



## 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 17 December 2015 commencing at 9.00 am.**

### Business

1. Australian National Anthem
2. Acknowledgement of Country
3. Apologies
4. Confirmation of Minutes
5. Declarations of Interest and Reportable Political Donations
6. Deputations
7. Mayoral Minutes
8. Development and Environmental Health Group Reports
9. Strategic and Community Facilities Group Reports
10. General Manager's Group Reports
11. Civil Services Group Reports
12. Public Question Time
13. Notices of Motion
14. Advisory Committee Minutes
15. Reports from Councillors on Attendance on Council's behalf
16. Questions Without Notice
17. Confidential Session

Paul Hickey  
**General Manager**

**A morning tea break is taken at 10.30 a.m. and a lunch break taken at 1.00 p.m.**

### **Deputations to Council – Guidelines**

Deputations by members of the public may be made at Council meetings on matters included in the business paper. Deputations are limited to one speaker in the affirmative and one speaker in opposition. Requests to speak must be lodged in writing or by phone with the General Manager by noon on the day preceding the meeting. Deputations are given five minutes to address Council.

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

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

### **Public Question Time – Guidelines**

A public question time has been set aside during the Ordinary Meetings of the Council. Public Question Time is held at 12.45 pm but may be held earlier if the meeting does not extend to 12.45 pm.

The period for the public question time is set at a maximum of 15 minutes.

Questions are to be addressed to the Chairperson. The period is set aside for questions not statements.

Questions may be on any topic, not restricted to matters on the agenda for the subject meeting.

The Chairperson will manage the questions from the gallery to give each person with a question, a "turn". People with multiple questions will be able to ask just one before other persons with a question will be invited to ask and so on until single questions are all asked and, time permitting, the multiple questions can then be invited and considered.

Recording of the questions will not be verbatim.

The standard rules of behaviour in the Chamber will apply.

Questions may be asked from any position in the public gallery.

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1. Australian National Anthem
  2. Acknowledgement of Country
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  6. Deputations
  7. Mayoral Minutes
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**1. Australian National Anthem**

The National Anthem will be performed by Councillors and staff.

**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 26 November 2015 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 26 November 2015.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil Items

**8.1 DA 2014/387 - Sec 96 - Dees Lane Lynwood - Telecommunications**

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

**8.1 DA 2014/387 - Sec 96 - Dees Lane Lynwood - Telecommunications**

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<b>Applicant</b>	NBN Co Limited
<b>Property</b>	Lot 5 DP 245043, 11 Dees Lane LYNWOOD
<b>Proposal</b>	To amend development consent 2014/387 by deleting deferred condition 1 and condition 9.
<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**

On the 28 May 2015 Council resolved to grant consent to DA 2014/387 for a telecommunications facility comprising a 45 metre high lattice tower and ancillary equipment subject to:

*Appropriate conditions including that the proponent and NBN Co Limited be responsible for all maintenance and liabilities associated with the tower and indemnifies Ballina Shire Council and the Ballina Byron Gateway Airport from any liabilities concerning the tower's intrusion above the airport's obstacle limitation surface (OLS).*

A deferred commencement consent incorporating these conditions was issued on 9 June 2015.

The subject application seeks to amend the Notice of Determination for development application 2014/387 by removing Deferred Commencement Condition Number 1 which states:

*Documentation is submitted to Council that demonstrates that the proponent and the NBN Co. Limited can legally indemnify Ballina Shire Council and the Ballina Byron Gateway Airport in perpetuity from any liabilities concerning the tower's intrusion through the airport's obstacle limitation surface.*

The modification application also seeks the removal of Condition 9 of the consent which states:

*Prior to the issue of the Construction Certificate legal documentation is to be submitted to Council that the proponent and the NBN Co Limited legally indemnify Ballina Shire Council and the Ballina Byron Gateway Airport in perpetuity as required by the deferred commencement condition.*

The applicant maintains that the above conditions do not serve a proper planning purpose and consequently, are ultra vires and unlawful.

As the original application was reported to Council for determination and given the level of community interest, this modification application is reported to Council for determination.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The subject application was placed on public exhibition from 21 October to 12 November 2015. During the exhibition period a total of 77 submissions were received, 50 objections (43 of which were in the form of a standardised letter) and 27 in support. 67 additional submissions were received outside of the exhibition period (also in the form of a standardized letter) that objected to the application.

The majority of the submissions received address the merits of the original proposal. These issues include visual impact, property values, consultation, service delivery, future plans for the airport's expansion, aviation safety, and alternative sites. These matters were assessed as part of the consideration and determination of development application 2014/387. As the proposed modification application seeks to delete deferred commencement condition No. 1 and condition No. 9, these issues raised are not relevant in the assessment of this modification application.

Other than the above considerations, a number of submissions objected to the subject application on the basis that NBN Co Limited had offered to indemnify Council and this was fundamental to Council approving the application.

By removing the indemnity, it is claimed by objectors, that the application is no longer substantially the same development as the development for which the consent was originally granted.

Visionstream however, in letter dated 24th November 2015 **attached** have disputed that any such indemnity was offered stating:

*During the application process nbn outlined that it is responsible for both the liability and maintenance of its own network infrastructure. nbn did not make an offer to indemnify Ballina Shire Council.*

In reviewing the development application documentation submitted to Council in support of the proposal, it is confirmed that neither the applicant nor NBN Co Limited provided any written offer to indemnify Ballina Shire Council and the BBGA.

Therefore, on the basis that an offer to indemnify Council was not part of the development proposal formally presented to Council, should Council resolve to modify the consent as now requested, the development as modified would remain substantially the same development as the development for which consent was originally sought.

Submissions received that are in support of the modification are in favour of the improved internet access the infrastructure will provide.

### **Report**

NBN Co Limited has provided legal advice **attached** stating that the indemnity conditions are unlawful as they do not fulfil a valid planning purpose. The advice continues that as the conditions are not fundamental to the DA the conditions should be removed. On this basis the subject application has been submitted.

The modification application has been assessed against the relevant provisions of S96 and S79C of the EP&A Act 1979 with the following being the pertinent matters for consideration by Council.

Ballina Byron Gateway Airport (BBGA) has been notified of the subject application. BBGA maintains its concerns with the approved tower and anticipates possible implications for aircraft safety the future expansion of the airport. CASA has been notified of the subject S96 application for their information or comment, however no comment has been provided.

As indicated by the substantial number of submissions received, the Dees Lane telecommunications tower is a contentious project. The Council needs to be mindful that the merits of the original application DA 2014/387 have been considered by it and development consent has been issued. This application is in relation to the amendment of the consent only.

The questions that are pertinent to this application are:

If the condition is removed, is Council satisfied the development remains substantially the same development as the development for which the consent was originally granted?

The subject application has no impact on the approved built form of the development. NBN Co Limited did not formally offer an indemnification as part of their application and maintains that there was no verbal undertaking to indemnify Ballina Shire Council.

Is the condition valid?

As quoted in the legal advice provided by the proponent, taking examples from the Hutchison case and others, the Land and Environment Court have said:

*To be valid, a condition must:*

- 1. Have a planning purpose,*
- 2. Fairly and reasonably relate to a development, and*
- 3. Not be so unreasonable that no reasonable planning authority could have imposed it.*

In the Hutchison case Cowdry J noted that:

*The (Hutchison indemnity condition) is not directed to the interests of the public safety or preservation or wellbeing of the public.*



*Instead it is directed solely to the issue of protecting the council from any liability in the event that a claim is made against it for damages relating to the effects of (EMR).*

*The sole beneficiary of the (Hutchison indemnity condition) is the council, not the residents. Such condition could not be classified as one made in "the public interest" as referred to in s 79C(1)(e) of the EP&A Act since no protection whatsoever is provided to the public. It follows that the (Hutchison indemnity condition) does not satisfy the test of validity, namely, that it relates to a "planning purpose".*

The Hutchison case has many similarities to the subject application and the ruling was clear that such a condition is not considered to have a planning purpose and is therefore void.

If the indemnification condition is invalid, it must follow that the entire consent is nullity and void?

Again from the Hutchison case:

*A condition which has no planning purpose could not be fundamental to the development. If excised, the consent would operate in precisely the same way as envisaged by council, except that council would be deprived of the indemnity to which it has no statutory entitlement. Accordingly under either test the Court determines that the indemnity condition is severable from the consent.*

### **Conclusions**

The subject application has been assessed under Sections 96 and 79C of the Environmental Planning and Assessment Act 1979. The proposed modification would be of minimal environmental impact. Furthermore, as the condition of indemnification is not a matter directly related to the development, as it does not fulfil a valid planning purpose, the conditions are not fundamental to the development and are invalid.

Therefore, should Council resolve to modify the consent as requested, the development as modified would remain substantially the same development for which consent was originally granted.

### **Option One**

That Council approve the S.96 modification application. This option is recommended for the reasons in the report.

### **Option Two**

That Council refuses the S.96 modification. This is not recommended based on the legal advice provided.

In conclusion it is also important to acknowledge that other sites have been canvassed by the objectors to this proposal. It is understood that there are other sites that may provide similar services, however there could also be tenure issues with those sites.

## **8.1 DA 2014/387 - Sec 96 - Dees Lane Lynwood - Telecommunications**

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Importantly as per the contents of this report, this assessment only deals with the indemnity issue and the other sites only become relevant if the application is refused and NBN Co. takes no further action to implement the original consent.

Finally it is also understood that Councillors included the indemnity condition due to concerns over Council's liability. Council's insurers have confirmed, verbally to date, that Council has insurance coverage in respect to the proposed tower as the original conditions imposed, including the mitigation measures, are based on advice from authorities such as the Civil Aviation Safety Authority. NBN Co has the responsibility to comply with all the relevant conditions.

### **RECOMMENDATION**

That the Section 96 application to remove deferred commencement Condition 1 and Condition 9 of development application 2014/387 applying to 11 Dees Lane, Lynwood, be **APPROVED**.

### **Attachment(s)**

1. Locality Plan
2. Advice on Validity of Conditions
3. Visionstream Letter dated 24 November 2015
4. CASA Letter dated 19/12/2014
5. Letters of Submission
6. Letters of Objection

**8.2 DA 2009/664 - Sec 96 - Modify Subdivision - Bolwarra Circuit, Wollongbar**

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**8.2 DA 2009/664 - Sec 96 - Modify Subdivision - Bolwarra Circuit, Wollongbar**

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<b>Applicant</b>	Kurrabri Pty Ltd
<b>Property</b>	Lot 100 DP 1212282 Bolwarra Circuit, Wollongbar
<b>Proposal</b>	Amendment to lot layout, deletion of conditions 1.3 and 1.4 and amendment to condition 2.2.
<b>Effect of Planning Instrument</b>	The land is partly zoned R2 Low Density Residential and R3 Medium Density Residential under the provisions of the Ballina LEP 2012, and partly zoned 7(d) Environmental Protection (Scenic/Escarpment) under the provisions of the Ballina LEP 1987.
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached.

**Introduction**

On 1 February 2010 Council issued development consent to DA 2009/664 for the 'Staged Residential Subdivision Comprising 92 Residential Torrens Title Lots, Seven Open Space Allotments, Bulk Earthworks Construction of Roads and other Associated Infrastructure and Environmental Restoration Works' at Lot 12 DP 1057624 No. 21 Queens Park Court, Wollongbar. The development was approved to be undertaken in four separate stages (refer approved plans attached). A subdivision certificate was issued for Stage 3 by Council on 16 December 2014.

The applicant seeks to modify the consent in the following manner:

- Component 1 - Amend the approved lot layout (ie condition 1.1) by amalgamating approximately 1.3 ha of land (previously approved as part of P5 public reserve for dedication to Council) with approved residential allotment K92 to create one large 'lifestyle lot' of 1.421 ha and one residue lot of approximately 1.53 ha in area to be dedicated to Council as public reserve (proposed Lot R2). Refer to attached plans. A building envelope has been identified within the R2 zoned portion of proposed lot K92, adjacent to Queens Park Court.
- Component 2 - Delete conditions 1.3 and 1.4 referring to nominated duplex and dual occupancy (not separately Strata or Torrens titled) sites.
- Component 3 - Amend condition 2.2 to allow for the landlocked triangular portion of land zone R3 – Medium Density Residential located in the north eastern corner of Lot P7 (public reserve) to be dedicated to Council at no cost or amalgamated with one of the neighbouring residential properties (either Lot 18 DP 1203362 or Lot 21 DP 1193473). A separate application to amalgamate this land with lot 18 is currently being assessed (DA 2015/608).

## **8.2 DA 2009/664 - Sec 96 - Modify Subdivision - Bolwarra Circuit, Wollongbar**

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

The key issue arising from the assessment of the application relates to Component 1 of the modification, and is summarised as follows:

- If approved, the responsibility of rehabilitation/revegetation and ongoing maintenance of the subject area, which is proposed to be amalgamated within approved residential Lot K92, will be transferred on to an individual property owner. Currently the developer is required, by condition of consent, to rehabilitate and embellish the site in accordance with the approved Rehabilitation Action Plan (RAP) prior to dedicating it to Council as public reserve. Concern is raised over the ability of the future owner of K92 to achieve the outcomes of the RAP and undertake maintenance of the land in perpetuity.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

The application was placed on public exhibition from 16 September to 6 October 2015. During the exhibition period a total of 13 submissions were received in opposition to the proposal. These objections generally relate to the proposal to amalgamate part of the approved public reserve P5 with residential lot K92 (private land). A copy of the submissions is attached. A confidential submission has been distributed to Councillors under separate cover.

The matters raised in these objections are summarised as follows:

*1 The proposal is contrary to the Wollongbar Masterplan.*

Comment: The development is not subject to an adopted 'masterplan'. The original application was assessed against the Ballina Shire Combined Development Control Plan, Chapter 15 – Wollongbar Urban Expansion Area. This plan indicated that all of the 7(d) zoned land would be dedicated to Council as open space. This document has since been repealed and replaced with the Ballina Development Control Plan 2012 (DCP 2012).

Whilst the proposed tenure of this portion of land differs from the original approval and requirements of the previous DCP, in that part of the 7(d) zoned land is proposed to be retained in private ownership rather than dedicated to Council as public reserve, the objectives of the zone and Chapter 3 – Urban Subdivision of the current DCP can still be met, provided the RAP is implemented in full. Land identified as environmentally constrained and consequently placed in an environmental protection zone are still required under DCP 2012 to be rehabilitated and embellished, in accordance with a RAP. The environmental goals of the amended and accompanying revised RAP, being 80% native canopy cover and weed eradication, remain consistent with the original RAP. However, the timeframe in which the restoration/rehabilitation is to occur will be extended under the revised RAP

## **8.2 DA 2009/664 - Sec 96 - Modify Subdivision - Bolwarra Circuit, Wollongbar**

from approximately five years to a period of between five to ten years, and as stated in the revised proposed RAP, the developer is only responsible for the work under the RAP until such time as the subject land is sold.

- 2 *Residents have purchased surrounding properties with the expectation that this land would be dedicated to Council as a public reserve.*
- 3 *Council has a responsibility to provide the community with sufficient open reserves.*
- 4 *Natural space plays a significant role in the health and wellbeing of the community (including our youth). The proposal will have social impacts.*
- 5 *This area should not be a manicured high maintenance parkland, but remain a public reserve.*
- 6 *If approved public access to this area will be denied.*

Comment: Residents may have purchased properties in the area with the understanding that this land would be dedicated to Council as public reserve, as was approved. If the current application is supported this area will remain in private ownership and will not be accessible to the public. It should be noted that as part of the originally consented to development a walking path, passive open space areas, playground and a section of rehabilitated 7(d) zoned land have/will be dedicated to Council as public reserve, primarily upon proposed Lot R2. Furthermore, access to approved Lot R3 is limited due to the topography of the land.

