed returns and the register will be tabled at the meeting for the information of the public.

## 10.3 Disclosure of Interest Returns

---

### Sustainability Considerations

- **Environment**  
Not Applicable
- **Social**  
The disclosure of interest returns help to improve transparency in the decision making process.
- **Economic**  
Not Applicable

### Legal / Resource / Financial Implications

Council must comply with the Local Government Act.

### Consultation

Provided for the information of the public.

### Options

The purpose of this report is for noting the information presented.

### RECOMMENDATION

That Council notes the contents of the report on the disclosure of interest returns for the period 1 July 2014 to 30 June 2015.

### Attachment(s)

Nil

## 10.4 Code of Conduct - Reporting

---

### 10.4 Code of Conduct - Reporting

**Delivery Program** Administration

**Objective** To comply with Council's Code of Conduct and directions from the Office of Local Government.

---

#### **Background**

The Office of Local Government's Model Code of Conduct requires a report to be submitted annually on Code of Conduct complaints. It is required that the report is submitted within three months of the end of August.

This report satisfies these requirements.

#### **Key Issues**

- Number and nature of complaints

#### **Information**

The last report Council considered in respect to this matter was for the 12 month period 1 September 2013 to 31 August 2014. This report is for the period 1 September 2014 to 31 August 2015.

The details of the complaints managed under the code for the period of this report are as follows:

Number of complaints made about councillors and the general manager	1
Number of complaints referred to a conduct reviewer	0
Number of complaints finalised by a conduct reviewer at the preliminary assessment stage Outcome – Take No Action	0
Number of complaints investigated by a conduct reviewer Outcome – Training or Education	0
Number of complaints investigated by a conduct review committee	0
Number of matters reviewed by the Division	0
Total cost of dealing with code of conduct complaints	0
Invoiced from conduct reviewers	0
Approximate staff costs	1,500

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
The Code of Conduct exists to ensure there are appropriate standards of behaviour.

## 10.4 Code of Conduct - Reporting

---

- **Economic**  
Not Applicable

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

The Council's Code of Conduct is based on the Office of Local Government's Model Code of Conduct, and requires a report to be submitted annually on Code of Conduct complaints. This report satisfies that legal requirement.

### **Consultation**

This report is provided for information.

### **Options**

This report is for information purposes only.

### **RECOMMENDATION**

That Council notes the contents of this report on Code of Conduct complaints for the period 1 September 2014 to 31 August 2015.

### **Attachment(s)**

Nil

**10.5 Annual Financial Statements - 2014/15**

**Delivery Program** Governance and Finance

**Objective** To obtain Council approval to exhibit the 2014/15 Financial Reports for public comment and to sign the certified statements for both the General Purpose and Special Purpose Statements.

---

**Background**

Council must prepare financial statements for each financial year that are in accordance with:

- The Local Government Act 1993 (as amended) and Regulations.
- The Australian Accounting Standards and professional pronouncements.
- The Local Government Code of Accounting Practice and Financial Reporting.
- The Local Government Code of Accounting Practice and Financial Reporting.
- NSW Government Policy Statement *"Application of National Competition Policy to Local Government"*.
- Office of Local Government guidelines *"Pricing & Costing for Council Businesses: A Guide to Competitive Neutrality"*.
- The NSW Office of Water guidelines.

Once completed and audited Council must resolve to exhibit the statements for public comment. Council must then consider the statements again (typically at the November ordinary meeting of Council), together with submissions, and formally resolve to adopt the statements.

This report seeks Council approval to exhibit the annual financial statements.

**Key Issues**

- Financial results
- Council must be satisfied that the statements present a true and fair picture of the Council's financial position as at 30 June 2015.

**Information**

The Annual Financial Statements for the year ended 30 June 2015 have been completed and audited. A copy of the statements, together with the Auditor's Reports, are enclosed with this business paper for all Councillors. A copy of the statements is available for the public at the Customer Service Centre and Council's website.

The purpose of this report is to obtain Council's approval for the exhibition of the financial statements and to provide Councillors with an opportunity to discuss the information contained within the documents.

## 10.5 Annual Financial Statements - 2014/15

---

Council must also provide approval for the Mayor, one other Councillor, the General Manager and the Responsible Accounting Officer to sign the statements confirming that, in the opinion of Council, the financial statements are fair and accurate. Copies of the two statements to be signed are attached to the end of this report.

Once the financial statements are approved the statements must be advertised for public comment. The statements must then be adopted at a meeting of Council not more than five weeks after the meeting where approval was provided to advertise.

Subject to Council approval to advertise at this meeting, the statements will be advertised and then presented, with any public comments received, to the meeting scheduled for Thursday 26 November 2015.

Council's auditor, Mr Kevin Franey, of Thomas Noble and Russell, will be present at the October meeting to provide an overview of the audit report and to answer questions regarding the Annual Financial Statements. The presentation is scheduled for 12 noon.

The documents enclosed with the business paper can be broken down into four main sections:

Part A	Auditor's Reports
Part B	General Purpose Financial Statements
Part C	Special Purpose Financial Statements
Part D	Special Schedules

Brief explanations for each of these items are as follows:

### **Part A – Auditor's Reports**

This includes the auditor's report on the general purpose financial reports and the special purpose financial reports. The auditors have listed the reports as drafts as the reports are considered draft until Council confirms its approval of the financial statements.

The Auditor has issued an 'unqualified report', which means that they are of the opinion that the financial reports represent a fair and accurate assessment of Council's financial position.

### **Part B – General Purpose Financial Statements**

These statements provide the consolidated operating result for 2014/15 and the consolidated financial position of Council as at 30 June 2015. The notes included with the statements provide details on income and expenditure, assets and liabilities. The notes also highlight the cash position of Council and identify which funds are externally restricted.

### **Part C – Special Purpose Financial Statements**

These statements are prepared as a result of National Competition Policy and relate to those aspects of Council's operations that are considered to be business activities.

**Part D – Special Schedules**

These schedules are prepared primarily for the Australian Bureau of Statistics and are used to gather information for comparative purposes.

**Sustainability Considerations**

- **Environment**  
This report encompasses Council's finances in total and as such has implications for environmental, social and economic outcomes.
- **Social**  
As above
- **Economic**  
As above

**Legal / Resource / Financial Implications**

Council is legally obliged to adopt the financial statements.

**Consultation**

No specific community consultation has been taken in respect to this report however the intent is to advertise the Draft Statements for public comment.

**Options**

Council may approve to exhibit or not exhibit the documents. As Council's auditor has approved the statements it is recommended that Council authorise approval.

**RECOMMENDATIONS**

1. That Council approves the signing of the statements that confirm the Annual Financial Statements are fair and accurate, by the Mayor, one Councillor, the General Manager and the Responsible Accounting Officer.
2. That Council authorises the exhibition of the Annual Financial Statements and Auditor's Reports for the year ended 30 June 2015, as attached to this report, for public comment.

**Attachment(s)**

1. Statement by Councillors and Management - General Purpose
2. Statement by Councillors and Management - Special Purpose
3. Annual Financial Statements 2014/15 (Under separate cover)



## **10.6 Delivery Program and Operational Plan - 30 September Review**

---

### **10.6 Delivery Program and Operational Plan - 30 September Review**

**Delivery Program** Governance and Finance

**Objective** To review how Council is performing compared to the actions and targets included in the 2015/16 Delivery Program and Operational Plan for the first quarter of the 2015/16 financial year.

---

Under the Integrated Planning and Reporting requirements Section 404 (5) of the Local Government Act states as follows:

#### ***Delivery Program***

*"The general manager must ensure that regular progress reports are provided to the council reporting as to its progress with respect to the principal activities detailed in its delivery program. Progress reports must be provided at least every 6 months".*

Even though Council is only required to receive six monthly progress reports the preferred practice has been to receive more timely quarterly reports. This report represents the first of the 2015/16 - 2018/19 Delivery Program and the 2015/16 Operational Plan, with the information contained in the report based on work undertaken up to 30 September 2015 (first quarter).

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.

All items are marked with a green (on track) amber (behind schedule or below target) or red (not progressing or well off track) traffic light.

## 10.6 Delivery Program and Operational Plan - 30 September Review

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	25	6	35	28	95
Amber	0	2	1	0	3
Red	1	0	1	0	2
<b>Total</b>	<b>27</b>	<b>8</b>	<b>37</b>	<b>28</b>	<b>100</b>

### Program Actions Overview - By Percentage

Group / Status	GM	DEH	Civil	SCF	Total
Green	94	75	94	100	95
Amber	0	25	3	0	3
Red	4	0	3	0	2
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

The two items showing as red are:

- Introduce online certification application process (page 7) – This is marked as red as it is not likely to proceed and we are reliant on the software provider improving the software
- Implement the use of barcodes within the store for accurate stock issue to responsible officers (page 18) – Bar coding numerous small stock items appears impractical and other options are being examined.

On the positive side there are many interesting and challenging projects in the program action list (i.e. North Creek dredging, Ballina Major Regional Centre Strategy, Coastal Shared Path etc) and all of these projects are progressing, albeit we would all like to see items move more quickly where possible.