- 7 *There is potential for loss of native wildlife. It may also be cleared of trees.*

Comment: The land currently zoned 7(d) cannot be cleared whether it is in private ownership or public ownership without consent. Once the RAP has been fully implemented exotic species will have been removed and an 80% native canopy cover will have been achieved. An established subtropical rainforest is expected to be a greater attractant to native wildlife.

- 8 *Neighbouring residents have been required to comply with bushfire protection requirements (at considerable expense) for the privilege of living near this bushland.*

Comment: This amending application will not significantly alter the long-term bushfire risk to neighbouring residents.

- 9 *Local residents are in the initial stages of establishing a land care group to assist in rehabilitating the designated Public Reserve.*
- 10 *As an alternative we propose a standalone residential lot with the remainder of the allotment dedicated to Council as public reserve. The newly established Wollongbar land care group be held responsible for general maintenance, uphold the regeneration work completed and also maintain public liability insurance.*

## **8.2 DA 2009/664 - Sec 96 - Modify Subdivision - Bolwarra Circuit, Wollongbar**

Comment: Council welcomes the assistance of any Landcare group in maintaining large bushland areas. If approved, there will still be areas of dense subtropical rainforest that will be dedicated to Council as part of the proposal. The assistance of a Landcare group in maintaining these public reserves in perpetuity would be expected to be encouraged by Council. Land tenure does not necessarily restrict volunteer groups. Therefore, a dedicated Landcare group may still have access to the entire environmental protection zone, subject to consent of the owner.

11 *The only benefit of the proposal is further profit for the developer. There is insufficient justification for the proposal.*

Comment: The amended RAP indicates that the developer will be responsible for "rehabilitation works and follow-up maintenance until the land in question is sold". There is therefore a clear financial benefit for the developer if this responsibility of rehabilitation works can be transferred to another party.

Apart from the financial benefit to the developer, the proposed modification offers some benefits to Council in the form of reduced maintenance costs in perpetuity. The cost to Council to maintain a fully rehabilitated subtropical rainforest area as public reserve is approximately \$2,500 per year in perpetuity.

There is also some benefit to Council in not taking on the perimeter liabilities of bushfire risk, tree hazard management, weed control and steep inaccessible terrain. If the Section 96 application and therefore the amended RAP is not accepted, the original approved RAP will need to be implemented by the developer.

12 *Council should see this space as a valuable resource. These green spaces are becoming increasingly rare on the plateau and need to be protected.*

Comment: The 7(d) zoned land is to be protected regardless of the tenure and once rehabilitated will be maintained as 'green space'.

13 *The modification, if approved, will devalue the surrounding residential properties.*

Comment: No information has been submitted which supports this claim.

14 *The proposal will set an undesirable precedent.*  
15 *The proposed variation to the minimum lot size for the 7(d) zone is not well founded and may set a precedent for similar approvals.*

Comment: Each application is assessed on the merits and circumstances of the case. The proposed variation to the minimum lot size for 7(d) zoned land is addressed later in this report.

16 *This proposal goes against the current approval. Allowing developers to modify an existing approval erodes the integrity of the planning process.*  
17 *Approval of this application will result in uncertainty and lack of confidence in the council approval process.*

18 *The modified proposal is not substantially the same as that approved by Council.*

Comment: The applicant has the opportunity to seek a modification to the consent under Section 96 of the Environmental Planning and Assessment Act 1979. For the purposes of Section 96 Council is satisfied that the modified development is substantially the same development as the development for which consent was originally granted. Accordingly Council may consider the application as submitted. Council is following due process by considering the application in accordance with its statutory obligations.

- 19 *The land will be destroyed or neglected if in private ownership.*  
20 *Ongoing management and enforcement of the Rehabilitation Action Plan under private ownership is at significant risk because: there is potential for change in ownership; legal action may be required; other parties may be involved (eg creditors and mortgagees); and the rehabilitation will require a long term commitment, very high skill set in environmental management and financial resources.*  
21 *The covenant placed over the land to ensure ongoing maintenance of the land has not been provided.*

Comment: If the application is approved the future owner of proposed Lot K92 will be responsible for the rehabilitation and ongoing maintenance of the 7(d) zoned land. Council has the ability to impose this requirement on the future land owner of proposed Lot K92 and legally enforce compliance. However, concern is raised over the capacity and ability of an individual land owner (as opposed to the developer or Council) to achieve this.

- 22 *Council's maintenance responsibilities should not be a reason to approve the application. Council will have to maintain the playground and other section of the reserve; the upkeep of this part of the reserve will not be significantly greater.*  
23 *The Council need to have regard for the community interest, not just that of the developer. Maintaining the public reserve is in the public interest.*

Comment: Under the current approval Council will be required to undertake ongoing maintenance of proposed Lots P4 (playground) and P5 (comprising both Public Reserve Lots R2 and R3). Council needs to consider all aspects of the application in the assessment and determination, including the impact on the local residents as well as the public interests of the wider community.

Comment:

- 24 *The existing access road to Council's sewer pump station has created privacy issues for the neighbouring property owner.*

Comment: Screening of the connecting footpath from neighbouring properties is included in the original and proposed RAP that is yet to be fully implemented. This application will not significantly alter this arrangement.

25 *The removal of the camphor laurel trees has created an eyesore.*

Comment: Exotic weed removal is a requirement of the RAP. The revised RAP seeks to extend the restoration timeline where trees can be poisoned and left in-situ, as opposed to clear felling methods required by Council's OS&RR section for areas to be dedicated to Council to reduce the risk of public liability arising from falling branches.

26 *Due to the size of the building envelope on K92 more tree removal will be required to accommodate a dwelling.*

Comment: The building envelope on proposed Lot K92 is similar to that which was previously approved. The building envelope on the lot will not change significantly.

27 *There is a real and measurable difference between 'public reserve' and a private 'life-style lot'.*

Comment: The main difference in this component of the application is the tenure of this portion of the site and the responsibilities in relation to rehabilitation and ongoing maintenance works.

28 *The revised Rehabilitation Action Plan reduces the rehabilitation of the 7(d) land. In particular, they are proposing a reduction in the rehabilitation of the land referred to as Work Zone 1B.*

Comment: An 80% native canopy cover and weed control remains a goal in the revised RAP but this is to be achieved over an extended timeframe (five to ten years).

29 *The proposal is not consistent with the objectives of the 7(d) zone.*

Comment: Addressed later in the report.

30 *Council support has been given to the proposal prior to appropriate public consultation.*

31 *The two week exhibition period is insufficient considering the complexity of both town planning and environmental issues.*

Comment: Several pre-lodgement meetings were held with the applicant and it has been understood that a formal amendment application would need to be lodged and assessed prior to any determination. The applicant has lodged this application to modify the development consent for assessment in accordance with the relevant legislation. For the purposes of transparency, this application has been reported to Council for determination. The application was exhibited in accordance with Ballina Development Control Plan 2012. A reasonable period has been allowed for the lodgement of public submissions, and all submissions have been considered.

32 *Council must consider the impact of the proposal in terms of the physical environment and social and community impacts.*

Comment: Agreed.



32 *The proposal to delete conditions 1.3 and 1.4 has the potential to significantly alter the density and profile of the approved allotments and increase the likelihood of duplex lot development.*

Comment: Addressed later in this report.

### **Applicable Planning Instruments**

#### **Ballina Local Environmental Plan (BLEP 2012)**

##### *Clause 2.3 - Zoning*

The land to which the proposed modification (predominately components 2 and 3) relates is partly zoned R2 Low Density Residential and partly zoned R3 Medium Density Residential under the provisions of the BLEP 2012.

The objectives of the R2 zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide development that is compatible with the character and amenity of the surrounding neighbourhood.*
- *To encourage housing and infrastructure that supports the ageing population.*
- *To provide for development that meets the social and cultural needs of the community.*
- *To encourage development that achieves the efficient use of resources such as energy and water.*

Comment: The proposed amendments do not raise any matters for concern in relation to the objectives of the R2 and R3 zones.

Since approval of the application Council has reviewed the zoning for the area in line with the State Government's Standard Instrument LEP. Under the Ballina LEP 2012 approved Lots K1-5, K15 and K20-K27 have been rezoned R2 Low Density Residential, with the remaining residential lots in the subdivision being zoned R3 Medium Density Residential.

It should be noted that the applicant has not obtained the consent of these property owners to modify conditions in relation to component 2 of this modification application which relate their land. Regardless, the majority of the allotments in stages one to three have already been developed, and it is considered that in relation to component 2 the provisions of the BLEP 2012 prevail over these conditions and therefore their deletion is not essential.

Component 3 of this modification application is now being dealt with under a separate development application.

**Ballina Local Environmental Plan (BLEP 1987)**

*Clause 9 – Zoning*

The land to which the proposed modification (predominately component 1) relates is partly zoned 7(d) Environmental Protection (Scenic Escarpment) under the provisions of the BLEP 1987.

The objectives of the 7(d) zone are:

- A The primary objectives are:*
  - a) to protect and enhance those areas of particular scenic value to the Shire of Ballina, and*
  - b) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas.*
- B The secondary objective is to enable development as permitted by the primary and secondary objectives for Zone No 1 (b), except for development which could conflict with the primary objectives of this zone.*
- C The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the visual impact being minimised as much as is reasonably practical.*

Comment: The current consent requires the developer to prepare and implement a RAP in relation to the 7(d) zoned areas (incorporating weed eradication and revegetation/rehabilitation works), prior to dedication of the land to Council as public reserve. An 80% native canopy cover is to be achieved under the RAP. Implementation of the RAP will ensure objective A) a) of the 7(d) zone is achieved. A RAP has already been submitted and approved by Council in accordance with the conditions of the subdivision consent.

Approval of this modification application will transfer the responsibility of implementation of the proposed revised RAP and ongoing maintenance of the land to the individual property owner of proposed Lot K92. Concern has been raised by the local residents and Council assessment staff as to whether the future land owner will have the capacity and ability to implement the RAP and maintain the land in an acceptable state in perpetuity. If the goals of the RAP cannot be achieved it would be considered that the proposal fails to meet the objectives of the zone.

The revised RAP does not specify a start date for actions under the plan, but indicates that the developer will only be responsible for the rehabilitation works on proposed Lot K92 (private land) until the land in question is sold. It also seeks to extend the period by which the rehabilitation will be completed and recommends a restriction be placed on the title of proposed Lot K92 to require on-going maintenance of the revegetation works by the owner.

**Minimum Lot Size**

Component 1 of the application seeks to realign the boundaries between approved Lot K92, and reserve Lots R2 and R3 to create one public reserve of 15,300m<sup>2</sup> (described as proposed Reverse No. R2) and one parcel of land of 12,213m<sup>2</sup> (described as proposed Lot K92) which comprises 11,667m<sup>2</sup> of 7(d) zoned land previously nominated for dedication to Council as public reserve, and approved residential Lot K92.

Details of the lot areas proposed under Component 1 of the application are as follows:

<b>Proposed Lot</b>	<b>Total Proposed Area</b>	<b>Proposed Area 7(d) zoned</b>	<b>Variation to Minimum Lot size for 7(d) zone</b>
K92	14,213m <sup>2</sup>	11,667m <sup>2</sup>	97.08%
R2 (Public Reserve)	15,300m <sup>2</sup>	9,745m <sup>2</sup>	97.56%

The applicant has submitted a written SEPP 1 objection to vary the minimum lot size (40 hectares) in the 7(d) zone under the Ballina LEP 1987. However, in accordance with the relevant judgments of the NSW Land and Environment Court (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163), SEPP 1 is not applicable to a Section 96 modification. Notwithstanding this, the proposed variation to this development standard must be considered under Section 79C of the *Environmental Planning and Assessment Act 1979*.

The applicant's justification for the variation to the minimum lot size is summarised as follows:

- The 40 hectare standard was established as a universal numerical standard based on traditional agricultural methods and activities
- The development achieves the objectives of the 7(d) zone
- The environmental attributes of the 7(d) zoned land will be protected via the amended Rehabilitation Management Plan
- Proposed Lot K92 will have a building envelope to restrict the location of a future dwelling house on this allotment, which is contained wholly within the R3 zone
- The existing land zoned 7(d) is currently well below 40 hectares
- The proposal will reduce the amount of land dedicated to Council, thus reducing the ongoing maintenance burden
- The management of the 7(d) zoned land is consistent with the approach of the other developments within the Wollongbar Urban Expansion Area
- The proposal will not create an undesirable precedent
- The development, as proposed, will facilitate the subdivision of the site in accordance with Council's strategic plans.

## **8.2 DA 2009/664 - Sec 96 - Modify Subdivision - Bolwarra Circuit, Wollongbar**

Comment: NSW Department of Planning and Environment has raised no objection to this component of the modification and advised that no further concurrence for the variation to the development standard relating to the minimum lot size for 7(d) zoned land is required.

The principal purpose of the current application is to excise approximately 1.3 ha of land from the area previously approved as P5 public reserve and amalgamate it with the approved residential allotment K92.

Approved public reserve Lots R2 and R3 are well under the minimum lot size of 40 ha. The subdivision of these lots was supported under the assessment of the original application on the basis that both would be dedicated to Council as public reserves. Whilst no objection is raised specifically to the size of proposed lots P5 and K92, the configuration and future tenure of the land is not supported as Council cannot be reasonably confident that the future owner of proposed lot K92 will have the resources to implement the RAP and maintain the land in perpetuity. Accordingly, there is a reasonable expectation that the development as modified will not meet the objectives of the zone.

Furthermore, it is unreasonable for the developer, after completing three of the four stages of the development, to now seek to transfer their responsibilities for the rehabilitation works onto another party. It has been argued by the applicant that Council has in the past allowed the amalgamation of 7(d) zoned areas with residential allotments in the Wollongbar Urban Expansion Area (WUEA). However, this has only occurred under different circumstances to the current application.

### **Ballina Shire Development Control Plan 2012 (DCP 2012)**

The land is within the WUEA as identified under the DCP 2012. Generally the proposed modifications to the development do not raise any significant issues in relation to DCP 2012, including Chapter 3 – Urban Subdivision. However as stated previously, concern is raised over the likely success of the RAP if the implementation lies solely/predominately with the future owner of proposed Lot K92. Whilst a restriction can be placed on title to require these works to be undertaken, this may be difficult for Council to enforce.

### **Comments from Open Space & Resource Recovery (OS&RR)**

Council's OS&RR section has provided the following comments on the application.

*The proposed revised RAP submitted with this modification application has been reviewed by OS&RR and is suitable to be approved. There are benefits to Council by transferring the land into private ownership which includes the reduced maintenance requirements to Council in perpetuity. The cost to Council to maintain a fully rehabilitated subtropical rainforest area as public reserve is approximately \$2,500 per hectare per year. No resources are provided for Council's management of all new subdivision bushland areas once handed over from the developer so the risk of the recently converted native bushland reverting back into weed infested bushland is high. Weed infested bushlands would cost Council approximately \$10,000 per hectare per year to rehabilitate so the under resourced financial liability grows.*

*There is also a benefit to council in not taking on the perimeter liabilities of future bushfire hazard reduction requirements, tree hazard management and steep inaccessible terrain. If the S96 and therefore the amended RAP is not accepted then the original approved RAP would be implemented. The original RAP approved in 2010 does not meet current subdivision bushland handover standards with tree hazard buffers from all urban boundaries. Council may need to address these matters during land management resulting in significant resource requirements particularly with regards to large tree hazard management along very steep terrain.*

Comment: Approval of the application will reduce Council's ongoing maintenance costs. However, it may also be unreasonable to expect that an individual property owner will have the resources and finances to complete the rehabilitation works and maintain the vegetation and bushfire asset protection zones in perpetuity in this case. As the existing RAP was approved in 2010 it is noted that it does not meet the current bushland handover standards. This alone is not adequate justification for approval of this modification application.

### **Conclusions**

The majority of approved residential lots in the subdivision have been realised. As the developer has taken the benefit of the consent they should also accept the burden of the conditions, including the full rehabilitation of the 7(d) zone areas. Given the nature of the vegetation and terrain, it is considered unreasonable for the developer or Council to transfer the responsibility of rehabilitation and ongoing maintenance of these areas to an individual property owner in this particular case. If this occurs it is unlikely that the rehabilitation goals of the RAP will be achieved.

No objection is raised to components two and three of the application. However, these components are mere 'house-keeping' changes and should the current application be refused by Council they will not necessarily impact on the completion of the development.

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

#### **Option One**

That Council approve the application on the basis that it is in the interest of the wider community for Council not to take ownership of the subject land (after it is rehabilitated by the developer) and it accepts that the future land owner of approved Lot K92 is likely to be reasonably able to take on the responsibility of implementing the RAP in full and maintaining the property in perpetuity.

## **8.2 DA 2009/664 - Sec 96 - Modify Subdivision - Bolwarra Circuit, Wollongbar**

### Option Two

That Council refuse the application on the basis that:

- a) given the nature of the terrain and vegetation, it is not in the public interest to allow for the transfer the responsibility of rehabilitation/restoration and ongoing maintenance of the 1.3 ha portion of land (previously approved as part of P5) to an individual property owner by amalgamating with the approved residential lot (known as approved Lot K92)
- b) the developer should be responsible for the rehabilitation of the 7(d) zoned land, and,
- c) Council accepts the dedication and future maintenance of the area identified as P5 (Public Reserve) as per the original consent.

This is the preferred option for the reasons discussed in this report and outlined in the recommendation.

### **RECOMMENDATION**

That the Section 96 application to amend the lot layout, delete conditions 1.3 and 1.4 and amend condition 2.2 of DA 2009/664 at Lot 100 DP 1212282 Bolwarra Circuit, Wollongbar, be **REFUSED** for the following reasons.

1. The proposed amendments are unlikely to achieve the objectives of the 7(d) zone, as expressed in the Ballina LEP 1987.
2. It is unreasonable for the developer to devolve responsibility of rehabilitation and ongoing maintenance of the subject land onto another party.
3. Approval of the application is not in the public interest.

### **Attachment(s)**

1. Locality Plan
2. Approved Plans
3. Proposed Plans
4. Letters of Objection
5. Confidential Letter of Objection (not for publication) (Under separate cover)

**8.3 DA 2015/320 - Sec 96 - 18 Northcott Crescent, Alstonville**

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**8.3 DA 2015/320 - Sec 96 - 18 Northcott Crescent, Alstonville**

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<b>Applicant</b>	I & T Jackson
<b>Property</b>	Lot 71 DP 800199, No. 18 Northcott Crescent, Alstonville
<b>Proposal</b>	To modify Condition No. 3 of the issued consent to allow for Colorbond Sheeting construction of the front elevation of the approved Storage Sheds rather than the required masonry construction
<b>Effect of Planning Instrument</b>	The land is zoned IN1 General Industrial under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

**Introduction**

On the 10 July 2015 Council, under delegated authority, approved the erection of self-storage premises containing 30 units of varying sizes, associated signage, driveway access/egress, car parking and landscaping.

Although the applicant had proposed the use of texture coat blue board within the front elevation, Council's Environmental Health Group required the replacement of this material with masonry construction as required by Council's Development Control Plan, Chapter 5 Industrial Development (DCP).

Consequently, Condition No. 3 of the issued consent states:

- 3. The front elevations of the buildings fronting Northcott Crescent are to consist of masonry construction (rather than the proposed texture coat blue board wall cladding).*

The applicant has subsequently lodged a Section 96 Modification Application requesting that the masonry construction requirement for the front Northcott Crescent elevation be replaced by colorbond sheeting, (i.e. not the originally requested texture coat blue board wall cladding).

Due to the requested variation of the recently re-stated masonry DCP requirement and the potential precedent effect any variation would have, the Section 96 is reported to Council for determination.

**Reportable Political Donations**

Details of known reportable political donations are as follows:

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

## Report

As stated above, the requirement for masonry front elevation construction has been a provision within Council's DCP relating to development within Industrial zones that has recently been re-stated.

The masonry construction requirements have been adopted into Council's DCPs since 1994 in an effort to provide a design of industrial buildings that establishes a minimum standard streetscape presentation with the selective use of materials of suitable texture and colour.

The previous DCP No. 1 – Urban Land, Policy Statement No. 5 – Industrial Development stated:

*“The front elevation of industrial buildings shall be clad in face brick or selected masonry materials (not standard concrete block). When proposing the use of cladding it shall be suitably pre-coloured.”*

Similar provisions were most recently reaffirmed and reinforced by Council's consultants (GHD) and review panel as part of Council's formulation and adoption of the current Ballina Development Control Plan 2012, Chapter 5 Industrial Development.

Council's DCP renewal program in 2012 included a specific review of provisions relating to industrial development. This was done by GHD and included benchmarking with other local government areas. The review recommended retention of the provision requiring use of masonry materials on the front of buildings.

Consequently, it appears that since 1994 and as reaffirmed in 2012, Council wishes to maintain a high standard finish to the front elevation of industrial buildings to improve the appearance of the front elevation of buildings within the streetscape.

Currently, Section 3.1.3 of Chapter 5 outlines:

### **Building Appearance – Control**

- i. Exterior walls of buildings, including any outbuildings, shall comprise materials with a low reflective index and must not be constructed using uncoated/untreated metal sheeting, fibre-cement or like materials;*
- ii. The full length of any exterior wall facing a road frontage, including any adjoining exterior wall for a minimum length of 5 metres, must be of masonry construction and painted where of plain concrete finish;*

The Section 79C report prepared by Council's Development and Environmental Health Group in relation to the assessment of DA 2015/320 noted at Chapter 5 of the DCP:

### **A. Element – Building Design Requirements**

*The building line for the street frontage is 6m which is compliant and the part texture coat blue board front panels (although presenting similar to masonry construction) is a fibre cement material and is therefore inconsistent with the DCP.*



*Consequently, a condition of consent will require the blue board wall cladding to be replaced with masonry and the stramit uniguard cladding (similar to colorbond) facing Northcott Crescent, although not strictly masonry construction in accordance with the DCP, is considered acceptable as the metal cladding is not an unfinished/unpainted material and will therefore present well with a low reflective index and break up the front façade.*

*The side and rear boundaries will have a zero lot line. This is also considered acceptable and will be finished in uniguard cladding, therefore the returns of the building, where visible due to the setbacks of adjoining buildings will also present well.*

*It should be noted that the majority of the existing storage sheds within the Russellton Industrial Estate have masonry finishes to the building(s) frontage.*

Although the applicant, as part of the Section 96 Modification Application, has highlighted examples of a number of buildings that have colourbond (or similar) frontages (copy attached), it should be noted that some of these buildings were built prior to any DCP provisions relating to masonry construction (i.e. prior to 1994).

Since receiving the Section 96 Modification Application, Council Officers have reviewed various development applications for buildings within the Russellton Industrial Estate and have reaffirmed that the majority of existing buildings (including storage sheds) have some form of masonry finish to the street frontage(s).

Further, within Council's Southern Cross Industrial Estate, to reinforce the requirement for masonry construction, a restriction on title was also applied so that prospective purchasers were fully aware of such future construction requirements. Russellton Industrial Estate does not have this restriction on title.

Council's Environmental Health Group has identified for Council's consideration a specific example, similar to that the subject of this report, of an applicant's request to vary the masonry requirement via DA 2003/897. Although DA 2003/897 related to a building's finish in the Southern Cross Industrial Estate, it is relevant to the current Russellton Industrial Estate proposal as it demonstrates that where a variation to the masonry finish has been specifically requested, Council chose to maintain its DCP requirements relating to industrial buildings/development.

DA 2003/897 was reported to Council's Planning Committee on 14 August 2003 (copy attached) where Council had an option to part clad the building in concrete to a minimum height of 2.9 metres and the remainder of the street frontage part colourbond cladding. Council resolved to maintain the DCP requirements applicable at that time and that:

*"The front elevation when viewed from Piper Drive shall be clad in face brick or selected masonry materials (not standard concrete block) and shall be suitably pre-coloured."*

### **Conclusions**

It is evident that, although there may be examples of colorbond (or similar) cladding within the Shire's Industrial Estates (both in Southern Cross and Russellton) the Council has, since the DCP provisions were first introduced, generally maintained that the front facades of industrial buildings should be of masonry construction to ensure a consistently higher standard of visual presentation when viewed from the street system. This intention has been specifically re-stated in the recent 2012 DCP project.

Specifically, in relation to the current request, the additional cost of providing a masonry finish should not be significant based on the limited façade that would need to be treated.

As the Council has only relatively recently reaffirmed the DCP provisions as part of its renewal program in 2012, it is considered that the Council should consistently maintain the masonry finish to industrial building frontages across the Shire.

If Council were to vary the requirement for masonry construction in this instance, the DCP would also need to be amended to reflect this position given the precedent it would establish. This would also affect the presentation of buildings in the Southern Cross Industrial Estate, unless different controls were to apply to the Shire's industrial estates.

### **Options**

1. That Council refuse the Section 96 Modification Application requesting that the front elevation/façade be clad in colorbond materials rather than masonry given the long held and recently re-stated preference for masonry finishes because the proposal is inconsistent with Council's DCP provisions and is not in the public interest.
2. That Council approves the Section 96 Modification Application to allow colorbond cladding to the front elevation/façade of the self-storage sheds as proposed.

Option one is recommended as per the contents of this report.

**RECOMMENDATION**

That the Section 96 Modification Application to DA 2015/320 at Lot 71 DP 800199, No. 18 Northcott Crescent, Alstonville to modify Condition No. 3 of the issued consent to allow for Colorbond Sheeting construction of the front elevation of the approved Self-Storage Sheds rather than the required masonry construction be **REFUSED** for the following reasons:

1. The proposal is inconsistent with Council's DCP provisions.
2. The proposal is not in the public interest.

**Attachment(s)**

1. Locality Plan
2. Approved Plans
3. Council's Consultant's DCP Renewal Document
4. Current DCP Requirements
5. Applicant's Photographs of Colourbond Examples
6. DA 2003/897 Report & Resolution

## 8.4 DA 2015/138 - Coastal Protection Works, Skinner and Camden Streets

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### 8.4 DA 2015/138 - Coastal Protection Works, Skinner and Camden Streets

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<b>Applicant</b>	Civiltech Consulting Engineers
<b>Property</b>	Lot 10 DP 1126929, Lot 1 DP 1119099, Lot 3 DP 1079380, No. 2 Skinner Street and Nos. 3 & 5 Camden Lane, Ballina
<b>Proposal</b>	To undertake coastal protection works comprising a dry rock revetment wall and partial filling of land behind the revetment wall within the subject lands
<b>Effect of Planning Instrument</b>	The lands are zoned R2 Low Density Residential and W1 Natural Waterways under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject lands are depicted on the locality plan attached

#### Introduction

On 26 March 2015 Council received a development application for the construction of "...an erosion protection retaining wall, including the removal of vegetation..." along the eastern boundary of the following sites:

Parcel	Address	Lot/DP	Owner	Area
1001966	2 Skinner Street	Lot 10 DP 1126929	KL Jambor	1,653m <sup>2</sup>
1001640	5 Camden Lane	Lot 1 DP 1119099	JA Carmont	1,428m <sup>2</sup>
1000693	3 Camden Lane	Lot 3 DP 1079380	WG Edwards	1,227m <sup>2</sup>
16046	1 Camden Street	Lot 33 DP 872966	MJ Gribble	1,227m <sup>2</sup>

Although the attached design plans indicated a triangular shaped allotment further to the east of Lots 1 and 10 within North Creek, it should be noted that this privately held Lot 43 DP 1009315 is not party to the application.

The lots have direct frontage to North Creek (and Lot 43 DP 1009315) with the immediate intertidal foreshore and bank located within the eastern boundaries of the lots. The subject lands have generally accreted eastwards and these accreted lands (or current shoreline) are currently unprotected by engineered structures from the potential processes of estuarine erosion. It should be noted, however, that at least one existing rock wall (now largely buried by accreted lands) understood to be approximately two metres high was built sometime in the 1980s further westward of the current proposal as indicated on attached plans.

Additionally, during the assessment of the current proposal, the owner of the southern-most Lot 33 DP 872966, Mrs Gribble, withdrew her participation in the application on the basis that she did not believe the further construction of the proposed wall was warranted at this time.

#### **8.4 DA 2015/138 - Coastal Protection Works, Skinner and Camden Streets**

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During assessment the proposal was revised three times and was subsequently placed on public exhibition twice. The revisions generally related to the positioning of the wall further to the west to that originally proposed and changes to the design of the wall (including the deletion of any mangrove clearing) so that the toe of the wall is located at the base of the existing bank in front of the subject allotments and limiting the height of the wall to match the top of the existing bank utilising a batter of 1h:4v. Due to the withdrawal of Lot 33 DP 872966 (Mrs Gribble) from the proposal, the length of the wall was also reduced (although the footprint has increased due to the amended sloping rather than vertical wall design).

These revisions were undertaken by the applicant subsequent to NSW Fisheries and NSW Office of Water (as Integrated Approval Bodies) not issuing General Terms of Approval (GTA's) to the originally submitted and secondly revised plans.

It is only recently that both NSW Fisheries (under the Fisheries Management Act 1994) and NSW Office of Water (Water Management Act 2000) were prepared to issue GTA's based on the third set of revised plans. It is the most recent thirdly revised plans that are the subject of this report (refer attached revised plans and responses from relevant Government Agencies).

The subject lands are currently zoned part R2 Low Density Residential Zone and part W1 Natural Waterway Zone under the Ballina Local Environmental Plan 2012 (BLEP 2012). The proposed wall is located entirely within the W1 Natural Waterway Zone as indicated in the attached zoning plan.

The current BLEP 2012 zone boundary reflects the zone boundary in the previous BLEP 1987 that formerly applied to the subject lands. The BLEP 1987 zone boundary was based on the shoreline boundary of the lots at the time of the preparation of the BLEP 1987. The zoning of the land was considered and reviewed during the preparation of the BLEP 2012. At the time it was determined appropriate to apply the waterway zone to this component of the lands given the environmental qualities of the sites.

Councillors may recall that a report was presented to Council's Ordinary Meeting of 27 March 2014 requesting an amendment to the BLEP 2012 to enable the permissibility of coastal protection works (such as a seawall or revetment wall) on the four properties. This was due to "coastal protection works" being a prohibited land use within the W1 Natural Waterway Zone.