In respect to the Service Delivery Targets there are a total of 94 targets, or preferred targets, identified in the Operational Plan and the following two tables provide an overview of how Council is performing against those targets, again on a number and percentage basis.

### Service Delivery Targets Overview - By Number of Activities

Group / Status	GM	DEH	Civil	SCF	Total
Green	14	21	20	19	74
Amber	7	1	7	1	16
Red	1	1	2	0	4
<b>Total Tasks</b>	<b>22</b>	<b>23</b>	<b>29</b>	<b>20</b>	<b>94</b>

### Service Delivery Targets Overview - By Percentage

Group / Status	GM	DEH	Civil	SCF	Total
Green	64	91	69	95	79
Amber	32	4	24	5	17
Red	5	4	7	0	4
<b>Percentage Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

In respect to these services the variances of note include the following items:

## 10.6 Delivery Program and Operational Plan - 30 September Review

---

- Asset Management – Percentage of DA referrals completed within 21 days – 67% (target > 70%) (page 26) – Even though this did not reach the benchmark the results are continuing to improve as compared to previous years.
- Commercial Services (Airport) – Increase in operating revenue and operating surplus is greater than 25% of revenue (page 22) – At this stage these two items have been flagged as amber, as the benchmarks are a stretch based on recent years. Both revenues and operating expenses are being monitored directly by Council's finance staff to ensure that any known variations are reported as early as possible to Council.
- Commercial Services (Property) – Flat Rock Tent Park – Increase in operating revenue and operating surplus is greater than 15% of revenue (page 22) – As previously reported, this park which has a strong focus on surfing, is down in bookings and revenue from previous years and the feedback has related to concerns over the recent shark incidents.
- Number of on site effluent disposal systems inspected per annum (page 26) – This is showing as red as we are well below the preferred target, however numbers are increasing. The extra position approved by Council has been advertised with no preferred candidate selected and a second recruitment process will be commenced shortly. In the interim extra resources have been provided through casual labour hire and this is helping to some degree.
- Water and Wastewater Services (Various – pages 31 and 32) – There are a number of amber and red indicators with the agreed benchmarks more reflecting preferred outcomes, rather than a realistic target. Nevertheless the indicators provide useful information in respect to the performance of this section.

### 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.

### 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 for noting purposes.

**RECOMMENDATION**

That Council notes the contents of this report in respect to the review of the Delivery Program and Operational Plan for the first quarter of the 2015/16 financial year.

**Attachment(s)**

1. Delivery Program September 2015 Results (Under separate cover)

**10.7 Capital Expenditure Review - 30 September 2015**

**Delivery Program** Governance and Finance

**Objective** To provide a status report on the capital works being undertaken by Council during the 2015/16 financial year.

---

**Background**

Council has a significant capital expenditure program included in the annual Operational Plan and due to the scale and magnitude of the program it is important that updates are provided on a regular basis.

The current practice is to provide a comprehensive quarterly status report on all the major capital works included in the Operational Plan. This status report provides details on key milestone dates, along with a comparison between budget and actual expenditure.

This report is for the three month period to 30 September for the 2015/16 financial year.

**Key Issues**

- Status of works

**Information**

To assist in understanding the delivery timeframes for the capital works the attachments to this report provide information on the following items:

- Original Budget - represents the budget as per Council's adopted Operational Plan
- Carry Forward - represents budgets carried forward from the previous financial year that were approved by Council at the August 2014 Ordinary meeting
- Approved Variations - Variations previously approved by Council resolution either through a Quarterly Budget Review or a separate report on a particular project.
- New Variations – Represents further recommended changes based on the latest available information for the project.
- Latest Estimate - Sum of the original budget plus budget changes
- Expended to Date - Expenditure to date of report
- % Expended - Percentage of budget expended to date
- Milestone Dates - Represents target dates for completion of the major milestones.
- Status - Allows additional comments to be provided.

The attachments are split into the main functional sections within Council undertaking the works: i.e. Open Spaces, Waste, Operations Support, Commercial Services, Water and Wastewater and Engineering Works.

Points of interest in respect to the attachments are as follows.

***Open Spaces (attachment one)***

The major works to be completed this year relate to:

Play Equipment (various) – Specifications are being finalised for the equipment prior to ordering. The time delay for delivery of this equipment means it will be installed around March to May 2016.

Wollongbar Skate Park – The community consultation process for this project is underway with Council to make a final decision and obtain planning consent before tenders can be called for the construction of the project.

Ballina Netball Lights – A grant of \$25,000 is available for these lights, however with an estimated total cost of \$100,000 additional funds are being sought from the Club and other sources.

Wollongbar Sports Fields – Construction works are now again underway for this project following the acceptance of a tender by Council.

***Operations Support (attachment two)***

Administration Centre – Air-conditioning – The preparation of the detailed specifications for this project has highlighted that additional works may be needed. A further report will be submitted to Council to confirm the project options.

Ballina Surf Club – The construction of Building B is progressing with a planning application lodged to amend the original consent. Subject to planning approval and the calling of tenders, the works are scheduled to be undertaken following the summer holidays.

Ballina Surf Club – Building A – It is recommended that \$25,000 in savings from the Library and Visitor Centre budgets be reallocated to assist with sand blasting and painting this building. The extreme weather conditions require this work as a matter of urgency.

Lennox Head Surf Club / Lake Ainsworth Precinct – The construction of the car park is largely complete. As the Engineering Works Section is overseeing all aspects of this project, other than the approvals for the new surf club, the balance of the budget has been transferred to Engineering Works (refer to their attachment). This leaves \$100,000 for the building approval process, along with the balance of the budget still unexpended in this report for the car park.

Marine Rescue Tower – The commencement of this project is subject to funding being secured. Various representations are being made to the State and Federal Governments and it is hoped that the shortfall in funding will be confirmed in the near future.

Following representations to Council from the local State Member, Ms Tamara Smith, a commitment was given from the Mayor and General Manager that a comprehensive report on the state of the funding for this project would be submitted to the November 2015 Ordinary meeting.

## 10.7 Capital Expenditure Review - 30 September 2015

It was originally intended to provide a further report on this project once the outcome of Council's application to the Federal Government's National Stronger Regions Fund is known, which is expected to be late November or December, however a report will now go to November.

Keeping in mind that a further report will be submitted to Council a snap shot of the project budget and possible funding for this project is as follows. In respect to the estimated costs of the project, the latest figures provided by a quantity surveyor, dated November 2014, are as per the following table.

**Table One – Estimated Project Budget (as at November 2014)**

Budget Item	(\$ Ex GST)
Construction of new building	1,322,000
Refurbishment of public toilets including removal of top deck room etc	137,000
Demolition of existing tower	33,000
Construction of car park – including stormwater drainage works etc	258,000
Environmental items	10,000
Contingency	255,500
<b>Sub Total</b>	<b>2,015,500</b>
Design and Project Management	160,000
<b>Total Project Budget (excluding Fit Out)</b>	<b>2,175,500</b>

The 2015/16 budget figure of \$2,214,800 in the attachment to this report includes the original 2015/16 estimate of \$2,175,500 along with \$39,300 in funds carried forward. The \$2,214,800 is funded as follows:

- Council Community Infrastructure Reserve (allocated) 825,500
- Council Civil Services Reserve (Rescue Tower) (allocated) 39,300
- NSW Public Reserves Management Fund (confirmed) 350,000
- Federal or State Government Grants (being sought) 1,000,000

The \$1m grants figure was a nominal figure to balance the project budget when the Council's 2015/16 Operational Plan and budget was prepared.

In respect to funding now confirmed or likely, following on-going representations from Council, the latest information is as per Table Two.

**Table Two – Marine Rescue Centre Funding**

Possible Funding Sources	(\$ Ex GST)
NSW State Government (Public Reserves Management Fund) – Confirmed	350,000
Council – Expended in 2013/14 and 2014/15 (i.e. planning consent / design)	114,000
Council – Community Infrastructure Reserve allocated in 2015/16 budget	825,500
Council – Civil Services Reserve (Tower) allocated in 2015/16 budget	39,300
Council – Civil Services Reserve (Tower) – Funds not yet allocated (1)	46,500
NSW Marine Rescue (2016/17) – Confirmed (2)	200,000
NSW Community Building Partnership (2015/16) (verbal commitment only) (3)	50,000
NSW Community Building Partnership (2016/17) (verbal commitment only) (3)	50,000
<b>Total Possible Funding</b>	<b>1,675,300</b>

- (1) This figure of \$46,500 represents funds held in the Civil Services Reserve which have not yet been allocated to this project and are available to help fund the works.
- (2) NSW Marine Rescue recently confirmed funding of \$200,000 for the project as part of their 2016/17 budget. These funds are not available until 2016/17.
- (3) The NSW Community Building Partnership monies represent two commitments from Ms Tamara Smith, however there are no certainties over these monies as all applications received each year must be determined and assessed.

These figures total \$1,675,300 with \$114,000 already expended by Council, which then leaves \$1,561,300 in available funding (with some risks for the Community Building Partnership Program).

Council's total commitment to this project is also over \$1m (i.e. \$114,000 + \$825,500 + \$39,300 + \$46,500 = \$1,025,300).