Following a briefing held on 6 May 2014, a further report was presented to Council's Ordinary Meeting of 26 June 2014 providing an alternative approach to the use of the R2 zone, being an enabling clause in the BLEP 2012 which would allow development on the four allotments for the purpose of coastal protection works whilst retaining the existing zoning configuration.

Council resolved, amongst other matters:

*"That the Council submit a planning proposal to amend Schedule 1 of the Ballina Local Environmental Plan 2012 and insert 'coastal protection works' as an additional permitted use (with consent) for Lot 10 DP 1126929, Lot 1 DP 1119099, Lot 3 DP 1079380 and Lot 33 DP 872966 (Camden Street, Camden Lane and Skinner Street, Ballina) to the Department of Planning and Environment for review and Gateway determination..."*

## **8.4 DA 2015/138 - Coastal Protection Works, Skinner and Camden Streets**

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Schedule 1 Additional Permitted Uses of the BLEP 2012 was subsequently amended on 16 January 2015 and now allows consideration of development for the purposes of coastal protection works (subject to development consent which is now being sought under the current application that is the subject of this report).

Further to these amendments to the BLEP 2012 to allow consideration of the works, the allotments also have relevant history in relation to erosion protection works.

In January 2012, Council officers investigated the placement of sandbags within the foreshore area of No. 2 Skinner Street (Lot 10 DP 1126929) that had not been approved by Council. The sandbags had apparently been placed to mitigate the effects of coastal erosion.

In response, the landowner advised that the sandbags had been placed as emergency protection to prevent the loss of landscaping. It was also advised by the landowner that a more permanent protection structure would be sought in conjunction with the adjoining landowners to provide protection against coastal erosion. Following further assessment by Council officers, no enforcement action was taken against the landowner in relation to the placement of the sandbags.

In March 2013, DA 2013/75 was lodged with Council on behalf of the four landowners seeking development consent for the provision of a rock retaining wall along the foreshore frontage of the subject sites. The development application defined the proposal as "erosion protection works". The design and location of the proposed protective wall was the same as that originally lodged under the current DA 2015/138.

The proposed rock wall was to be located in the W1 Natural Waterway Zone under the BLEP 2012. The statement of environmental effects (SEE) submitted in support of DA 2013/75 was unclear in detailing the "erosion protection works" and, in relation to the BLEP 2012, what consent was being sought for. While the SEE referenced the W1 Zone as the location of the proposed rock wall it also indicated, in reference to the W1 Zone, that "it is considered that [the W1 zone] is an anomaly in the zoning and is anticipated to be rectified in due course."

Following a preliminary assessment of DA 2013/75 by Council staff, further information was requested from the applicant. Clarification was sought from the applicant about how the development would be permissible on the land.

As a result of coastal protection works being prohibited development in the W1 Zone at the time, the development application was subsequently withdrawn by the applicant and has been re-lodged as part of the current application due to the enabling clause of the BLEP 2012.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Public Exhibition**

As stated previously in this report, both the originally lodged application and the thirdly revised location, repositioning, and design plans for the wall/filling were placed on public exhibition. Council received 17 submissions of objection.

The issues raised in the submissions (and an additional petition containing 28 signatures against the proposal) during both the original exhibition and the re-exhibition are summarised as follows:

- No evidence that this environmentally sensitive area requires protection, (i.e. there needs to be tidal hydraulic survey) and the wall may cause other issues particularly as Lot 33 DP 872966 (Mrs Gribble) has withdrawn from the application
- The wall is unnecessary and the wall is an opportunistic re-alignment to gain more land
- The enabling clause 2.5 and Schedule 1 of the BLEP 2012 permits erosion protection works only, it does not allow the containment of lands gained by accretion where erosion is not occurring
- Reduced/restricted public access along the foreshore/beach at high tide
- Two of the three lots already have a rock wall built in the 1980's (and possibly another wall built in the 1960's). The existing wall built in the 1980's should simply be improved and extended to provide the protection sought rather than another wall close to the intertidal region
- A boardwalk or similar should be constructed to allow public access along the foreshore
- Cumulative impact on coastal vegetation and marine life
- The accreted lands may be reclaimed by the river by natural processes
- Inadequate design plans
- The design will not protect the properties in storm events
- The tide will sweep around the wall and create further erosion
- Flooding/surge impacts to Skinner Street and Camden Street from added pressure to stormwater
- Aesthetics of the wall will be displeasing
- Heavy machinery in the construction will do major damage to the intertidal habitat and other infrastructure
- Inadequate public exhibition of the proposal
- Not in the public interest

A copy of each submission is attached. These issues/concerns will be considered throughout the report.

### **Report**

The proposed development has the potential to impact on the environment in a number of ways. These impacts may be either short term, limited to the period of construction, or longer term associated with the continuing presence of the proposed revetment wall.

#### **8.4 DA 2015/138 - Coastal Protection Works, Skinner and Camden Streets**

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An assessment of the application under the Coastal Protection Act 1979 and Section 79C(1) of the Environmental Planning and Assessment Act 1979 and associated instruments has been undertaken, with this report focusing on the following relevant crucial issues which include the associated matters raised by submitters.

##### **Ballina Local Environmental Plan 2012 (BLEP 2012)**

As previously stated in the report the lands the subject of the application are partly zoned R2 Low Density Residential and part W1 Natural Waterway, with the proposed wall located entirely within the W1 Natural Waterway Zone.

Although there is an enabling clause 2.5 incorporating Schedule 1 (1AA) of the BLEP 2012 which allows consideration of the coastal protection works on the allotments, it is still a requirement that any development must be considered having regard for the objectives of the applicable land use zone.

Therefore particular consideration must be given to the compatibility of this development with the objectives of the W1 Natural Waterway Zone.

The objectives for the W1 Zone are:

- *To protect the ecological and scenic values of natural waterways.*
- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- *To provide for sustainable fishing industries and recreational fishing.*
- *To ensure that development maintains and enhances the integrity of aquatic ecosystems and biodiversity.*

Despite both NSW Fisheries and NSW Office of Water issuing GTA's for the revetment wall, it is arguable whether such a development is compatible with the W1 Zone objectives for the following reasons.

The works will result in the potential for adverse impacts on what is an environmentally sensitive site and Councillors will need to determine if the conditions proposed to be applied to any consent by both Council and other relevant regulatory bodies will satisfactorily mitigate environmental impacts.

In addition, the placement of the wall may change the existing natural foreshore processes along the frontages of these properties and those immediately adjoining that are not party to the application and will likely result in minor impacts to the public amenity of the immediately adjoining foreshore area (having regard for the fact that the titles of the subject lands do extend further eastwards of the wall's designed location).

The applicant contends that the W1 zoning is an anomaly and the revetment wall is "...in keeping with the character of the locality" and it is considered that the application is substantially reliant upon the enabling clause 2.5 and Schedule 1 (1AA) of the BLEP 2012.

Notwithstanding the W1 Zone objectives, Schedule 1(1AA)(2) is also very specific as to what additional permitted uses may be considered, being:

"Development for the purposes of coastal protection works is permitted with development consent."



Therefore Council must be satisfied that the proposed wall/works are indeed “coastal protection works”, which are defined under the Coastal Protection Act 1979 (as adopted by the BLEP 2012) as meaning:

*“activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters and includes seawalls, revetments, groynes and beach nourishment.”*

Further “coastal hazards” are also defined under the Coastal Protection Act 1979 as:

*“(a) beach erosion,  
(b) shoreline recession,  
(c) coastal lake or watercourse entrance instability,  
(d) coastal inundation,  
(e) coastal cliff or slope instability,  
(f) tidal inundation,  
(g) erosion caused by tidal waters, including the interaction of those waters with catchment floodwaters.”*

Some public submissions have questioned whether the proposed wall will reduce the impact of coastal hazards on the subject properties and if indeed coastal hazards are actually occurring on the subject properties at this time due to the natural accretion of land that has been continuing to occur over a substantial number of years.

If this view was supported by the Council, and due to the specific nature of both the enabling clause of the BLEP 2012 and the permissible land uses within the W1 Zone, the proposed wall would be prohibited development.

Consequently, the Council must be satisfied that the proposed wall is a “coastal protection work”. This is an important consideration in the fundamental permissibility of the proposed works.

In relation to the other relevant assessment clauses, namely Clause 5.5 Development within the coastal zone, Clause 5.7 Development below mean high water mark, Clause 7.1 Acid sulfate soils, Clause 7.2 Earthworks, Clause 7.3 Flood planning, refer to assessments outlined below and particularly to the SEPP 71 Section of this report.

**Coastal Protection Act 1979 (CPA)**

Two of the main objectives of the CPA which are particularly relevant to the consideration of this application are:

*(d) to promote public pedestrian access to the coastal region and recognise the public’s right to access, and  
(e) to provide for the acquisition of land in the coastal region to promote the protection, enhancement, maintenance and restoration of the environment of the coastal region.*

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In addition, Section 55M of the Coastal Protection Act requires the consent authority to be satisfied in regard to a number of matters before granting development consent for coastal protection works for erosion and accretion of lands, being:

*(1)(a) the works will not over the life of the works:*  
*(i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or*  
*(ii) pose or be likely to pose a threat to public safety, and*

*(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works:*  
*(i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,*  
*(ii) the maintenance of the works.*

*(2) The arrangements referred to in subsection (1)(b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:*

*(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following:*

*(i) the owner or owners from time to time of the land protected by the works,*

*(ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,*

**Note.** Section 80A (6) of the Environmental Planning and Assessment Act 1979 provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

*(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the Local Government Act 1993).*

*(3) The funding obligations referred to in subsection (2)(a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.*

As the Statement of Environmental Effects submitted by the applicant was silent in relation to the CPA and particularly the maintenance and provision of public access to and along the foreshore area of North Creek immediately east of the subject properties, Council requested that this be specifically addressed.

The applicant's response of 2 December 2015 is attached and states that:

*"The proposal will not unreasonably limit public access to the beach as there are existing public access opportunities via Norton Street, Skinner Street and Camden Street and the proposed works are entirely within the boundaries of privately owned land."*

In addition to this, the applicant also provided advice from one of the land owners, Mr Carmont, dated 30 November 2015 confirming that they (i.e. the three land owners') are not prepared to provide any legal access along the foreshore and that the status quo should remain for various reasons (also attached).

As outlined above, the CPA in conjunction with State Environmental Planning Policy No. 71 and the NSW Coastal Policy all seek to promote public access to and along coastal foreshores to be protected, maintained, improved or new opportunities created as part of the consideration of the current application.

The existing status quo does not allow the public on-going access along this section of foreshore. There are no legally binding easements and nor has there been proposed dedication of land for public use and therefore the current public access across the privately owned land may be denied or restricted at any time by any of the current or subsequent landowners. Without the provision of an easement or the partial dedication of private lands as part of this current development application, Council will need to give careful consideration to whether the proposal meets the objectives of the CPA and other relevant legislation.

Important key considerations in relation to the above are:

- (i) The proposed wall is to be placed within the boundary of the subject lands, albeit in the intertidal zone of North Creek, for what the applicant contends is to protect them from coastal erosion. Even though there may be a strong desire by the land owners to construct coastal protection works to avoid potential loss or damage; this is often not a preferred option in mobile coastal/estuarine environments that may be adversely impacted by revetment walls.

The Coastal Protection Act does allow for coastal protection works including hard protection structures if erosion presents an immediate threat to public safety, or property or infrastructure that is not expendable.

Coastal protection works can consist of hard structures such as revetments that armour and fix the position of the shoreline, and/or soft works such as beach nourishment which replace lost sediment and reinstate a buffer zone.

Whilst revetments may halt landward migration of the shoreline, they may adversely impact the adjoining land and foreshore, by:

- Lowering of the sand levels of the foreshore immediately in front of the revetment, often resulting in the loss of a useable beach.

- Reflecting wave or tidal energy off the structure resulting in an inability of sand to build-up seaward of a revetment.
- Causing accelerated erosion at the terminal ends of a revetment, resulting in significant scour pockets on adjoining land which encourage the construction of further revetments to mitigate the accelerated erosion.
- Causing an associated loss or degradation of coastal resources and habitat.

Consequently, it is important to note that revetments may only prevent further erosion of the land directly protected by that structure. Revetments may not provide a coastal management benefit to adjoining areas or address the primary cause of erosion.

Any proposal for a revetment wall should demonstrate a threat to development. The applicant's Engineering Geologist (Coffey Geotechnics) in May 2012 has noted "*...It appears that the fluvial system in North Creek is currently depositing sediment, providing additional support to the eastern lot boundaries...The erosive events appear to be overridden by the accretionary processes...and as such we anticipate that in the future the area east of the residences will continue to form new land as the juvenile mangroves grow and spread*".

As can be seen from the attached aerial photography from 1967 to 2012, the lands immediately in front of these properties have been accreting over a substantial number of years, i.e. a cyclical process. Even though there have been significant storms and flooding events during this time as outlined by the applicant, of recent times natural land accretion appears to have replenished damage after the event(s) to this locality.

Therefore the applicant's contention that the need for erosion protection is due to recent erosive events and the need for the owners to otherwise implement on-going temporary control measures has not been clearly demonstrated given the apparent cyclical but overall recent accretion of lands in this locality.

If the Council considered that the lands' vulnerability to storm damage and flooding events did not pose an immediate threat of erosion, the construction of the proposed permanent revetment wall (given that one is partially constructed already) may not be warranted in the circumstances when considered under the provisions of the Coastal Protection Act.

Notwithstanding this consideration, the Council must be mindful of the proposed wall's situation in the context of other existing coastal protection works/walls in the locality (which are generally of a vertical/steep rock construction). The Coastal Protection Act calls for a strategic approach to these works and although the applicant contends that the proposed works will provide "the missing link", this was prior to Lot 33 DP 872966 being withdrawn from the application. Additionally, the Council is also not party to the application (i.e. in relation to the public access lands of Camden and Skinner Street road reserves). The potential impact on these adjoining lands once the wall has been

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constructed has not as yet been confirmed by the specialist engineering advice that is proposed to be conditioned should the application be approved.

- (ii) Although public access directly to North Creek will not be impeded, as public access is obtained elsewhere from public road reservations, the public will continue not to be able to have legal access along the foreshore over the subject private lands as there are no legally binding easements here. The only access available would be reliant upon the continued practise by current owners that allows people to walk across the private landholdings.
- (iii) The proposed wall does not pose a threat to public safety as it is proposed to be located entirely within private lands.
- (iv) The owners of the subject lands, by locating the wall within their property, adopt responsibility for its ongoing maintenance.
- (v) If approved, the owners may need to agree to be bound by reasonable legally binding obligations regarding ongoing maintenance, subject to consultation as required by Section 55M of the CPA.

#### **State Environmental Planning Policy No. 71 – Coastal Protection (SEPP 71) & NSW Coastal Policy**

The subject lands are located within the “Coastal Zone” for the purposes of SEPP 71. The lands are also within a “sensitive coastal location” being within 100 metres of high water mark of the estuary; however the proposed development is not “significant coastal development” for the purposes of SEPP 71.

Similar to the CPA, Clause 7 of SEPP 71 requires the matters set out in clause 8 (also referring to clause 2) of the Policy to be taken into account by the consent authority when it determines a development application to carry out development on land to which the Policy applies.