There has been a perception that as funding of up to \$1,675,000 (or \$1,561,300 once expended funds are deleted) could now be available, Council has enough funds to build the tower. This is based on the assumption that as per Table One, the construction of the new building is \$1,322,000.

This assumption fails to recognise that an item such as the car park component of the estimate includes road works, pedestrian walkways and significant stormwater related works that need to be completed as part of the construction project. There are also other costs being incurred or incurred such as the design and project management cost items, where Council has already expended \$114,000 to date. There is also the risk that the estimated cost has increased since the quantity surveyor's report was completed in November 2014, along with the need to allow for contingencies.

Possibly the public toilet related works could be deferred, but this would still result in a project budget of around \$2m.

Realistically Council still has a shortfall of approximately \$400,000 to \$500,000 if we wish to see this project delivered in full.

With funding still being pursued from the State and Federal Governments no change is currently recommended to the Council budget, with a further report on the options available to be submitted to the November Ordinary meeting.

Finally the fit out costs for the tower will be funded by the local marine rescue volunteers, with \$150,000 raised and available for that fit out. This contribution and the matching cost has not been included in Tables One and Two.

### ***Commercial Services (attachment three)***

89 Tamar Street – The funding for the air-conditioning is no longer needed and it is recommended that the funds be transferred to the Wigmore Arcade shop fit-outs.



***Water and Wastewater (attachments four and five)***

Water – An adjustment of \$120,000 is recommended for the Smith Drive Main Renewal, which is a combination of an additional \$147,000 for the Emigrant Creek underbore replacement (which it was hoped would be avoided, but testing showed it was leaking) and a reduction due to the removal of some of the original works.

The underbore was priced, but not part of the original contract sum.

To highlight the benefits of this project, the approximately 4.5km of 80 year old pipeline was identified as contributing almost 16% of total water losses across the Shire (i.e. 16% of 785 ML). This equated to an estimated \$1 million in lost water over 10 years and this does not include the cost of increased maintenance and repairs. The estimated losses convert to around 3.9 litres of water lost per second (lps).

Initial indications suggest the project has been very successful, and actual water savings are possibly even greater than the original estimate.

In August 2011, monitoring in Bagot Street (near the North Creek Bridge) recorded 8.5 lps flowing into West Ballina. The reading is now 2.2 lps.

This is a reduction of 6.3 lps in the West Ballina zone, and if sustained, would mean the community would recoup the cost of construction within six years.

While the early results are very positive, they are based on instantaneous flow readings. The true test of success will be a sustained reduction in water received through the Rous Water supply meters, and this will be monitored and reported over the coming months.

Other positive items in the water capital works program are the deferral of the trunk main works for Lennox Head for many years, due to a reconfiguration, and it is likely that the Pine Avenue, Ballina trunk main work may be deferred later in this year due to information being sourced from our pressure management zone systems.

This on-going analysis is helping Council to optimise current systems and defer significant capital costs for future years.

Wastewater – The major change here is a further deferral of the Reverse Osmosis for similar reasons to the deferral of the water projects. Essentially staff are pursuing other more cost effective technologies prior to proceeding with Reverse Osmosis.

***Engineering Works (attachment six)***

***Urban Roads***

The major change is the inclusion of the Angels Beach Drive roundabout which is fully funded from Blackspot monies.

The Lake Ainsworth project has been transferred to this program from Operations Support as mentioned earlier.

### *Rural Roads*

Both the Pimlico and Uralba Road projects have been deleted from this budget as those works were completed in 2014/15 due to the allocation of additional Roads to Recovery monies by the Federal Government.

### *Ancillary Transport Services - Shared Paths and Footpaths*

Council was unsuccessful in obtaining grant funding for 50% of the cost of the Shared Path segment from Headlands Drive to Pat Morton. Therefore our matching \$850,000 out of a total budget of \$1.7m will need to be deferred to 2016/17.

Importantly Council has now received our Aboriginal Heritage Impact Permit (AHIP) which means there are no planning impediments to commence construction of the shared path on the eastern side of The Coast Road.

The Civil Services Group are in the process of finalising the preferred procurement approach for this project. The only component of this project without planning consent is the re-alignment outside the Flat Rock Tent Park, with that planning application now lodged with Council.

### *Water Transport*

It is intended to package up all the Water Transport Projects into one contract to provide maximum cost efficiencies to Council.

### **Sustainability Considerations**

- **Environment**  
Many of the works listed provide positive environmental outcomes
- **Social**  
Certain items provide significant social benefits
- **Economic**  
Improved infrastructure can benefit the local economy.

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

The report provides financial information on the capital works program.

### **Consultation**

This report is presented for public information. Consultation has been undertaken with staff managing the various projects.

### **Options**

As per the following table there is once again an extremely high level of capital expenditure forecast for 2015/16.

**Capital Works Summary – 30 September 2015 (\$'000)**

Section	Budget (%)	Expended (%)	Percentage
Open Spaces	6,070,100	187,100	3
Waste	446,000	14,000	3
Operations Support	10,947,100	380,000	3
Commercial Services	3,026,000	178,000	6
Water	4,276,000	377,600	9
Wastewater	5,088,000	240,600	5
Engineering Works	12,240,000	1,837,000	15
<b>Total</b>	<b>42,093,200</b>	<b>3,214,300</b>	<b>8</b>

Expenditure is not progressing as quickly as we would like however a number of large contracts are in the process of being let, or specifications finalised to allow tenders to be called and those contracts should result in a rapid increase in expenditure during the next six to nine months.

There are also a few budget adjustments listed in this report and the recommendations that follow seek Council approval for those adjustments.

**RECOMMENDATIONS**

1. That Council notes the contents of this capital expenditure review for the period ended 30 September 2015.
2. That Council approves the following budget adjustments as per the attachments to this report.

Description	Current 2015/16	Revised 2015/16	Variation	Comments
<b>Operations Support</b>				
Admin Centre - Lighting	15,200	22,900	7,700	
Ballina Surf Club Building A	0	25,000	25,000	
Lennox Head Surf Club	1,251,300	100,000	(1,151,300)	
Ballina Library – Improvements	56,900	31,900	(25,000)	
Ballina Library - Lighting	8,400	700	(7,700)	
<b>Net Change</b>	<b>1,331,800</b>	<b>180,500</b>	<b>(1,151,300)</b>	
<b>Commercial Services</b>				
89 Tamar Street Air-conditioning	15,000	0	(15,000)	
Wigmore Arcade – Shop Fit Outs	7,000	22,000	15,000	
<b>Net Change</b>	<b>22,000</b>	<b>22,000</b>	<b>0</b>	
<b>Water</b>				
Main Renewals – Smith Drive	500,000	620,000	120,000	Funds sourced from reserve
Water Refurbishment Reserve	(500,000)	(620,000)	(120,000)	
Trunk Mains – Lennox Head	100,000	0	(100,000)	Defer for ten years in financial plan
Section 64 Contributions	(100,000)	0	100,000	
<b>Net Change</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>Wastewater</b>				
Treatment Plant – Ballina DAF Removal	0	10,000	10,000	
Treatment Plant – Alstonville – Maturation Pond Study	0	5,000	5,000	
Trunk Mains – Ballina Heights Drive	0	85,000	85,000	
Reverse Osmosis	1,600,000	200,000	(1,400,000)	Defer for one year
Wastewater Refurb Reserve	(1,600,000)	(300,000)	(1,300,000)	
<b>Net Change</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>Engineering Works</b>				

## 10.7 Capital Expenditure Review - 30 September 2015

Alstonville Bypass	130,000	0	(130,000)	Funds returned to Alstonville bypass reserve
Transfer from Bypass Reserve	(130,000)	0	130,000	
Ballina Bypass	51,000	181,000	130,000	Sourced from Ballina bypass reserve
Transfer from Bypass Reserve	(51,000)	(181,000)	(130,000)	
Angels Beach Drive / Links Avenue Roundabout	0	1,000,000	1,000,000	Black Spot project
Black Spot Grant Funds	0	(1,000,000)	(1,000,000)	
Lake Ainsworth - Eastern Road Closure	0	865,300	865,300	Transferred from Operations Support
Lake Ainsworth - Ross Street	0	286,000	286,000	
Pimlico Road	297,000	2,000	295,000	Funds transferred back to reserve as works completed in 2014/15
Uralba Road	300,000	5,000	295,000	
Roads to Recovery Transfer	(597,000)	(7,000)	(590,000)	
Shared Path – Pat Morton	1,700,000	0	(1,700,000)	Transfer project and funding from 2015/16 to 2016/17
Community Infrastructure Reserve	(850,000)	0	850,000	
RMS Grant Funding	(850,000)	0	850,000	
<b>Net Change</b>	<b>0</b>	<b>1,151,300</b>	<b>1,151,300</b>	

### Attachment(s)

1. Capital Expenditure - Open Spaces and Waste
2. Capital Expenditure - Operations Support
3. Capital Expenditure - Commercial Services
4. Capital Expenditure - Water Operations
5. Capital Expenditure - Wastewater Operations
6. Capital Expenditure - Engineering Works

## **11.1 Lake Ainsworth Precinct - Eastern Road Closing**

---

### **11. Civil Services Group Reports**

#### **11.1 Lake Ainsworth Precinct - Eastern Road Closing**

**Delivery Program**      Engineering Works

**Objective**              To report on the program to close the Eastern Road at Lake Ainsworth.

---

#### **Background**

Council, at its last meeting, considered a request from the NSW Office of Sport to enter an agreement that would enable an access road to the Lake Ainsworth Sport and Recreation Facility to be provided via the eastern side of Lake Ainsworth. Council declined this request and reaffirmed its preferred position that the eastern precinct provide emergency only access, as the priority use for the land was public open space and environmental protection.

Council's decision has been communicated in writing to the Office of Sport. At the time of writing this report, no response to our letter has been received.

The detail design process for the eastern precinct is continuing. The design alternatives will be presented to Council for approval. However it is possible to close the road following the completion of the construction of the new car park. There are several options for the timing of the closure and the purpose of this report is for Council to confirm its preference.

#### **Key Issues**

- Preferred time to implement the closure of the Eastern Road
- Potential flow on impacts of closure

#### **Information**

The completion of the current car park project is expected to occur by the end of October. Once this work is complete, the project to formalise car parking on the northern side of Ross Street will commence, and this project is expected to take six to eight weeks to complete.

In preparing for this construction work, a review of the consultant's design has identified some improvements, including an increase of the parking capacity from 24 to approximately 35 car parks. This will be achieved by using a ninety degree angle for the parking. The majority of the actual works will take place between Gibbon and Stewart Streets on the northern side of Ross Street.

There is a concern that a survey has confirmed that the caravan park boundaries encroach into the road reserve in this location, therefore they will need to realign their fence and it may result in a reduction in size to some caravan sites between Stewart and Gibbon Street. From discussions with caravan park representatives they are not supportive of this re-alignment; however it would appear they have limited legal authority to stop Council as they are encroaching on Council land.

## 11.1 Lake Ainsworth Precinct - Eastern Road Closing

---

Whether they attempt to involve Crown Lands or the Minister in this discussion remains unclear.

The attachment to this report is an aerial photograph showing how the Eastern Road closure can be installed until the formal works for the eastern precinct are completed.

The photograph shows line marking to create a roundabout at the Camp Drewe / Pacific Parade intersection and a traffic barrier across the Eastern Road to the north of the intersection. This configuration is preferred from a traffic management perspective and it retains short term access to some of the existing car parking.

The location of the barrier has been selected to facilitate reasonable access to the public toilets and open space areas for maintenance and cleaning. It will be necessary for our waste service vehicles to travel through the barrier.

The issue of the public toilets and waste bins etc is important, as is the access to the dog off leash area.

For example what Council will need to consider in the ultimate design is whether we wish to retain the public toilets that are located near the off leash dog access track. If we retain those toilets we will continue to incur the toilet operating costs, along with needing to provide formal access for Council vehicles to clean the toilets.

When there are two toilets nearby (Surf Club and shared toilets at the Caravan Park) the need for these toilets is questioned.

Also with respect to waste bins, the maximum distance staff typically move wheelie bins is 20 metres (internal procedure to minimise injuries). Therefore if waste bins are retained near the public toilets, as they currently are, particularly for disposal of dog related waste, then the access to this location will need to cater for waste trucks.

As these bins are used for dog waste they can weigh an enormous amount and it is not practical for one employee to wheel the bin to the proposed road closure. Therefore to avoid truck movements in this location the preferred option may well be to only provide waste bins near the road closure.

In respect to the dog off leash area, once the road is closed, people walking dogs will need to park near the Surf Club or further south at Ross Street. It may well be a preferred option to actually ban dogs from the eastern side of the Lake, and amend the dog off leash area to immediately north of the Surf Club. The dog walkers would then park in the new car park and follow the currently on leash area to the north of the Surf Club to access the beach.

Car parking is also an important consideration. It is estimated that we will lose approximately 55 car parks from the closure of the Eastern Road. The new car park provides another 34 car parks, which results in a net loss of approximately 21. This net loss could have negative flow on impacts until the Ross Street car parks are created.

## 11.1 Lake Ainsworth Precinct - Eastern Road Closing

---

Also even with the Ross Street additional parks, as they are located to the western end of Ross Street, we may well find reluctance from people to use these car parks. People may use Pacific Parade, or park further around the Lake on the southern and western sides.

The Council rangers have identified that even without the road closure, more and more people have been parking on the south and western side of the Lake, creating new access paths and ultimately inflicting damage in the natural areas around the Lake.

More formalised accesses and possibly parking will need to be addressed by Council in this location, as the closure of the Eastern Road will have a flow on impact.

The proposed roundabout could also impact on the loading area for the Lennox Head Surf Club and discussions will need to be held with the Club prior to implementation.

There has also been some perception that we will immediately dig up the Eastern Road once it is closed. This work will only be undertaken when the detail design is completed to ensure that all appropriate stormwater and drainage measures are implemented as part of the removal of that road. Otherwise there could be significant run-off into the Lake and we still need to access the public toilets and waste bins.

All of these inter-related issues are being considered as part of the detail design for the eastern precinct.

The final issue that Council needs to consider is that we are approaching the peak holiday period. We need to consider whether closing the Eastern Road just prior to the holiday period is appropriate considering the high traffic volumes that will shortly be occurring in this location.

### **Sustainability Considerations**

- **Environment**  
A key objective of this project is to facilitate improved environmental protection of the Lake Ainsworth area.
- **Social**  
A key objective of this project is to provide enhanced open space facility and amenity within the Lake Ainsworth area.
- **Economic**  
Improving the social and environmental outcomes for this area will assist economic development.

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

There are no legal, resource or financial implications associated with the options in this report, as Council has set aside funding for this project.

### **Consultation**

## 11.1 Lake Ainsworth Precinct - Eastern Road Closing

---

The Council has previously concluded a community consultation to assist to establish a plan for the future of the South Eastern Precinct of Lake Ainsworth. The NSW Office of Sport has been advised of Council's position. Council continues to receive feedback from residents in Gibbon Street who are concerned with this proposal.

### Options

In respect of the timing of the closure of the Eastern Road there are a number of options, as per the following.

1. Immediately following the construction of the new car park.

This option provides the earliest access to the benefits to be derived from the closure, although there are concerns that we have not fully investigated all the flow on impacts. Until the final designs are completed the existing pavement will remain in place thereby allowing Council vehicles to access this location. The fact the pavement remains in place also reduces any environmental benefits that might be gained.

2. Immediately following the reconstruction of Ross Street and formalisation of the parking at this location.

This option provides a delay to the closure when compared to option one, however it avoids a work zone being in place at the commencement of the closure and it assists to offset some of the total lost parking by replacing a portion of that capacity. This would result in the Eastern Road being closed close to the holiday period.

3. Defer the closure until after the peak summer period.

The advantage of this option is that it enables the public to adjust to the changes outside of a peak period and reduces Council's risk of any unforeseen issues with the proposal. It also allows Council more time to consider related issues such as public toilets, dog access, waste management etc.

4. Defer the closure until the formal rehabilitation and other works are completed for the Eastern Road precinct in the first quarter of 2016.

The advantage of this option, further to the advantages of options two and three is that it maximises the time available to the Lake Ainsworth Sport and Recreation Facility to adjust any arrangements on their site in regards to receiving traffic from the west. It also avoids the presentation of temporary works in this area until the final program is undertaken.

From a staff perspective it is always better to have a comprehensive understanding of the final designs and outcomes prior to implementing something such as a major road closure.

This means options three or four are the preferred approaches.

However Councillors have expressed a view to close the Eastern Road as soon as possible, therefore options one or two might be the preferred Council approach.



## **11.1 Lake Ainsworth Precinct - Eastern Road Closing**

---

To some extent this is a political decision and the recommendation provides the opportunity for Councillors to select the preferred option.

### **RECOMMENDATION**

In regard to the closure of the Eastern Access road at Lake Ainsworth, based on the contents of this report, Council's preference is Option 1 or 2 or 3 or 4 (one to be selected) with the General Manager authorised to proceed as per that option.

### **Attachment(s)**

1. Temporary Road Closure Proposal

## 11.2 Main Street Proposed Footpath Construction

---

### 11.2 Main Street Proposed Footpath Construction

**Delivery Program**      Engineering Works

**Objective**              To review a request to delete a footpath construction project from Council's Delivery Program.

---

#### **Background**

The Council's Delivery Program for 2014/15 included a project to construct a footpath in Main Street Alstonville. Main Street residents have sent a letter to Council asking that the works be deleted from our program. Therefore the purpose of this report is to review their request.

#### **Key Issues**

- Determine demand for a footpath project.

#### **Information**

The proposal for this project is to construct a footpath from Perry Street to Maguires Creek. Attached to this report is an aerial photograph illustrating the location of the proposed works.

The project is estimated to cost \$66,000. The Council has grant funding of \$33,000 from the RMS towards this cost.