#### **Clause 2 – Aims of Policy**

*“(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales Coast, and”*

**Assessment:** The proposed development is located on privately owned land and according to relevant Government Agencies will not have an adverse effect upon the natural, cultural, recreational and economic attributes of the New South Wales Coast subject to conditional mitigation measures. This riverfront locality has been historically developed for residential purposes; however it is accepted by the applicants that there will be a need to demonstrate by specialist design analysis that the fluvial and tidal hydraulic impacts of the wall will be acceptable. If approved, this detail should be required to be satisfactorily provided prior to the issue of the Construction Certificate.

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The fluvial and tidal reports will need to demonstrate that the wall's construction will alleviate any underlying shoreline recession and erosion on the subject lands whilst not adversely impacting on adjoining lands not subject of this application.

*“(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and”*

**Assessment:** The proposed development will not improve existing public access along the estuarine foreshore as the proposed works are entirely within private lands and the application does not propose to provide public access either immediately landward or seaward of the wall. The applicants' contention that the public can utilise what would be the Norton Street road reservation is not currently a practical option as the road reservation is underwater for substantial periods.

*“(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and”*

**Assessment:** The subject lands are privately owned and have not been identified by Council or any other Government Agency as being required for the provision of new opportunities for public access to the coastal foreshore. Despite this, Council still needs to be mindful of identifying any suitable new opportunities for improved public access along the foreshore in its consideration and determination of these types of application.

*“(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and”*

**Assessment:** The subject lands have been used for residential purposes for an extensive period of time and extensively modified for this purpose. The sites have not been identified as being significant for Aboriginal cultural heritage. Refer to further comments later in this report.

*“(e) to ensure that the visual amenity of the coast is protected, and”*

**Assessment:** The proposed wall will be visually compatible with existing protective works within North Creek. It will not cause any significant adverse impact on the scenic amenity of the river at this location due to its limited height.

*“(f) to protect and preserve beach environments and beach amenity, and”*

**Assessment:** Construction of the revetment wall proposed by this development application will, if approved, need to be the subject of further specialised engineering assessment and certification to demonstrate that the wall will not adversely impact the waterway and adjoining lands and will not have an adverse impact on the adjoining beach amenity upon low tides.

*“(g) to protect and preserve native coastal vegetation, and”*

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**Assessment:** The subject lands contain scattered native coastal vegetation (mangroves). All coastal vegetation at this location is outside of the proposed footprint of the wall or within North Creek and have satisfactory separation distances to alleviate any potential for impact on vegetation from wave action off the wall etc.

*“(h) to protect and preserve the marine environment of New South Wales, and”*

**Assessment:** The proposed development has no adverse impact on the marine environment of the locality and incorporates suitable measures for the prevention of off-site sedimentation impacts. GTA's have been issued by both NSW Fisheries and NSW Office of Water.

*“(i) to protect and preserve rock platforms, and”*

**Assessment:** The proposed development has no impact on local rock platforms.

*“(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6(2) of the Protection of the Environment Administration Act 1991), and”*

**Assessment:** The design of the proposed development incorporates the principles of ecologically sustainable development and causes no adverse impact on biodiversity and ecological integrity. The revised wall design has been supported by NSW Fisheries and NSW Office of Water on these grounds.

*“(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and”*

**Assessment:** The proposed development does not involve the construction of a building and the wall is to have a relatively low elevation to protect the scenic quality of the area, although the wall will not be as aesthetically pleasing as the current natural intertidal region of this locality.

*“(l) to encourage a strategic approach to coastal management.”*

**Assessment:** As previously outlined in this report, the proposed development is not considered to be entirely consistent with Section 55M of the Coastal Protection Act as the immediately adjoining properties remain unprotected and public access along the foreshore will not be improved. The provision of an easement or dedication of lands into public ownership would have improved the capacity for a strategic approach to be able to be taken to improving public access.

#### **Clause 8 – Matters for consideration**

*(a) the aims of this Policy set out in clause 2,*

**Assessment:** Refer to previous comments under clause 2.

*“(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved”.*

**Assessment:** The proposed development has no adverse impact on any direct public access to the coastal foreshore by pedestrians or persons with a disability. The application does not propose any improved facilities.

*“(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability”.*

**Assessment:** The subject lands are privately owned and used for residential purposes. The sites have not been identified as being required for the provision of a new point of public access at this point in time. Despite this, Council needs to decide if the possibility for future public access along the foreshore for disabled people should be addressed as part of this application.

*“(d) the suitability of development given its type, location and design and its relationship with the surrounding area”.*

**Assessment:** The proposed development is appropriate to the site when considered in the context of the surrounding area which predominantly contains revetment walls (or similar). It was unknown at the time of writing this report if the proposed revetment wall would increase sand losses or would adversely affect neighbouring properties. These are critical issues which will need to be addressed by specialist design certification prior to any construction certificate issuing or work commencing.

*“(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore”.*

**Assessment:** It is considered that the proposed development does not have an adverse impact upon the visual amenity of the coastal foreshore; does not cause overshadowing of the coastal foreshore; and will not result in any loss of views of the coastal foreshore gained from any public place when having regard for the surrounding locality.

*“(f) any scenic qualities of the New South Wales Coast, and means to protect and improve these qualities”.*

**Assessment:** The subject land is located within a long established residential area and is on the riverfront and not the coastline. The proposed wall will not in itself adversely impact the scenic quality of the coastal foreshore at this location as it is not visually significant and will not result in any vegetation loss.

*“(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats”.*

**Assessment:** The subject land does not contain habitat for threatened flora or fauna.



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*“(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats”.*

**Assessment:** No objection has been raised by NSW Fisheries to the potential impact on aquatic/marine habitat (subject to mitigation measures).

*“(i) existing wildlife corridors and the impact of development on these corridors”.*

**Assessment:** The subject land does not comprise part of a wildlife corridor.

*“(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards”.*

**Assessment:** The applicants' submitted purpose of the proposed wall is to protect the subject lands from coastal erosion. There has been no accompanying engineering assessment(s) prepared by specialist consultants that demonstrate that construction of the revetment proposed by this development application will alleviate the potential for shoreline recession and erosion on the subject land and that the proposed revetment wall would not increase sand losses and would not affect neighbouring properties. On face value it would seem clear that the works would assist to mitigate storm damage and have erosion protection value.

*“(k) measures to reduce the potential for conflict between land-based and water-based coastal activities”.*

**Assessment:** The proposed development does not present any potential for conflict between land based and water based activities unless the general public enters private lands.

*“(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals”*

**Assessment:** The subject lands are unlikely to be of any Aboriginal cultural heritage significance in view of its historic use for residential purposes. Refer to comments later in this report.

*“(m) likely impacts of development on the water quality of coastal water bodies”.*

**Assessment:** If approved, an Erosion and Sediment Control Plan will need to be satisfactorily supplied prior to the issue of the Construction Certificate to ensure that the construction of the proposed wall will not adversely impact the water quality of North Creek.

*“(n) the conservation and preservation of items of heritage, archaeological or historic significance”.*

**Assessment:** The subject lands contain no known items of heritage, archaeological or historic significance.

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*“(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities”.*

**Assessment:** The proposal does not involve the preparation of a draft local environmental plan.

*“(p) only in cases in which a development application in relation to proposed development is determined:*

- (i) the cumulative impacts of the proposed development on the environment, and*
- (ii) measures to ensure that water and energy usage by the proposed development is efficient”.*

**Assessment:** Without the provision of further detailed engineering reports, it was unknown at the time of writing this report if approval of the proposed development would not generate adverse cumulative impacts on the environment. However, having regard for the approval of similar applications, and as the design of the proposed development is consistent with the applicable legislative requirements this seems to be unlikely.

### **Clause 14 – Public Access**

*“Public Access: A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land based right of access of the public to or along the coastal foreshore”.*

**Assessment:** As outlined throughout this report, there is no proposal by the landowners to allow the unrestricted public access in the vicinity of the wall. The proposed development does not, of itself, diminish any current land based right of the public to access the coastal foreshore.

### **Clause 16 – Stormwater**

*“Stormwater: The consent authority must not grant consent to a development application on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform”.*

**Assessment:** The proposed development will not discharge untreated stormwater to any of the above.

This assessment under SEPP 71 concludes that if the applicants were to propose an easement for legally binding public access across the properties (or similar) and relevant specialist engineering advice being provided prior to the issue of the Construction Certificate, the development would generally be consistent with the aims and relevant provisions of SEPP 71 and the NSW Coastal Policy. The issue of whether it is both timely and reasonable to link improved public access along the estuary shoreline in this location to this particular application is a public interest matter for the Council to determine. The applicants contend that there is no nexus to the application as the works are proposed entirely within private property.

### **Key Merit Issues**

#### **Public Access To and Along the Foreshore**

Although the public are currently permitted access along the eastern portion of these properties, there appears to be no land based right of public access along the grassed and sandy beach areas that comprise the estuarine frontages of these properties. This land is private property. If the public wishes to acquire private land, then an appropriate dedication or easement process for public access appears to be necessary. In this regard the private land owners do need to address the case for the provision for, or improvement of, public access under the CPA, SEPP 71, and the NSW Coastal Policy in their application.

The issue of community access along the waterfront near Camden Street was included in the 2004 PAMP.

The further PAMP review in 2010 noted this access in the community suggestion section for the path along North Creek from Fox Street to Cawarra Street. However, the proposal did not rate sufficiently to make it into the current PAMP works program.

The 2013 PAMP review of 'Program of Works' also did not include this access pathway.

There is also a perception in the submissions received that public access would be degraded by approval of this application as it has been made. This is not the case as the access used by the public is over private property and may be able to be denied at any time. Although public access from Skinner Street and Camden Street directly to North Creek is not affected by this proposal, Council staff did requested the applicant to provide specific advice about the provision of public access along the foreshore to provide an improved access outcome.

The applicant has advised that this will not be forthcoming.

#### **Flooding of Skinner Street/Stormwater**

Any stormwater or localised flooding in Skinner Street can be attributed to the inadequacy of the existing pipe network. The proposed wall does not affect the existing pipes or their location and Council's Civil Services Group have raised no objection to the wall in this regard.

#### **No detailed design**

It is common to provide concept design plans at development application stage, whilst full design is undertaken after consent is issued and prior to the issue of the Construction Certificate (due to further certainties for the applicant).

There is sufficient design detail for both Council Staff and relevant Government Agency staff to consider the proposal. Council should note that if additional engineering certification reports are provided as outlined within this report, the location and/or design of the wall could change in the normal course of such processes.

#### **The need for the erosion protection wall**

This issue has been assessed within the Coastal Protection Act 1979 section of this report. The applicant contends that the purpose of the proposed wall is to afford protection to the subject lands from erosion and to facilitate the ongoing use of the lands for low density residential development, whilst some of the submitters contend that the works are unwarranted and are simply an attempt to secure more lands.

Generally, erosion protection constructed on private land for the benefit of the private land is a matter for the relevant landowners. They must evaluate the cost/benefit of protecting their property to ensure it maintains its value and amenity. On face value the wall's construction will materially assist to protect the immediate shoreline from storm damage and erosion.

Whilst the lands have clearly been accreting for a number of years and the fluvial system within North Creek is currently continuing to deposit sediment, periodic erosion could occur including during major storm events.

#### **The need for a Hydrological Survey**

The development application was not supported by any Coastal Engineering Assessment.

Based on this uncertainty, if the application is approved, the need for a fluvial analysis is proposed to be conditioned prior to the issue of the Construction Certificate. The typical type of bank protection along North Creek has historically been the construction of rock walls. From viewing the aerial imagery for this location, the proposed wall does not intrude into the waterway and is unlikely to interfere or influence the existing water movement patterns in North Creek; however this has not been specifically assessed by specialist engineering consultants.

Notwithstanding this, if the application is approved, the applicant should be required to provide a report from a suitably qualified Engineer confirming that the wall will not cause adverse impacts (such as scouring, increased flood flows/levels or increased sand losses) on surrounding neighbouring properties, particularly the unprotected Lot 33 DP 872966 and Council's road reservations of Skinner and Camden Streets.

In addition, an Erosion and Sediment Control Plan and Acid Sulfate Soil Management Plan to mitigate construction impacts on North Creek should also be required prior to the issue of any Construction Certificate.

#### **Relevance of Coffey Geotechnical Report**

Council's Civil Services Group has advised that the submitted Coffey Geotechnical report dated 1 May 2012 (also included in the BLEP 2012 Amendment/Planning Proposal) is not particularly relevant in the circumstances and simply indicates that the lands are relatively stable.

### **Aesthetics of the wall**

The proposed rock wall is typical of other walls along North Creek, albeit on an angle rather than vertical to reduce the potential wave impact on nearby mangroves.

While the wall is not expected to substantially adversely impact the visual amenity of the foreshore, it would be visible in the landscape.

The design and construction of the proposed revetment wall will cause no adverse amenity or view loss impacts on neighbouring residences.

### **Can a Mean High Water Mark (MHWM) be redefined if the land is continuing to accrete?**

The MHWM can be redefined if accretion continues. The eastern boundary for accreted land is limited to reaching the Norton Street road boundary (as it extends further north than currently constructed) and the adjoining privately held Lot 43 DP 1009315 further to the east.

If a further revetment wall was constructed on the redefined eastern boundary (i.e. on the MHWM of Lots 1 and 10), the consent of the adjoining land owner of Lot 43 DP 1009315 to the submission of any development application would likely be required.

### **Cultural Heritage**

The subject lands have been historically used for residential purposes and have been extensively modified from their unstabilised natural state by residential habitation and coastal erosion.

The applicant provided an Aboriginal Cultural Heritage Due Diligence Report prepared by Everick Heritage Consultants dated June 2015 and this was reviewed by NSW Office of Environment and Heritage (OEH), copy attached.

The conclusion of the report (as supported by OEH) is that it is highly unlikely that there are any items of Aboriginal Heritage on the lands to be occupied by the proposed revetment wall.

In addition, neither the subject lands nor its existing improvements have any European Heritage significance.

### **Lack of Public Exhibition/Consultation**

With respect to the advertising and notification of adjoining residents for the Development Application, owners and occupiers of six adjoining properties were notified of the application by direct letter dated 2 April 2015 (11 letters). Additionally, advertising was included in The North Coast Advocate of 8 April 2015 and two signs were also placed adjacent to the works, one was placed at the end of Skinner Street where people go onto the beach area and one at the end of Norton Street where people currently access the beach.

In all cases people were invited to examine the proposal that was displayed on Council's web-page and/or by visiting the Council's offices.

The re-exhibition of the thirdly revised proposal repeated all of the above with all previous objectors directly notified, along with three signs (rather than two).

It is considered that the general public were adequately notified both at lodgement of the original proposal and upon the most significant changes to plans (i.e. third revisions to plans).

### **The Public Interest**

Although the proposal, particularly that as originally submitted, raised a number of public objections, particularly from residents in the locality (including a petition), it is considered that the proposed development does not raise any matter which may be regarded as contrary to the public interest and which would prevent the application from being conditionally approved. This is contingent, however, on the Council determining whether or not there is sufficient nexus and need for the applicants to provide for legally binding land based public access along the foreshore and the submission of specialist engineering design review and certification.

The proposal will generate limited social and economic benefits for the community and subject to appropriate conditions (inclusive of those from other Government Agencies) and the submission of an engineering report confirming that the wall will not unreasonably impact neighbouring properties, adjoining public lands, and the natural environment, the Council may grant development consent to the application.