Also attached to this report is a copy of the letter from the Main Street residents. In summary, the letter advises that the residents would prefer other road improvement works to be undertaken in Main Street and that the footpath would reduce the amenity of the street and should not proceed. The letter is signed by representatives from nine properties. A copy of a letter from an individual property is also attached.

The project was listed in our Pedestrian Access and Mobility Plan works program for 2014/15 on the basis that it was assessed at the time of preparing the PAMP with a priority score of 64. This is the highest score of the remaining projects in the plan and this ranking can be attributed to the project's proximity to the St Joesph's and Alstonville Public schools, the access provided from the path to Bulwinkle Park and the direct connectivity provided by the proposed path to the path adjacent to the Old Bruxner Highway.

The project did not proceed in 2014/15 as we were awaiting the outcomes from the RMS grant funding and now 50% funding has been secured the project can proceed.

The terrain at this location is uneven and the street has some locations of steep vertical grade which means a formal footpath would improve the accessibility at this location. However as per the comment in the resident letter, the formed road is narrow and is without kerb and gutter and on this basis the amenity of the street is not as formally urban when compared to

## **11.2 Main Street Proposed Footpath Construction**

---

other locations. It is agreed with the residents that the traffic volume is relatively low in the street.

If the Council decided not to proceed with the project, staff would make a request to RMS to reallocate the funds to another project acceptable to the RMS in respect of the funding criteria.

We would first nominate the projects in the 2015/16 Delivery Program as the Council's preference for the reallocation of these funds if the RMS is agreeable.

### **Sustainability Considerations**

- **Environment**

The design and construction of this project would be undertaken with appropriate environmental impact mitigation measures in place. As per the above information, residents are concerned about the impact of this project on the amenity of the location.

- **Social**

The provision of footpaths promotes connectivity and access for residents.

- **Economic**

The provision of new public infrastructure assists to promote Ballina Shire as a place to live and invest.

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

There are no legal or resource implications with proceeding or deleting the project from our program.

Deleting the project will save Council \$33,000.

In respect of the residents' preference for alternative roadworks, it is agreed that Main Street, like many streets, could be improved. It is a matter for Council to reallocate funds between programs, however from the perspective of staff the preference is for the works program to follow the adopted priority order and the program be adjusted (that is the adopted works be brought forward or delayed) in response to changes in the availability of funds. Priority for works in our programs is annually reviewed in developing the Delivery Program and in processes that occur to update our strategic infrastructure planning.

### **Consultation**

This report is responding to feedback from residents.

### **Options**

The options available to Council are;

1. Delete the project from the program.

## **11.2 Main Street Proposed Footpath Construction**

---

This option responds to the preference of the local residents and is a direct saving to Council's budget that can be reallocated to another project. If the Council prefers this option, it is recommended the funds be retained in this footpath program to provide the required matching amount to a request to the RMS to reallocate their contribution.

### **2. Proceed with the project.**

This option acknowledges the interests of the broader community in this project, in particular the connectivity to the Old Bruxner Highway and the local schools.

From the perspective of staff, the project still has significant merit and it support the needs of the broader community. However, on balance, it is reasonable that the local preference should prevail over the broader community interests on this occasion.

In the circumstance that Council deletes the project from our program, reallocating the funds to road improvements in Main Street is not recommended at this point in time for the following reasons;

- This would deny the opportunity to leverage grant funds for footpath works
- While improvements to Main Street are a reasonable request, the works have not been identified as a priority within existing programs adopted by Council
- No investigations have been conducted in respect of whether a feasible project could be established for the available funds.

### **RECOMMENDATION**

That the footpath construction project proposed for Main Street, Alstonville, be deleted from Council's works program and the General Manager make a request to the RMS proposing to reallocate the grant contribution to other footpath projects within the Council's 2015/16 Delivery Program.

### **Attachment(s)**

1. Location Aerial Photograph
2. Group Residents Letter
3. Individual Resident Letter

## 11.3 Ballina Heights Drive - Contract Variation Claim

---

### 11.3 Ballina Heights Drive - Contract Variation Claim

**Delivery Program**      Engineering Works

**Objective**              To provide information regarding a variation claim to the contract amount for the Ballina Heights Drive Project.

---

#### **Background**

At the August 2015 meeting of Council a report was provided in regards to the management of the contract for the construction of Ballina Heights Drive. The purpose of this report is to provide a further update to the Council.

The background information from the previous report is reproduced below.

*In May 2013 Council awarded a contract to Gary Deane Constructions (GDC) for the construction of Ballina Heights Drive.*

*The original contract sum was \$7,308,824. The final contract sum, following sixty eight approved variations was \$7,474,112.*

*In previous updates Council was advised that GDC had made significant variation claims that had been rejected wholly or in part by Council's officers.*

*A report to the March 2015 Ordinary meeting of Council discussed the amount claimed and the basis of the claims. The report also discussed the findings of an independent assessment of the claims. The Council noted that staff are involved in further negotiations to resolve this matter.*

The updated information is provided in the confidential section of this business paper. The information pertains to the unresolved issues including legal and commercial claims against the Council and therefore the reporting is confidential.

#### **Key Issues**

- Dispute resolution.

#### **Information**

No further information is available for public reporting at this time.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
Not Applicable

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

There are significant financial implications to the project if the claim is successful in full or in part. The extent of this is explained in the confidential report.

Substantial staff time has been required to respond to this matter. Council is incurring additional project management fees and legal costs to defend its position.

#### **Consultation**

Not Applicable

#### **Options**

This report is for information only.

#### **RECOMMENDATION**

That Council notes the contents of this report regarding the Ballina Heights Drive contract variation claim.

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

Nil

## 11.4 Tender - Provision for Internal Audit Services

---

### 11.4 Tender - Provision for Internal Audit Services

**Delivery Program** Governance and Finance

**Objective** To assess tenders for our Internal Audit Services contract.

---

#### **Background**

In October 2009, a contract was awarded to an external provider to undertake internal audits for Council. The current contract expired 30 September 2015. A special purpose committee which includes the Mayor and Councillors Keith Johnson and Ben Smith provides oversight of our internal audit program. From the perspective of the senior management, the internal audit program is an essential component of our corporate governance as it provides a source of independent review and advice reducing our exposure to fraud and maladministration risk. Furthermore, the Office of Local Government encourages councils to have an internal audit program and the Office has published guidelines in this regard.

Tenders were advertised in July 2015 for the Provision of Internal Audit Services for a three year period with two, one year options. At the close of the tender period on 18 August 2015, six submissions were received. This report provides the outcomes from the tender evaluation process.

#### **Key Issues**

- Engage suitably qualified and experienced service provider; and
- Award the tender in accordance with the Local Government (General) Regulations 2005.

#### **Information**

Tender submissions were received from:

- Crowe Horwath (Aust) Pty Ltd
- Forsyths Business Services Pty Ltd
- Bentleys Brisbane (Audit) Pty Ltd
- Grant Thornton Australia Ltd
- InConsult Pty Ltd
- RSM Bird Cameron

The current service provider is Grant Thornton.

All tenders were initially assessed for conformity with the tender specification. From this assessment all tenders were deemed to be conforming.

The tender documentation defined three areas, by which each tender would be assessed:

- Total Price - 25%
- Capability & Resources – 35%
- Relevant Experience – 40%

## 11.4 Tender - Provision for Internal Audit Services

---

A tender evaluation panel was established in accordance with Council's procedures and the tenders were assessed against the stated evaluation criteria.

Based on the non-priced assessment criteria, Grant Thornton Australia Ltd was ranked the highest in the evaluation.

Assessment of the pricing component is difficult as the lowest rate may not represent best value for money having regard to factors such as the quality of advice, work effort proposed, familiarity with council functions, mix of seniority of personnel and so forth. For example, an audit with scheduled rates pricing it is difficult to compare a tenderer who may provide a lower hourly rate, however the time taken to complete the audit may be several hours longer. This was the primary reason for setting price at 25% of the evaluation criteria.

The assessment of price, to the extent that is possible was undertaken by the following process. Tenderers were asked to submit a lump sum price to complete an Internal Audit Plan and the development of a Risk / Fraud Plan and hourly rates to undertake the audit component of the works. Tendered rates to undertake the internal audits varied from \$140 - \$200 per hour.

Local and Community was not included as part of the evaluation criteria. Crowe Horwath (Aust) Pty Ltd are the only tenderer with an office located in Ballina. The tender from Crowe Horwath (Aust) Pty Ltd however specifically noted that the majority of staff servicing this contract would be from their Sydney office.

When the non-priced and priced evaluation criteria are combined, Grant Thornton Australia Ltd is the highest ranked tender and is considered the best value proposal for Council. Grant Thornton Australia Ltd was not the lowest overall priced tender, however the rates for the development of the various plans were considered reasonable in comparison to the other submissions.

The following is the final rankings of the six tender submissions.

<b>Tenderer</b>	<b>Ranking</b>
Grant Thornton Australia Ltd	1
Forsyths Business Services Pty Ltd	2
InConsult Pty Ltd	3
Crowe Horwath (Aust) Pty Ltd	4
RSM Bird Cameron	5
Bentleys Brisbane (Audit) Pty Ltd	6

Grant Thornton is a large accounting and advisory firm and currently provides internal audit services to 16 councils in NSW, including several in the Northern Rivers region. Grant Thornton has provided a reliable and satisfactory service to Council during the period of the former contract.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Internal audit is a key part of the governance framework within Council.



- **Economic**  
Not Applicable

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

The works to be performed under this contract will be undertaken based on the available budget which is typically around \$30,000 - \$40,000 annually.

The provision of internal audit services is considered important to the ongoing management of Council. In this regard the program assists Council to meet its legal requirements, efficiently use its resources, and ensures our financial management systems are appropriate.

### **Consultation**

A public tender process was conducted.

### **Options**

In accordance with Part 7 Clause 178 of the Local Government (General) Regulations 2005, Council must either:

1. *Accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
2. *Decline to accept any of the tenders.*

*A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*

- (a) postpone or cancel the proposal for the contract;*
- (b) invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details;*
- (c) invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract;*
- (d) invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract;*
- (e) enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender; and*
- (f) carry out the requirements of the proposed contract itself.*

Accordingly,

1. Council may award the contract to Grant Thornton Australia Ltd to undertake the provision of Internal Audit Services for Council; or
2. Council may determine not to accept any of the tenders received and invite fresh tenders or alternatively enter into negotiations directly with one or more service providers.

## **11.4 Tender - Provision for Internal Audit Services**

---

Option Two is not recommended as Council has undertaken the tender process in accordance with the Local Government (General) Regulations 2005. The tenders submitted would indicate a fair test of the market and that a fair rate has been achieved representing good value to Council.

Option one is recommended as the preferred option as the tender assessment indicates that a reliable market has been established and the assessment by the evaluation panel has determined the preferred tenderer.

### **RECOMMENDATIONS**

1. That Council accepts the tender for the provision of internal audit services from Grant Thornton Australia Ltd for a three year period.
2. That Council authorises the Council seal to be attached to the contract documents.

### **Attachment(s)**

Nil

## 11.5 Policy (Review) - Dust Sealing of Roads

---

### 11.5 Policy (Review) - Dust Sealing of Roads

**Delivery Program**      Engineering Works

**Objective**              To report a submission in response to the public exhibition of a review of the Dust Sealing of Roads Policy.

---

#### **Background**

At the July 2015 Council meeting it was resolved to place on public exhibition a draft update of the Council's Contributions for Dust Sealing of Roads Policy. One submission was received in response to the exhibition. The purpose of this report is to review this submission.

#### **Key Issues**

- Equitable allocation of Council resources
- Improving the road network

#### **Information**

A copy of the policy as exhibited and the submission are attached to this report. The submission is from residents in Shaws Lane. The submission deals with two suggestions. The first issue is the policy position which says Council will not make any financial contribution towards a project and the second issue is in regard to the provisions in the policy which do not permit the sealing of isolated segments of gravel roads.

#### Issue One - Council Contribution

This issue was a key consideration in the initial reporting to Council when this policy was first proposed. The background from the July report is reproduced below for the information of Council.

*In 2011 Council adopted a policy entitled Contributions for Dust Sealing of Roads Policy. This policy was prepared to assist staff responding to inquiries about road upgrade requests. In some circumstances, typically when residents were advised that their requested road upgrade was not part of Council's current forecast for programmed works, residents are sometimes interested in providing funds as leverage to advance or complete the work.*

*The key issue in those circumstances is to identify that Council will not make any contribution to the works. The reason for this is that it is inequitable for those with a capacity or willingness to make a contribution to road works to influence the programming of the allocation of Council funds by virtue of their contribution.*

*Once a contribution can be established, the policy confirms the process for Council to maintain its interests in respect of the standard and scope of work to be completed.*

## 11.5 Policy (Review) - Dust Sealing of Roads

---

The submission reasonably suggests that Council contributions may encourage further interest from residents and this creates an opportunity to leverage some of the Council's roads budget. The submission refers to our own dust sealing program as the source of funds for a contribution. However the availability of funds for this program is irregular and limited as the source of funds is savings from the maintenance program when these savings can be achieved in response to favourable weather conditions. Furthermore, the Council has already identified a priority program of works for delivery when funds are available. The concern with the proposal in the submission is that funds would be prioritized on the basis of the capacity to pay for residents of a location and this is considered to be an inequitable method of distributing Council's scarce resources.

The original policy position is therefore still preferred.

### Issue Two - Sealing of Isolated Segments Gravel Segments

These clauses were included in the original policy as isolated segments and regular changes in surface type can result in maintenance inefficiencies and safety issues.

The suggestion in the submission is that this position is overly restrictive and that in some circumstances an exception to the position may be warranted. It is the case that the current policy requires all landholders to reach an agreement and this means a project may not move forward even if a small minority do not agree. This position was accepted in the original policy as the intent was to provide an outcome opportunity where the interests of all residents and Council were supported and when this did not occur, the status quo of Council's road program remained unaffected and nobody was in effect disadvantaged.

Increasing the flexibility within the policy is not preferred as it is necessary to ensure the preferred direction of Council in regards to avoiding isolated segments is highlighted to prospective applicants. If staff assessed a project proposal that was meritorious, yet did not comply with the policy, reporting to Council seeking an approval for an exception would occur. It is however considered helpful to indicate in the policy that reasonable exceptions can be referred to Council for review.

### **Sustainability Considerations**

- **Environment**  
Road upgrades can reduce the impact of transport services on the environment. Road upgrades can improve the amenity of a location for residents.
- **Social**  
Road sealing improves access and safety for residents.
- **Economic**  
Road upgrades increase efficiency for transport.

## 11.5 Policy (Review) - Dust Sealing of Roads

---

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

There are no legal, resource or financial implications arising from the review of this policy.

### **Consultation**

The purpose of this report is to advise on a response to a public exhibition of this policy.

### **Options**

#### *Issue One (Financial Contribution from Council)*

The Council can elect to retain the current policy or amend it to include the option that Council contribute to agreed proposals to dust seal local roads. For the reasons set out in the report above, retention of the existing policy is recommended.

#### *Issue Two (Sealing of Isolated Segments of Road)*

Again it is open to Council to retain or amend the policy. Maintaining a policy setting that prohibits the sealing of isolated segments is preferred. The recommendation to this report however suggests it would be helpful to explain in the policy staff can elect to seek Council endorsement to a proposal that is not compliant with the policy that does however represent overall benefits in the particular circumstances.

### **RECOMMENDATION**

That the exhibited policy for the Contribution to Dust Sealing of Roads be adopted, subject to an amendment that includes advice that the sealing of isolated segments is not supported, however exceptions to this provision will be referred to Council for review in cases where it is considered by the General Manager that such an exception is reasonable in the circumstances.

### **Attachment(s)**

1. Policy - Contribution to Dust Sealing of Roads
2. Submission received

## 11.6 Policy (Review) - Urban Water Quality

---

### 11.6 Policy (Review) - Urban Water Quality

**Delivery Program** Water and Wastewater

**Objective** To review our urban water quality policy.

---

#### **Background**

The scheduled review of Council's existing Drinking Water Quality Policy identified benefits of including Council's other water quality management protocols (Recycled Water and Wastewater) in an umbrella Urban Water Quality Policy.

This new policy would replace and expand on the Drinking Water Quality policy which was first adopted on 22 September 2011 and ensures contemporary practices and legislative requirements are applied to all of Council's urban water quality responsibilities.

#### **Key Issues**

- Public and Environmental Health
  - Drinking Water Quality
  - Recycled Water Quality
  - Effluent Discharge Quality
  - Biosolids Management
- Legislative Compliance;
  - *Public Health Act 2010*
  - *Protection of the Environment Operations (POEO) Act 1997*
  - *Local Government Act 1993*
- National Water Quality Management Strategy

#### **Information**

The review of the Drinking Water Quality policy suggested compliance and operational benefits can be gained by including Council's other water quality management protocols (Recycled Water and Wastewater) in an umbrella Urban Water Quality Policy. Since 2011, the risk management practices and operational procedures developed for drinking water as part of the Drinking Water Management System have been progressively rolled out to the other areas of our Urban Water Quality Management systems.

This approach also recognises the role of the National Water Quality Management Strategy as a key collection of documentation and practices which can assist Council to improve water quality outcomes. A fact sheet about the National Water Quality Management Strategy is attached to this report for information.