### **Conclusions**

The proposed development provides for positive social and economic effects for the owners of the subject allotments by alleviating potential underlying shoreline recession and erosion on the subject lands and facilitating the ongoing use of the lands for low density residential purposes, within a location which is well served with infrastructure and services.

Having regard for ecologically sustainable planning principles it could be seen that the provision of a revetment wall in this location given that the shoreline has been accreting may be of no benefit or need in such an environmentally sensitive area.

Whilst the general public has had access to this area of North Creek for recreational purposes, it is not public land and public access can't reasonably be expected or guaranteed without formal land based access rights being provided.

Council must be mindful of approving the application as revised, due to the environmental sensitivities of this locality and particularly as the design may be of limited assistance in providing protection in an extreme event. Any approval should be made on the premise that there is considered to be a present threat to buildings and/or infrastructure on the properties. Council must be satisfied that the proposed wall/works are indeed "coastal protection works". This is an important consideration of the fundamental permissibility of the proposed works.

## **Options**

### **Option One**

That Council approves the development as submitted subject to applicable conditions of consent only including mitigation measures by relevant Government Agencies and other relevant conditions, including suitable engineering assessment prior to release of the Construction Certificate for the wall.

### **Option Two**

That Council advise the applicants that it would be prepared to consent to the development as submitted subject to normal applicable conditions of consent, including the mitigation measures requested by relevant Government Agencies and other relevant conditions (as per Option 1 above), but subject to the application being amended to propose the inclusion of a suitable provision for legally binding public access along the foreshore, prior to release of the Construction Certificate for the wall.

### **Option Three**

That Council refuses the development noting the wall is considered to be similar to a retaining wall (i.e. not a “coastal protection work”) and not permissible within the zone or under Schedule 1 of the BLEP 2012.

Even if the wall is considered to be genuine “coastal protection works”, the construction of the wall (as now designed on a sloping angle) is of minor benefit for protecting against coastal hazards and is not currently warranted in this location having regard for the environmental sensitivities of the sites, the natural accretion that has been occurring and continuing in this locality for a substantial number of years, and the emergency and temporary protection measures available under the Coastal Protection Act.

### **Option Four**

That Council defers determination of the development due to the number of uncertainties and potential impacts on both private and public environmentally sensitive lands until suitable engineering reports are submitted satisfactorily confirming the following:

- (a) That the wall is required in this locality in the immediate future and that any temporary measures cannot suitably protect against potential periodical coastal erosion at this location.
- (b) That if the wall design is constructed as proposed it will provide for adequate protection from wave action and will not be overtopped causing erosion and undermining on the western side of the wall.
- (c) That if the wall design is constructed as proposed that lowering of the sand levels of the foreshore immediately in front of the revetment, often resulting in the loss of a useable beach, will not occur.
- (d) That reflecting wave or tidal energy off the revetment wall resulting in an inability of sand to build-up seaward of the revetment wall will not occur as this will have an adverse impact on public lands (including Council’s road reservations) and adjoining Lots 43 DP 1009315 and Lot 33 DP 872966 not party to the application.

## **8.4 DA 2015/138 - Coastal Protection Works, Skinner and Camden Streets**

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- (e) That accelerated erosion at the terminal ends of a revetment will not be caused, resulting in significant scour pockets on adjoining land which will require the construction of further revetments to mitigate the accelerated erosion.

Subject to the Council being satisfied with the submitted application's arguments not to provide improved public access along the foreshore, Option one is recommended. Otherwise it is considered that the Council should pursue Option Two.

### **RECOMMENDATION**

On the basis that Council is satisfied with the application not providing for improved public access along the shoreline, that DA 2015/138 for coastal protection works along the eastern boundary of the subject allotments comprising a dry rock revetment wall and partial filling of land behind the revetment wall be **APPROVED** subject to the draft conditions of consent attached to this report.

### **Attachment(s)**

1. Locality Map
2. Erosion Protection Retaining Wall Layout Plan
3. Applicant's confirmation that No Legal Access is to be provided to the Public
4. 1967 North Creek Aerial
5. 1980 North Creek Aerial
6. 1991 North Creek Aerial
7. 2000 North Creek Aerial
8. 2012 North Creek Aerial
9. Zoning and Proposed Revetment Wall Overlaid on Cadastre
10. Zoning on Aerial
11. Proposed Draft Conditions of Consent
12. Letter - NSW DPI Fisheries
13. Letter - NSW DPI - Water
14. Letter - NSW Office of Environment & Heritage
15. Letter - NSW Trade & Investment - Crown Lands
16. Applicant's Submission
17. Letters of Objection



**8.5 DA 2015/402 - Secondary Dwelling, 6 Shelly Beach Road, East Ballina**

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**8.5 DA 2015/402 - Secondary Dwelling, 6 Shelly Beach Road, East Ballina**

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<b>Applicant</b>	M Walton
<b>Property</b>	Lot 6 DP 758047 No. 6 Shelly Beach Road East Ballina
<b>Proposal</b>	Request for a Review of Determination of DA 2015/4012 for a conversion of an existing detached shed to a Secondary Dwelling
<b>Effect of Planning Instrument</b>	The land is zoned R3 Medium Density Residential under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

**Introduction**

Under the provisions of Section 82A of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, Council has received a request to review a determination of Refusal in relation to the above Development Application. The matter is reported to Council for consideration and determination.

A development application was received by Council on the 7 August 2015 to carry out internal alterations to an existing detached rear yard shed to create a Secondary Dwelling at the above property.

Plans of the proposed development are **attached**.

The plans depict an existing shed, measuring 6m x 6m approximately, with an existing attached carport. The current shed is located 200mm from the side southern boundary and 400mm from the rear western boundary. An adjoining Crown coastal reserve exists to the rear of the site.

The original development application was neighbour notified with two written objections being received. A copy of each submission is **attached**.

Council staff proceeded to determine the application under delegated authority, which involved the preparation of a report to Council's internal Development Assessment Panel. A copy of the report to the Panel is **attached**.

The Panel, which comprised the Building Services Section Manager and two building surveyor assessment officers, recommended the application be refused on the 17 September 2015.

This recommendation was endorsed by the Development and Environmental Health Group Manager in accordance with Council's internal procedure, where the application was formally refused by Notice to the Applicant dated 25 September 2015.

The application was refused on the following grounds:

## **8.5 DA 2015/402 - Secondary Dwelling, 6 Shelly Beach Road, East Ballina**

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1. The building does not comply with Part 3.7 of the Building Code of Australia regarding fire separation of a dwelling.
2. The building does not comply with Parts 9 and 10 of the State Environmental Planning Policy (Affordable Housing) 2009 regarding side and rear boundary setbacks for a Secondary Dwelling.
3. The building does not comply with Element "C" of the Ballina Shire Development Control Plan 2012 Chapter 4 regarding building envelopes for a dwelling.

A copy of the Determination Notice to the Applicant is **attached**.

The applicant subsequently lodged a S.82A application requesting a review of this determination.

The applicant submitted a letter in support of the request for a review of determination dated 8 November 2015.

A copy of this letter is **attached**.

### **Reportable Political Donations**

Details of known reportable political donations are as follows:

- Nil

### **Report**

This request for a review of Council's determination is reported to Council for its consideration of the merits of the request and ultimate determination in accordance with S.82A (6) of the EP&A Act.

In the request for review no material change to the proposal has been made, other than the applicant has stated his willingness to meet the BCA requirements on walls that face the southern and western boundaries presumably to address Reason 1 of the Determination Notice.

However, no specific detail has been provided with the application as to how this would be achieved.

The planning provisions referenced in Reasons 2 and 3 of the Determination Notice are controls that the Council can vary if it considers the merits of the proposal warrant such variation. The particular controls relevant in this case relate to minimum side (0.9m) and rear (3.0m) setbacks and building envelope (height plane) controls.

In assessing this application for review of determination and whilst acknowledging there is a need for affordable housing, the particular controls are however considered well founded and worthy of maintaining in the circumstances, particularly given the proposed dwelling's proximity to the rear boundary adjoining a public coastal reserve and the likely potential for future redevelopment of adjoining and nearby lands that are within this medium density zone.

**Conclusion**

The application is now referred to Council for a review of the determination of refusal in accordance with Section 82A of the EP&A Act.

The following options are available to Council:

Option 1: Endorse the Refusal of the Development Application, as determined on the 25 September 2015.

Option 2: Overturn the Refusal and Approve the Development Application as submitted.

The recommendation is to endorse the refusal for the reasons as detailed in the report to the Development Assessment Panel attached.

**RECOMMENDATION**

That Council confirms the determination of Development Application 2015/402 for the conversion of an existing detached shed to a Secondary Dwelling at Lot 6 DP 758047 6 Shelly Beach Road, East Ballina as **REFUSAL** for the reasons stated in the Notice of Determination dated 25 September 2015.

**Attachment(s)**

1. Locality Plan
2. Site, Floor and Elevation Plans
3. Letters of Objection to the Original Development Application Notification
4. Report to Development Assessment Panel
5. Determination Notice to Applicant
6. Letter from Applicant in Support of S.82A Application

## **8.6 Compliance Work Plan 2015/16 Half Yearly Update**

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### **8.6 Compliance Work Plan 2015/16 Half Yearly Update**

**Delivery Program** Development Services

**Objective** To provide Council with an update on the progress of the annual Compliance Work Plan 2015/16

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#### **Background**

At the June 2015 Ordinary Meeting, Council adopted a Compliance Work Plan for the 2015/16 financial year.

This report provides a half yearly update report on the Plan.

#### **Key Issues**

- Level of Compliance
- Results achieved

#### **Information**

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

These priority areas are:

1. *Audit of Major Developments within the Shire* (Ongoing Program)
2. *Audit of Identified Development Consents* (Ongoing Program)
3. *Review of all Development Consents issued within the Russellton Industrial Estate* (Ongoing Program)
4. *Review of Liquor Licenses and Licensed Premises within Ballina Shire* (New Program)

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

In relation to the specific items in the Compliance Work Plan, compliance investigations to date have been hampered due to staffing and resourcing issues.

In the June 2015 Work Plan Report there were 85 Outstanding Notices requiring ongoing follow up. If a satisfactory resolution is not achieved in these matters, Council may have to commence formal Court proceedings.

## 8.6 Compliance Work Plan 2015/16 Half Yearly Update

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The main area of non-compliance resulting in Council's legal Notices are as a result of complaints for unauthorised second (and sometimes third) residential dwellings within rural land within the Shire. These dwellings are usually converted farm or dairy sheds and have substandard On-Site Sewage Management Systems.

Council is also investigating a number of unauthorised "function centre" (wedding venue) and "tourist and visitor accommodation" complaints within rural zones. These types of investigations are complex and require the dedication of many hours to identify and check all available records within Council's systems, as well as a number of inspections coordinating technical officers across various sections within Council's Development and Environmental Health Group to ascertain compliance.

A position of Compliance Officer has been vacant since May 2015, when the incumbent was promoted to a more senior position within Council's Civil Services Group. This vacant Compliance Officer position has been advertised on two separate occasions and unfortunately, for a number of reasons the position has not been filled. Council will be advertising the position for a third time in early 2016. This has left the section with only one Compliance Officer.

This reduction in staffing numbers has had an impact on the ability to undertake the proactive work as outlined in the Compliance Work Plan. Given the large numbers of legal Notices that are currently outstanding, the available staffing resources have been dedicated to this area of our work, due to the legislative time limits that apply should legal action be warranted.

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

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

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

This program originally commenced in the 2008/09 financial year with an audit of 2006 development applications, which included applications that have been determined or withdrawn. This program has continued on to audit 2007, 2008, 2009, 2010 and 2011 development applications. Compliance resources have also been involved in auditing developments being carried out on environmentally and culturally sensitive sites on an ongoing basis to ensure ongoing compliance. As this program now extends over six separate years, it is intended that each audit year will be reported separately, in table form.

Item	2006	2007	2008	2009	2010	2011
Number of Major Developments	65	89	77	43	82	56
Number Inspected for compliance	65	89	77	43	45	0
Number Compliant	53	78	62	34	22	0
Number of Ongoing Inspections	4 <sup>1</sup>	1 <sup>2</sup>	4 <sup>3</sup>	5 <sup>4</sup>	15	0

## 8.6 Compliance Work Plan 2015/16 Half Yearly Update

Item	2006	2007	2008	2009	2010	2011
Number of Consents not commenced	0	0	0	0	8	0
Number of Consents lapsed	8	10	11	4	0	0
Number yet to be inspected	0	0	0	0	37	56

<sup>1</sup> All four developments have been inspected and require further follow up inspections. Compliance is working with the receivers and the new landowners to bring the environmental restoration in line with the approved revegetation management plans approved for each development. There is a condition of consent that requires ongoing revegetation of the sites, which will take place for at least the next three years or until the objectives of the revegetation management plans are achieved.

<sup>2</sup> This development relates to a tourism development where works have commenced and are ongoing.

<sup>3</sup> These developments relate to a quarry and redevelopment of a hotel, which are ongoing matters and developments which are currently the subject of ongoing compliance action to ensure compliance with conditions of consent.

<sup>4</sup> Four of these developments relate to ongoing subdivisions which are awaiting final submission of linen plans and the remaining development is a tourist development which will lapse in the coming months if the use is not physically commenced.

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

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

This program originally commenced in the 2008/09 financial year with an audit of 2006 development applications, which included applications that had been determined or withdrawn. This program has continued on to audit 2007, 2008, 2009, 2010 and 2011 development applications.

Item	2006	2007	2008	2009	2010	2011
Number of Identified Developments	143	131	131	99	147	96
Number Inspected for Compliance	143	131	131	99	147	0
Number Compliant	142	128	119	96	125	0
Number of Ongoing Inspections	0	1 <sup>1</sup>	6 <sup>2</sup>	3 <sup>3</sup>	12	0

## 8.6 Compliance Work Plan 2015/16 Half Yearly Update

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Item	2006	2007	2008	2009	2010	2011
Number of Consents not commenced	0	0	0	0	8	0
Number of Consents lapsed	1	2	6	0	1	0
Number yet to be inspected	0	0	0	0	1	96

<sup>1</sup> *The remaining development relates to a business within Wardell that requires reports certifying all building works undertaken to the building. A Building Certificate is currently under assessment to address all outstanding issues.*

<sup>2</sup> *These developments relate to a number of businesses within the Shire which have not provided final certification of building works. These matters originally came to the attention of Council as these developments had commenced however no certification had been received.*

<sup>3</sup> *These outstanding developments relate to matters in which the works have been commenced, however matters are still outstanding for which final certificates have not been issued. These matters originally came to the attention of Council as these developments had commenced however no certification had been received.*

3. *Review of all Development Consent approvals issued within the Russellton Industrial Estate; (Ongoing Program)*

Compliance staff have written to all landowners and tenants within the Russellton Industrial Estate and have conducted preliminary inspections for illegal parking and road obstructions within the Russellton Industrial Estate, resulting in approximately 15 warnings being issued. Enforcement action is now underway with Penalty Infringement Notices issued to vehicles that are illegally parked.

With respect to road obstructions, these are primarily gates opening onto the Council road reserve area, Council provided landowners with a period of grace in which to rectify any unauthorised gate openings. These matters will be followed up when this grace period expires at the end of 2015.

With respect to the audit of business uses within the private land of the Russellton Estate, this part of the audit has commenced. Whilst only a small number of premises have been inspected, the majority of those premises have generally not been in compliance with development consents or have been operating without the requisite planning approvals being in place. Further, pollution events and potential damage to Council infrastructure have also been identified since the commencement of the Audit. A number of these premises have resulted in the level of outstanding legal Notices referred to above in this Report.