Some of Council's key achievements to date have been:

## 11.6 Policy (Review) - Urban Water Quality

- Submission of a Recycled Water Management System as part of the approvals process (Section 60 - *Local Government Act 1993*) for supply of Recycled Water for Dual Reticulation
- Development of Pollution Incident Response Management Plans to comply with the *Protection of the Environment Legislation Amendment Act 2011*
- Water Quality Data Management Systems, including live water quality trending and reporting
- Water Maintenance Planning Systems
- Water Incident Response and Communication Protocols

The key changes and similarities between the (old) Drinking Water Quality Policy and (new) Urban Water Quality Policy are summarised in the table below;

Item	(Old) Drinking Water Quality Policy	(New) Urban Water Quality Policy	
Water	Drinking Water	Drinking Water	Recycled Water Wastewater
Legislative Drivers	Public Health Act 2010	Public Health Action 2010	Local Government Act 1983 POEO Act 1997
Applicable National Water Quality Management Strategy Documents	Australian Drinking Water Guidelines	Australian Drinking Water Guidelines	Australian Guidelines for Water Recycling Guidelines for Sewerage Systems Australian guidelines for water quality monitoring and reporting
How are water quality requirements defined?	Australian Drinking Water Guidelines	Drinking Water	Australian Drinking Water Guidelines
		Recycled Water	Section 60 Approval (Local Government Act 1993)
		Wastewater	POEO Act 1997 4 x Environmental Protection Licenses for Wastewater Treatment Plants
Management Framework for Water Quality	Twelve Elements for Managing Water Quality	Twelve Elements for Managing Water Quality	
Peak Council Operational Plans	Drinking Water Management Systems	Drinking Water Management System (DWMS)	Recycled Water Management System (RWMS) Wastewater Management System (WWMS)

Stormwater was excluded from the scope of this policy (despite stormwater quality being part of the Nation Water Quality Framework) as Council is not currently resourced to manage the inclusion of stormwater quality management actions at this stage. We are however currently progressing to implement the outcomes of the Urban Stormwater Management Plan (which was considered by Council on 26 July 2012) as resources become available.

Otherwise the policy is considered to be contemporary and reflects current legislation. A copy of the new policy is attached to the report.

### **Sustainability Considerations**

- **Environment**

The Twelve Elements for Managing Water Quality provide a systematic and risk based approach for assessing and addressing environmental risks.

- **Social**

The Twelve Elements for Managing Water Quality provide a systematic and risk based approach for assessing and addressing;

- public health risks
- customer feedback.

- **Economic**

Effective management of public infrastructure and services supports economic growth.

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

Council requires this new policy to cover recycled water as part of compliance with an approval issued pursuant to Section 60 of the *Local Government Act 1993* to supply Recycled Water for Dual reticulation (yet to be issued by NSW Department of Primary Industries - Water). The new policy will meet that requirement.

The new policy (and replacement of the existing policy) has no direct financial implications. However the more systematic approach may identify actions in the improvement plans (developed as part of the Twelve Elements for Managing Water Quality) which may require funding. The quantum of this funding will vary according to the actions identified, but is unlikely to significantly increase over and above that which Council continually utilises in implementing improvements.

For example, when Council originally adopted its Drinking Water Management System (DWMS) [28 March 2013] there was an implementation plan with \$96,000 of additional funds to progress the development of a water quality database and an investigation of online instrumentation at Marom Creek water treatment plant. Both projects have now been completed and Council staff are now devising an implementation plan for the online instrumentation project at Marom Creek water treatment plant. (The study recommended up to \$206,000 of expenditure to improve management of water quality).



## **11.6 Policy (Review) - Urban Water Quality**

---

There are also compliance and operational benefits that can be gained by addressing Council's other water quality management responsibilities in a consistent manner.

These types of projects are either funded from appropriate existing operational budgets or identified as new projects in the process to prepare the delivery program for adoption by Council.

### **Consultation**

It is recommended that Council exhibit the draft policy as per the attachment to this report.

### **Options**

Council may accept or amend the proposed new policy and rescind the existing Drinking Water Quality policy. The change to a broader urban water focus is largely reflective of current practice and offers synergies across the organization in dealing with urban water quality. 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 place the draft Urban Water Quality Policy, as attached to this report, on public exhibition.
- 2) If no responses are received to the public exhibition:
  - a) the Urban Water Quality Policy will be considered to be adopted by Council, and
  - b) the existing Drinking Water Quality Policy will be considered rescinded by Council.
- 3) A further report be presented to Council if submissions are received in response to the public exhibition in point one above.

### **Attachment(s)**

1. Draft Policy - Urban Water Quality
2. Fact Sheet - National Water Quality Management Strategy

12. Public Question Time

---

**12. Public Question Time**

### **13.1 Notice of Motion - Surf Jet Ski Patrols**

---

## **13. Notices of Motion**

### **13.1 Notice of Motion - Surf Jet Ski Patrols**

**Councillor** Cr Meehan

---

I move

1. That Council provide in principle support to the introduction of a roving jet ski patrol based on the proposal from Mr Neil Kennedy, Club Captain, Lennox Head Surf Club.
2. The principles of this proposal are as follows:
  - Two shifts – first from 9am to 12 midday, second from 12:30pm to 3:30pm
  - Each shift would rove from north from Seven Mile Beach to South Wall Ballina and back, as a minimum
  - Constant communication should be kept between the ski, surf clubs, life guards on duty and any helicopters or fixed wing aircraft supporting from above
3. This service is to continue until the end of the 2016 Easter School Holidays, however it may terminate earlier if the State Government introduces other shark deterrents.
4. The actual introduction of this service is to be subject to a further report to Council (i.e. the November Ordinary meeting prior to school holidays) confirming the viability and effectiveness of the service, estimated cost and funding options.

#### **Councillor Comment**

Mr Neil Kennedy has frowarded by email to all Councillors his extensive documents titled Review of Shark Hazard Mitigation Strategies for Ballina Shire Waterways’.

In addition to that document, based on his first hand experience, he has identified that the introduction of a roving jet ski patrol, provided by Australia Life Guard Services, would provide an additional level of support to that currently being provided in respect to shark mitigation strategies.

With the NSW State Government unclear as to what actions it wishes to implement in respect to shark mitigation strategies, it is entirely appropriate for Council to be proactive as possible. Mr Kennedy, as Club Captain of Lennox Head Surf Club, is confident that the direction provision of extra hours in the jet ski, will provide excellent additional support to the life guards.

### 13.1 Notice of Motion - Surf Jet Ski Patrols

---

My proposal is to trial this extra service for the balance of the 2015/16 surf life saving seasons, or until other measures are introduced by the State Government.

A copy of the email from Neil, which was sent to the General Manager and all Councillors is as follows:

*Dear Paul,*

*I have a proposal I would very much like Council to consider.*

*I just spent the last 3 hours (10am to 1 pm) today on the Australian Lifeguard Service (ALS) jet-ski that resides at Lennox Head SLSC.*

*Originally I went out to look at a large bait-ball in front of the Lennox flags at the request of the Lifeguard on duty – within ½ an hour I was responding to a call from the Sharpes Beach Lifeguard about the 2 helicopters circling above the swimmers and surfers. At Sharpes when I got there (less than 15 mins by ski as I was already on the water) we undertook a preventative action of advising the surfers to clear the water as I had sighted what I am about 80-90% sure was a shark.*

*During the entire 3 hour session on the ski I conducted a roving patrol from the north end of 7 mile beach down to mid Angels Beach and back. In that period I observed what could only be described as an inordinate amount of bait balls (est 100+) the majority of which had high levels of marine activity surrounding (sea birds diving, dolphins feeding, whales with calves and 1 suspected shark).*

*Along the way I engaged in open friendly communication with all four (4) of what I call the Waterway User Groups of:*

- 1. Recreational Surf-craft Users – board and boogie board riders at Lennox Main, Boulders, Sharpes and Flat Rock*
- 2. Commercial Surf Operations – the surf school operating at mid Sharpes*
- 3. Unpatrolled Beach Users – all along 7 mile and along Sharpes*
- 4. Patrol Flag Areas – at Lennox and at Sharpes*

*To a man, every person I spoke with from on the ski showed a very high appreciation for my presence and the job being done. Many were grateful of the explanation I gave of the relationship between the ski and the helicopters circling above. The surf school thanked me, heeded the warning and removed their patrons from the water. The dialogue between myself and the free surfers was particularly cordial with both parties exchanging commentary on what had been sighted by each in the last hour or so.*

*I believe the roving jet ski patrol is the key missing link in Council's response to shark mitigation at the moment. My proposal is:*

- Immediate introduction of a roving jet ski patrol by ALS – the ALS ski is currently based at Lennox SLSC*
- Two one-man shifts – first from 9am to 12 midday, second from 12:30pm to 3:30pm – we need two shifts because 3 hours is about as long as you want 1 person on the ski from a WHS aspect*
- Each shift would rove from north 7 mile down to South Wall and back again*
- Constant communication should be kept between the ski, surf clubs, life guards on duty and most importantly, any helicopters or fixed wing aircraft supporting from above – this is the one factor that I found lacking with my session today – direct contact with the eyes above that were circling in support.*

*The cost of this incredibly important, visual connection between the skies above and the people in the water would only be a further 6 ALS man-hours a day. Given the number of ALS lifeguards already in place yet ill-advised to leave their post, I feel this is only a marginal increase to gain a very large amount of additional safety and community appreciation.*

*This concept goes a long way towards cost effective additional shark mitigation for ALL waterway user groups.*

*I urge Council to consider this proposal and to implement as soon as possible.*

*Thank you for your time.*

**COUNCILLOR RECOMMENDATIONS**

1. That Council provide in principle support to the introduction of a roving jet ski patrol based on the proposal from Mr Neil Kennedy, Club Captain, Lennox Head Surf Club.
2. The principles of this proposal are as follows:
  - Two shifts – first from 9am to 12 midday, second from 12:30pm to 3:30pm
  - Each shift would rove from north from Seven Mile Beach to South Wall Ballina and back, as a minimum
  - Constant communication should be kept between the ski, surf clubs, life guards on duty and any helicopters or fixed wing aircraft supporting from above.
3. This service is to continue until the end of the 2016 Easter School Holidays, however it may terminate earlier if the State Government introduces other shark deterrents.
4. The actual introduction of this service is to be subject to a further report to Council (i.e. the November Ordinary meeting prior to school holidays) confirming the viability and effectiveness of the service, estimated cost and funding options.