## 8.6 Compliance Work Plan 2015/16 Half Yearly Update

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Unfortunately, due to the current Compliance Officer role being vacant and the need to direct resources to current outstanding legal Notices, the inspections of properties for compliance with development consents has not progressed to a level that would be expected. This program will not be completed within the terms of this financial year and progress will be diminished until full staffing is achieved.

### 4. *Review of Liquor Licenses and Licensed Premises within Ballina Shire (New Program)*

This program has been commenced and there have been a number of issues, including potential risk issues, identified. A working group has been established across the Development and Environmental Health Group, Strategic and Community Services Group, General Managers Group and Civil Services Group to address these matters.

It is envisaged that this program will take approximately five to six months to complete on resolution of the identified risk issues.

#### *Local Court Proceedings*

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

This current financial year, one ongoing matter was referred to Council's legal representative for the commencement of legal action for the unauthorised removal of native vegetation in Pimlico. This matter was reported to the April 2015 Council meeting.

#### *Legal Notices*

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

This current financial year, the Compliance Team has:

- Issued 11 new formal Notices for identified breaches and non-compliances;
- Monitored and undertaken additional actions in relation to 50 formal Notices that have not been resolved to Council's satisfaction; and
- Finalised 21 formal Notices, where the matter has been resolved to Council's satisfaction.

#### *Liquor Licensing Issues*

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



During the current financial year, the Compliance Unit has dealt with 17 liquor licence applications.

### **Sustainability Considerations**

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

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

This program aims to efficiently utilise the resources allocated for enforcement activities. Proactive actions up front can reduce the need for extra compliance at a later date.

### **Consultation**

This report has been provided for public information.

### **Options**

The options are to note the contents of the report or to amend the identified compliance project work program where Council believes there may be higher priorities that need to be addressed. The recommendation is to note the report as Council has previously endorsed the compliance work plan for 2015/16 and the priorities are considered to reflect the highest priorities for the broader community.

### **RECOMMENDATION**

That Council notes the contents of this report on the status of the Compliance Work Plan for 2015/16.

### **Attachment(s)**

Nil

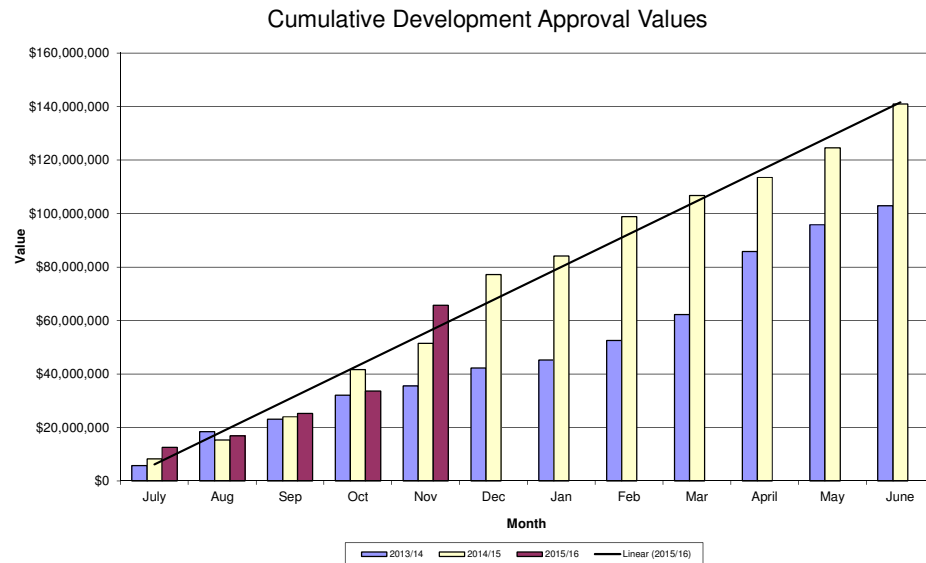
**8.7 Development Consent and Infrastructure Approvals - November 2015**

**8.7 Development Consent and Infrastructure Approvals - November 2015**

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

<b>Number of Applications</b>	<b>Value of Work</b>
29 Other Building Related	\$ 22,915,500
28 Dwelling/Duplexes/Residential Flat Buildings	\$ 9,139,000
3 General Developments	\$ 0
<b>Total Value</b>	<b>\$ 32,054,500</b>

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



During the period of 1 November 2015 to 30 November 2015 the Development and Environmental Health Group issued Public Infrastructure / Civil Construction Works comprising of:

<b>Number of Applications</b>	<b>Value of Work</b>
1 Public Infrastructure / Civil Construction	\$ 15,000
<b>Total Value</b>	<b>\$ 15,000</b>

**RECOMMENDATION**

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

**Attachment(s)**

Nil

## 8.8 Development Applications - Works in Progress - December 2015

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### 8.8 Development Applications - Works in Progress - December 2015

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The following schedule sets out current development applications that have not yet been dealt with for the reasons cited:

Please note that duplex and dual occupancy applications are not included in this report.

DA No.	Date Rec'd	Applicant	Proposal	Status
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	Determination Pending
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	Referred to Government Department
2015/302	15/06/2015	Newton Denny Chapelle	Three Lot Torrens Title Subdivision to Create 1 x 1,920sqm and 1 x 2,510sqm allotments and associated works – 19 Bullinah Crescent, East Ballina	Referred to Government Department
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

**8.8 Development Applications - Works in Progress - December 2015**

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 Drive & Euroka Street, Cumbalum	Awaiting Additional Information
2010/458	5/11/2015	Geolink (Duraplas)	Boundary adjustment subdivision and consolidation of four lots into three lots and the use of Proposed Lot 1 for the storage of tanks, internal access, carparking and office area – 9 Robb Street, Alstonville	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	Being Assessed
2015/468	2/9/2015	Ardill Payne & Partners	Residential Subdivision to create 179 residential lots and two residue lots and associated infrastructure	Awaiting Additional Information

## 8.8 Development Applications - Works in Progress - December 2015

			works – Lot 389 DP 1199596 & Lot 409 DP 1202454, Unara Parkway & Deadmans Creek Road, Cumbalum	
2015/567	12/10/2015	Peter Turner & Associates	Alterations and Additions to St. Andrews Village Nursing Home - 59 Bentinck Street, Ballina	Awaiting Additional Information
2015/594	22/10/2015	Astworth Pty Ltd	Erection of Industrial Building - 27 Cessna Crescent, Ballina	Being Assessed
2015/599	26/10/2015	CivilTech Consulting Engineers	Eight Lot Industrial Subdivision, Vegetation Clearing and Associated Works - 54 North Creek Road, Ballina	Awaiting Additional Information
2015/608	30/10/2015	CivilTech Consulting Engineers	To undertake a boundary adjustment subdivision to create 1 x 1,804m <sup>2</sup> (proposed Lot 181) and 1 x 5.316ha (proposed Lot 182) - 25 Spring Creek PI & Bolwarra Cct, Wollongbar	Referred to Government Departments
2015/625	09/11/2015	Mac Aviation Services (Raemon McEwen)	Two storey extension and use as flight training facility - 210 Southern Cross Drive, Ballina	Awaiting Addition Information
2015/632	13/11/2015	J Senior	Vegetation management works comprising the removal of	Determination Pending

**8.8 Development Applications - Works in Progress - December 2015**

			three trees - 15 Eyles Drive, East Ballina	
2015/638	17/11/2015	Ardill Payne & Partners	Alts and Adds to Avis Offices at Ballina Byron Gateway Airport - 210 Southern Cross Drive, Ballina	Determination Pending
2015/645	18/11/2015	Ballina Shire Council	Erection of Ballina Lighthouse and Lismore SLSC Storage Building and Associated Uses - Compton Drive, East Ballina	Being Assessed
2015/650	24/11/2015	North Coast Petroleum	Erection of an Above Awning Business Identification Sign – 335 River Street, Ballina	Being Assessed
2015/652	20/11/2015	Ballina Assembly of God	Business Identification Signage – 12 De-Havilland Crescent, Ballina	Being Assessed
2015/655	25/11/2015	NV & CE Eather	Alterations & Additions to an Existing Dwelling within a Multi Dwelling Housing Development – 2/14 Latta Avenue, Ballina	Being Assessed
2015/657	27/11/2015	Gateway Lifestyles Ballina Gardens	Vegetation Management Works – 126 Tamarind Drive, Ballina	Being Assessed
2015/660	1/12/2015	Civiltech Consulting Engineers	Boundary Adjustment Subdivision - 314 Ellis Road, Rous	Referred to Government Departments

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

## 8.8 Development Applications - Works in Progress - December 2015

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	Awaiting Additional Information

### 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 December 2015.

### Attachment(s)

Nil



## **9.1 Development Control Plan 2012 - Amendment No 6**

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### **9. Strategic and Community Facilities Group Reports**

#### **9.1 Development Control Plan 2012 - Amendment No 6**

**Delivery Program** Strategic Planning

**Objective** To inform the Council of the outcomes of the public exhibition of Draft Amendment No. 6 to the Ballina Shire Development Control Plan 2012 and seek direction in relation to the adoption of the recommended amendments.

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#### **Background**

Draft Amendment No. 6 to the Ballina Shire Development Control Plan 2012 (the DCP) was considered by the Council at its Ordinary Meeting held on 27 August 2015. At that meeting it was resolved to publicly exhibit Draft Amendment No. 6 for community feedback [Minute No. 270815/5].

The Council further resolved at its Ordinary Meeting held on 24 September 2015 to exhibit a DCP amendment relating to the car parking rate for medical centres located within central business areas [Minute No. 240915/18].

In accordance with the above resolutions, Draft Amendment No. 6, incorporating the medical centre car parking rate amendment, was placed on public exhibition from 7 October 2015 to 6 November 2015. Four public and four staff submissions were received in response. These submissions related to floodplain and stormwater management, car parking, ridgeline and scenic protection areas, and issues related to commercial development at Lennox Head.

The purpose of this report is to inform the Council of the issues raised in the submissions and to seek direction on the adoption of Draft Amendment No. 6 to the DCP.

#### **Key Issues**

- Ensuring the DCP provides for intended and consistent planning outcomes
- Addressing matters raised in submissions.

#### **Information**

The details of Draft Amendment No. 6 to the DCP were reported to the Council at its Ordinary Meetings held on 27 August 2015 and 24 September 2015. Full details of the proposed amendments, which were placed on exhibition in accordance with the Council's resolutions, are contained within Attachment One.

Table 1 below contains details of some of the more significant proposed amendments to the DCP and provides an indication as to whether any submissions concerning these amendments have been received.

Full details of matters raised in submissions and the proposed responses are contained in the consultation section of this report.

**Table 1 - Details of Significant Amendments**

DCP Chapter	Clause	Details of Proposed Amendment
2 General and Environmental Considerations	3.9	<p><b>Stormwater Management</b></p> <p>The existing provisions have been found to be overly prescriptive and to lack sufficient flexibility to enable consideration of alternatives that may otherwise meet the objectives of specific controls. The approach taken has been to redraft controls based on performance criteria.</p> <p>The majority of specific controls are proposed to be contained within a document separate from the DCP, known as the Ballina Shire Council Stormwater Management Standards for Development, which is intended to become the primary reference standard. This document has now been completed and has been the subject of an industry workshop. Once finalized, it is proposed to replace the Northern Rivers Local Government Development and Design Manual which will then become a secondary reference standard.</p> <p><b>Submissions</b></p> <p>Two public submissions have been received which relate to stormwater management issues.</p> <p>A submission from Newton Denny and Chappelle raises the following concerns with the proposed updated section 3.9 Stormwater Management provisions of DCP Chapter 2;</p> <ul style="list-style-type: none"> <li>• Stormwater Management Standards referenced in the DCP are not available for comment;</li> <li>• Some development controls are more objectives than controls and some controls are more like objectives,</li> <li>• Exemptions for DCP on-site detention standards are not detailed within the current DCP (i.e. small scale development, rural development and the like),</li> <li>• Stormwater management provisions do not apply to dwelling houses and secondary dwellings but do apply to dual occupancies. All three developments have a 0.5:1 floor space ratio and should have the same stormwater management provisions apply.</li> </ul> <p>A submission from Planners North indicates that no objection in principle is raised to the proposed amendments to Section 3.9. They recommend however that the term "<i>lawful point of discharge</i>" be defined in a broad way to ensure an as flexible approach as possible.</p>
2 General and Environmental Considerations	3.19	<p><b>Car Parking Requirements</b></p> <p>Car parking and access requirements are currently not consolidated in the one location within the DCP. Whilst Chapter 2 contains the majority of more general provisions, additional location-specific provisions are contained in DCP chapters 4, 5, 6a, 6b, 6c, 6d, 7 and 8. All car parking and access requirements contained elsewhere in the DCP were consolidated within Chapter 2. Individual DCP chapters continue to reference location specific car parking and access requirements for completeness.</p> <p>The above amendments are designed to remove confusion and provide greater clarity over applicable car parking rates and access requirements.</p> <p>The requirement for car parking for people with disabilities to be covered with a waterproof roof or awning has been extended to new public car parking containing 20 or more spaces. This results in similar requirements being applied to public car parking as are applied to industrial, commercial and tourist and visitor accommodation.</p> <p>The car parking rate for medical centres located in central business locations has been changed to one space per 25m<sup>2</sup> of gross floor area as per the Council's resolution on 24 September 2015 [Minute No. 240915/18].</p> <p><b>Submissions</b></p> <p>A submission from Planners North requests that under the heading Live / Work Development the bracketed words (West Ballina</p>

## 9.1 Development Control Plan 2012 - Amendment No 6

DCP Chapter	Clause	Details of Proposed Amendment
		Enterprise Corridor Precinct) be removed. It is suggested this will allow better utility for this landuse as time goes on.
2b Floodplain Management	Various	<p>The amendment proposed deleting the reference to a <i>minimum fill level</i> for infill sites and renaming this as a <i>required fill level</i>. The <i>required fill level</i>, if adopted, will act as both a minimum and maximum level preventing excessive filling on smaller infill sites and requiring an alternative to traditional slab on ground construction to be considered.</p> <p>A number of other more minor changes have also been proposed as detailed in Attachment One. It was also found necessary to replace the various flood maps that accompanied Chapter 2b due mainly to drafting anomalies that arose when combining 2D and 3D flood modelling information. Maps were replaced as soon as they became available.</p> <p><b>Submissions</b></p> <p>Four public submissions and two staff submissions were received which relate to Council's filling policy. Further investigation and consideration of the issues raised is warranted. Council's Civil Services Group will prepare a separate report for the Council's consideration on issues relevant to Chapter 2b Floodplain Management once issues raised have been fully investigated. At this stage it will be recommended that no changes to Chapter 2b be made, apart from the replacement of flood maps.</p>
Chapter 6c Commercial Development Lennox Head	8.1 and 8.2 Precinct D controls	<p>Rewording and clarification of the manner in which traffic impact is to be assessed and access requirements for lots located on eastern side of Ballina Street.</p> <p>Rewording and clarification of preferred land uses within Precinct D and associated building design requirements.</p> <p><b>Submissions</b></p> <p>A submission from Planners North addresses preferred land use issues as they relate to Precinct D. Also addressed is the issue of building height within the Lennox Head commercial centre which was not addressed in the proposed DCP amendments.</p>

### Sustainability Considerations

- **Environment**

The DCP establishes local planning policy in relation to a variety of environmental, social and economic considerations. Specifically, it establishes direction for development outcomes within the shire. As such, the DCP provides an opportunity for Council to address a wide range of matters in relation to development. The implementation of Draft Amendment No. 6 to the DCP will clarify and improve the application of the DCP.