**Attachment(s)**

Nil

**14. Advisory Committee Minutes**

**14.1 Commercial Services Committee Minutes - 15 October 2015**

---

**Attendance**

Crs David Wright (Mayor - in the chair), Jeff Johnson, Keith Williams, Keith Johnson, Susan Meehan and Paul Worth,

Paul Hickey (General Manager), Rod Willis (Development and Environmental Health Group Manager), Steve Barnier (Strategic and Community Facilities Group Manager), Paul Tsikleas (Manager Commercial Services) and Joanne Cordery (Secretary) were in attendance.

There were three people in the gallery at this time.

**1. Apologies**

An apology was received from Cr Sharon Cadwallader, Cr Robyn Hordern Cr Ken Johnston, Cr Ben Smith.

**RECOMMENDATION**

(Cr Jeff Johnson/Cr Keith Williams)

That such apology be accepted

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**2. Declarations of Interest**

Nil

**3. Deputations**

Nil

**4. Committee Reports**

**4.1 Flat Rock Tent Park Fees and Charges 2016/17**

**RECOMMENDATION**

(Cr Jeff Johnson/Cr Paul Worth)

That Council authorises the exhibition of the draft Flat Rock Tent Park fees and charges for 1 February 2016 to 31 January 2017, as attached to this report, for public comment.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**4.2 Site Investigation - Corner of Boeing Avenue and Cessna Crescent**

**RECOMMENDATION**

(Cr Paul Worth/Cr Susan Meehan)

1. That Council notes the contents of this report in respect to the site investigation for Council owned land on the corner of Boeing Avenue and Cessna Crescent.
2. That Council receive a further report on the current rezoning process for the Southern Cross Industrial Estate along with consideration of all the land owned by Council in this precinct.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**4.3 Land Clearing and Ongoing Maintenance - Council Operational Land**

**RECOMMENDATION**

(Cr Paul Worth/Cr Susan Meehan)

1. That based on the contents of this report that Council undertake site clearing works as outlined in the report for Proposed Lots 2 and 3 Boeing Avenue with funds of up to \$25,000 to be allocated for the initial works and a \$10,000 recurring budget allocation for ongoing clearing/slashing, with these funds sourced from the Property Development Reserve.
2. That Council undertake minor vegetation maintenance works at Lot 18 DP1059476 Kays Lane Alstonville, with a budget of \$5,000 sourced from the Property Development Reserve.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**4.4 54 North Creek Road, Ballina - Land Subdivision Development Proposal**

**RECOMMENDATIONS**(Cr Susan Meehan/Cr Keith Williams)

1. That Council proceed to lodge a development application for the proposed subdivision of Part Lot 98 DP 1194043 as per the proposed lot layout prepared by Civiltech as attached to this report.
2. That Council supports the inclusion of the Noise Management Plan as prepared by Tim Fitzroy and Associates and as attached to this report, for inclusion in the subject development application.

FOR VOTE - Cr David Wright, Cr Keith Williams, Cr Keith Johnson, Cr Susan Meehan and Cr Paul Worth

AGAINST VOTE - Cr Jeff Johnson

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**4.5 Policy (Review) - Entrepreneurial Property Activities and Financial Reserve**

**RECOMMENDATIONS** (Cr Paul Worth/Cr Susan Meehan)

1. That Council adopts the updated and renamed Property Reserves 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.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**4.6 Shop 4 Wigmore Arcade Complex - Leasing Proposal**

**RECOMMENDATION** (Cr Paul Worth/Cr Keith Williams)

That Council notes the contents of this report in respect to the lease negotiations for shop 4 Wigmore Arcade complex.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**4.7 Norfolk Homes - 67 Piper Drive, Ballina**

**RECOMMENDATION** (Cr Susan Meehan/Cr Keith Williams)

That Council notes the contents of this report in respect to the lease negotiations with Norfolk Manufactured Homes Pty Ltd.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**5. Confidential Session**

**RECOMMENDATION**

(Cr Susan Meehan/Cr Paul Worth)

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. (Cr Susan Meehan/Cr Jeff Johnson)

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith



5.1 **Shop 4 Wigmore Arcade Complex - Leasing Terms**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest due to the on-going commercial negotiations and the release of any information could prejudice those negotiations.

5.2 **Norfolk Homes - 67 Piper Drive, Ballina Leasing Proposal**

**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 and the release of any information could prejudice those negotiations.

(The Council moved into Confidential Session at 4.30pm).

**Open Council**

**RECOMMENDATION**

(Cr Susan Meehan/Cr Keith Johnson)

That Council move into Open Council and out of Committee of the Whole.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Horder and Cr Ben Smith

(The Council moved into Open Council at 4.38pm).

The General Manager reported to the Open Meeting the recommendations made while in Confidential Session:

**5.1 Shop 4 Wigmore Arcade Complex - Leasing Terms**

**RECOMMENDATIONS**

(Cr Susan Meehan/Cr Keith Williams)

1. That Council authorises the General Manager to finalise negotiations with the prospective tenant for Shop 4 Wigmore Arcade, based on the terms and conditions outlined within this report.
2. That Council authorises the Council seal to be attached to any lease documentation.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**5.2 Norfolk Homes - 67 Piper Drive, Ballina Leasing Proposal**

**RECOMMENDATIONS**

(Cr Paul Worth/Cr Susan Meehan)

1. That Council offer Norfolk Manufactured Homes Pty Ltd a lease for the subject site as per the terms and conditions outlined in Option One of this report.
2. That Council authorises the use of seal for all documents relating to the lease agreement.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**Adoption of Recommendations from Confidential Session**

**RECOMMENDATION**

(Cr Keith Johnson/Cr Susan Meehan)

That the recommendations made whilst in Confidential Session, be adopted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Sharon Cadwallader, Cr Ken Johnston, Cr Robyn Hordern and Cr Ben Smith

**MEETING CLOSURE**

4.39pm

**RECOMMENDATIONS**

That Council confirms the minutes of the Commercial Services Committee meeting held 15 October 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 September 2015 Ordinary meeting:

<u>Date</u>	<u>Function</u>
1/10/15	Meeting Evan Connick - re Oval
2/10/15	ArtLab Project at NRCG
2/10/15	Animal Logic
3/10/15	The Art Affect
3/10/15	Pecha Kucha 20/20
4/10/15	Country Music Launch
4/10/15	Ballina Rotary Duck Race
4/10/15	Art in Activation In Conversation
5/10/15	Meeting with Marine Rescue Members
5/10/15	Skate Park Meeting
6/10/15	Meeting – Marine Rescue Tower
6/10/15	150th Celebration Wind-Up
6/10/15	Briefing on new Ballina High School
7/10/15	Alstonville Wollongbar Chamber Breakfast
8/10/15	Meeting Steve Tyson – Service Centre
8/10/15	Aboriginal Community Committee
9/10/15	Meeting Lennox Head Cricket
9/10/15	Meeting Wollongbar Tennis
11/10/15	Alstonville Markets
11/10/15	Lennox Head Markets
13/10/15	Public Citizenship
13/10/15	Ballina Business Chamber
14/10/15	Meals on Wheels
14/10/15	Traffic Committee
14/10/15	Shark Advisory Meeting
15/10/15	Conflict Resolution Launch Byron Bay
15/10/15	Commercial Services Meeting
16/10/15	Curves Relay for Life – brochure
16/10/15	Public Meeting – Shark Summit – Lennox Head
17/10/15	A Fair To Remember
17/10/15	Cancer Council Art Exhibition Lesley Ryan
18/10/15	Ballina Jet Boat Surf Rescue Presentation
19/10/15	Visitor Economy Industry Night Airport
20/10/15	On-Site Inspection
22/10/15	Council Meeting
23/10/15	Every Women Matters
24/10/15	Annual meeting Lismore Naval Cadet Unit
26/10/15	RRCC Special Meeting
27/10/15	Alstonville/Wollongbar Chamber Annual General Meeting
29/10/15	Water Conference
31/10/15	Alstonville Show
31/10/15	Relay for Life

#### **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:

**17.1 Ballina Heights Drive - Contract Variation Claim**

This report contains information relating to as this matter involves legal claims against the Council.

**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 Ballina Heights Drive - Contract Variation Claim**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(d) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- d) commercial information of a confidential nature that would, if disclosed:
  - (i) prejudice the commercial position of the person who supplied it, or
  - (ii) confer a commercial advantage on a competitor of the council, or
  - (iii) reveal a trade secret

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as this matter involves legal claims against the Council.