- **Social**

As above.

- **Economic**

As above.

### Legal / Resource / Financial Implications

The preparation of Draft Amendment No.6 to the Ballina Shire Development Control Plan 2012 has been undertaken in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and the associated Regulation. The amendment can be completed and implemented within existing available staff and financial resources.

## 9.1 Development Control Plan 2012 - Amendment No 6

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Clause 21(1) of the *Environmental Planning and Assessment Regulation 2000* sets out the process applicable once Council has considered submissions. Clause 21(1) is reproduced below:

### **21 Approval of development control plans**

(1) *After considering any submissions about the draft development control plan that have been duly made, the council:*

- (a) *may approve the plan in the form in which it was publicly exhibited, or*
- (b) *may approve the plan with such alterations as the council thinks fit, or*
- (c) *may decide not to proceed with the plan.*

### **Consultation**

Draft Amendment No. 6 to the DCP was publicly exhibited between 7 October and 6 November 2015 in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*. Details of the proposed amendments were posted on Council's web site and made available at library community access points and at Council's Customer Service Centre. An advertisement also appeared in the Ballina Advocate on 7 October 2015. The proposed changes to Chapter 2b Floodplain Management were also forwarded to 16 local builders, building designers and consultants for comment.

In response, four public submissions were received. Submissions which do not relate to Chapter 2b Floodplain Management are summarised below.

#### *Newton Denny Chapelle (NDC) – Chapter 2 General and Environmental Considerations*

Advise that the updated Section 3.9 is heavily reliant on the as yet unpublished '*Ballina Shire Council Stormwater Management Standards for Development*'. As such a considered response is not possible and a request to defer this element of the draft DCP is made until the Stormwater Management Standards have been available for review and comment. Suggest that consultation on the standards could be via targeted engagement with key practitioners involved in the design of stormwater management systems.

In terms of the proposed section 3.9 the following comments were made:

- Some controls are better suited to be objectives and some objectives better suited to be controls.
- Exemptions for DCP on site detention standards are not detailed within the current DCP (i.e. small scale development) rural development and the like. Indicate that the Byron DCP for low lying areas provides that on site detention is not required where the site drains directly to a trunk drainage system within tidal reach of a river or stream.
- Stormwater management provisions do not apply to dwelling houses and secondary dwellings but do apply to dual occupancies. All three developments have a 0.5:1 floor space ratio and should have the same stormwater management provisions apply.

Comment:

The final version of the DCP is proposed to be reworded to clarify the distinction between objectives and controls, as suggested by the submission.

The exemptions from stormwater detention requirements detailed in the *Ballina Shire Council Stormwater Management Standards for Development* align closely with the suggestions in the submission. Exemptions are proposed for single dwellings on an allotment, secondary dwellings, dual occupancies, small scale development, where drainage connects directly into tidal waterways and low lying flood liable areas.

A draft of the *Ballina Shire Council Stormwater Management Standards for Development* was the subject of a workshop with local development consultants on 19 November 2015. This workshop reviewed the document to ensure its future application will provide practical stormwater management that is consistent with the property protection and environmental objectives of the draft DCP and the economic development of land. Arising from this review and suggestions from the consultants, a significant number of edits have been incorporated in the final draft.

Planners North (PN) – *Chapter 2 General and Environmental Considerations – Clause 3.2 Ridgelines and Scenic Areas*

The submission advocates for solid DCP protection provisions for ridgelines in Chapter 2 given the Minister's decree not to implement specific zonings to protect scenic areas. An example of a recent approval, on top of an exposed ridge in the Knockrow locality within a 7(d) Scenic/Escarpment zoning under the provisions of Ballina LEP 1987, is provided.

Comment:

Ballina DCP 2012, Amendment No 6, did not propose any changes to the controls contained within Chapter 2, Section 3.2 – Ridgelines and Scenic Areas. These controls relate to areas identified on the *Ridgeline and Scenic Areas Map*.

At this stage it is considered that there is no need to supplement the controls contained within Section 3.2 of Chapter 2 as these are considered adequate to protect the scenic value of the Shire's ridgeline and scenic areas. The challenge here relates more to how these controls are implemented as opposed to the nature of the controls.

In respect to the example quoted in the PN submission this relates to a single storey dwelling house approved on a ridge top site at Knockrow. The plans show the dwelling house has a maximum height of 3.45 metres from ground level to the top of the flat skillion roof.

The plan extract below shows a perspective view of the dwelling house approved on the Edwards Place site which is located within the Newrybar Scenic Escarpment area. It is considered that the dwelling house approved responds reasonably well to challenges of the site, including areas of steep terrain and vegetation, and has been appropriately sited in an area which is relatively flat and devoid of vegetation.



Planners North (PN) – *Chapter 2 General and Environmental Considerations – Clause 3.9 Stormwater Management*

PN raise no objection to the proposed amendment objective. PN seek a broad interpretation of the term “*lawful point of discharge*”.

Comment:

The term *lawful point of discharge* is currently defined in the *Northern Rivers Local Government Development and Design Manual* which is intended to be replaced by the *Ballina Shire Council Stormwater Management Standards for Development*. The consultation with stormwater consultants provided an opportunity to further review the lawful point of discharge definition.

Planners North (PN) – *Chapter 2 General and Environmental Considerations – Table 2.3 – General Car Parking Requirements*

PN raise no objection in principle to proposed car parking requirements. In order to retain future flexibility it is suggested that under the heading of Live / Work Development the bracketed words (West Ballina Enterprise Corridor Precinct) be excluded. This, it is suggested, will allow better utility for this land use as time goes on.

Comment:

Live / Work development is only referenced within DCP Chapter 6d – West Ballina Enterprise Corridor. Chapter 6d applies to the B6 Enterprise Corridor zone located adjacent to River Street in West Ballina. Special car parking requirements are nominated for live / work development which includes light industrial, cottage industrial, business incubation, new green technologies and shop top housing. No objection is raised to the reference in brackets to the West Ballina Enterprise Corridor Precinct being deleted as it will provide greater future flexibility should additional live / work precincts be identified within the shire at some future time.

Planners North (PN) – *Chapter 6c Commercial Development Lennox Head*

Generally raise no objection to the alterations and additions proposed for Chapter 6c. Submit that the preferred land use as specified in Part A relating to Development Controls for Precinct D should incorporate the land use flexibility illustrated by the Council in its determination of DA 2014/609.

Advise that the height control for the Lennox Head commercial precinct facilitates 3 levels. Indicate that if it is Council’s intent to limit development within the commercial area to 2 levels then this outcome should be described in the DCP.

Comment:

Clause 8.2 Preferred Land Uses for Precinct D has been amended significantly so that it no longer acts as a prohibition. The current wording provides as follows:

The preferred land use within this Precinct is short term tourist and visitor accommodation such as serviced apartments, motels and the like. Shop top housing is also encouraged. Commercial activities, such as restaurants or cafes, may be considered only when ancillary to the use of the premises for tourist and visitor accommodation and where fronting Ballina Street (short term accommodation must, however, remain the dominant land use).

The exhibited amendment to clause 8.2 provides for a softening of the provisions of clause 8.2 as indicated by the words in italics below:

*The preferred land use within this Precinct is short term tourist and visitor accommodation such as serviced apartments, motels and the like. Shop top housing, as well as commercial activities fronting Ballina Street that are ancillary to tourist and visitor accommodation, (such as restaurants or cafes) are also encouraged.*

It is considered that the proposed amendment creates the additional flexibility suggested by PN without the need for further amendment. It is however open to the Council to delete clause 8.2 in its entirety and rely only on the land use table contained within Ballina LEP 2012.

In respect to the building height issue raised by PN it is advised that Chapter 6c does not contain any building height restrictions. This issue is controlled by Ballina LEP 2012 and specifically the *Height of Buildings Map*. The building height limit in the Lennox Head commercial centre is 9 metres whereas the height limit in the adjoining residential area is 8.5 metres. It was the case prior to July 2015 that a 9 metre building height limit may have facilitated a three level development.

In July 2015 the revised SEPP – *Design Quality of Residential Apartment Development* came into effect together with the *Apartment Design Guide*. These provisions now also apply to mixed use development of three or more storeys. Under the provisions of the SEPP the ceiling height requirements specified in the *Apartment Design Guide* are required to be applied. These requirements effectively mean that a three level mixed use development would be required to have a minimum height of approximately 9.9 metres or 10.6 metres if the ground floor is proposed to be used by café or restaurant uses.

It is also doubtful whether it is possible to construct a 3 level apartment building containing ground floor garages and two levels of apartments whilst complying with minimum ceiling height requirements in the *Apartment Design Guide*.

In the above circumstances no additional advice or controls relating to building height are considered to be required within the Lennox Head commercial centre.

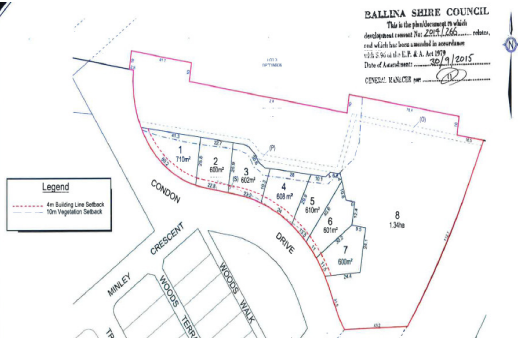
## 9.1 Development Control Plan 2012 - Amendment No 6

### Staff Submissions

During the exhibition of the DCP amendments staff have raised a number of issues that relate to the proposed amendments, which sought to better clarify related existing provisions or which relate to new provisions.

The table below lists the key matters raised by staff. It also contains comment on whether these suggested amendments can be accommodated within the current DCP review process.

**Table 3 – Summary of Issues Raised by Staff**

DCP Reference	Issue	Comment
Building Line Map (Sheet BL_007_020)	Variation to building line associated with a subdivision located in Condon Drive, East Ballina	<p>DA 2014/266 was approved in September 2015. The approval made provision for a 4 metre building line for certain lots with frontage to Condon Drive as indicated in the plan below. Council's standard building line was 6 metres prior to this variation.</p> <p>The submission requests that the Building Line Map (Sheet BL_007_020) be varied to reflect the approval already granted.</p> <p>This matter is considered to be an administrative change to the DCP to reflect the terms of an existing approval and one that will therefore not introduce a provision which sets a new requirement. For this reason it is considered that the variation to the building line map can be accommodated as part of the current DCP review process.</p> 
Chapter 2 2 General and Environmental Considerations	Clause 3.9.3 - Note at end of section E Standards is requested to now be the first point in this section given that the <i>Ballina Shire Council Stormwater Management Standards for Development</i> , have now been subject to industry consultation.	<p>The Note in question provides as follows:</p> <p><b>Note:</b></p> <p><i>The primary standard for provision and design of stormwater management systems and infrastructure will be the "Ballina Shire Council Stormwater Management Standards for Development" once finalised. The secondary standard is the "Northern Rivers Local Government Development and Design Manual". Where there is any inconsistency between these standards the primary standard shall prevail to the extent of the inconsistency.</i></p> <p>It is proposed that this Note be reworded as follows to become point i in this section of clause 3.9:</p> <p>i. <i>The primary standard for provision and design of stormwater management systems and infrastructure is the "Ballina Shire Council Stormwater Management Standards for Development". The secondary standard is the "Northern Rivers Local Government Development and Design Manual". Where there is any inconsistency between these standards the primary standard shall prevail to the extent of the inconsistency.</i></p>



## Options

1. Adopt and implement Amendment No. 6 to the DCP as exhibited, excluding changes to Chapter 2b Floodplain Management, or with changes.

This approach would involve the adoption of Draft Amendment No.6 as exhibited, excluding changes to Chapter 2b Floodplain Management, with the following additional recommended changes:

- Car parking requirements for Live / Work development nominated in Table 2.3 of DCP Chapter 2 delete the reference to West Ballina Enterprise Corridor Precinct.
- Amend the Building Line Map as it applies to Condon Drive, East Ballina, so as to incorporate the 4 metre building line approved in DA 2014/266.
- Reword the objectives paragraph of *Chapter 2, Section 3.9 - Stormwater Management* to clarify the distinction between objectives and controls including reword of objective (c) by deleting the words "not exceed pre development values" and replacing with "ensure no significant adverse downstream flooding or ecological impacts".
- Reword Section 3.9.3C (Manage Stormwater Runoff from Development) by deleting the word "mitigated" and inserting the word "significant" before the words "adverse flooding or ecological impacts"
- Incorporate as point i. in clause 3.9.3, under the heading of E. Standards, a reference to the *Ballina Shire Council Stormwater Management Standards for Development* being the primary standard and deletion of the *Note* as contained within the exhibited draft DCP documentation.

This is the recommended course of action and will support the provision of sound and consistent land use planning outcomes in the shire. The concept of regularly monitoring the DCP and adapting its provisions to changing circumstances, particularly with input from building designers and our assessment officers, is one that the Council has successfully applied over a considerable period, and it is suggested this process should continue.

If this is the approach adopted by the Council, it is proposed that the amendment will take effect from 1 February 2016. Public notice is required to be given of the amendment's adoption within 28 days of the Council's decision.

2. Decline the adoption of DCP Amendment No. 6

The Council may resolve to decline to adopt Draft Amendment No. 6 to the DCP in whole or part. This is not the recommended course of action as it will result in the identified changes, corrections and interpretive improvements not being incorporated into the DCP which will impact on its efficiency in providing intended and consistent land use planning outcomes.

3. Defer adoption of DCP Amendment No. 6

The Council may resolve to defer the adoption of Draft Amendment No. 6 to the DCP and seek additional information and/or further consideration of the identified issues, including those raised in the submissions.

As detailed in this report, it is the intent of Draft Amendment No. 6 to provide better function and clarity to the DCP and as such, this option is not recommended. Further, the matters raised in submissions that are not specifically related to Amendment No.6 will be scheduled for further consideration. This includes Chapter 2b Floodplain Management issues related to the examination of non-filling solutions and the further simplification of this chapter.

It is also noted that the work program for Council's Strategic and Community Facilities Group includes the monitoring of Council's key strategic land use planning documents, and their regular reporting to the Council. This assists in ensuring that the DCP remains relevant in achieving the desired development outcomes in the shire.

**RECOMMENDATIONS**

1. That the Council adopts Draft Amendment No.6 to the Ballina Shire Development Control Plan 2012, excluding proposed changes to Chapter 2b Floodplain Management, as exhibited for public comment, inclusive of the following additional changes:
  - Car parking requirements for Live / Work development nominated in Table 2.3 of DCP Chapter 2 delete the reference to West Ballina Enterprise Corridor Precinct.
  - Amend the Building Line Map as it applies to Condon Drive, East Ballina, so as to incorporate the 4 metre building line approved in Development Consent No 2014/266.
  - Reword the objectives paragraph of Chapter 2, Section 3.9 - Stormwater Management to clarify the distinction between objectives and controls including reword of objective (c) by deleting the words "not exceed pre development values" and replacing with "ensure no significant adverse downstream flooding or ecological impacts".
  - Reword Section 3.9.3C (Manage Stormwater Runoff from Development) by deleting the word "mitigated" and inserting the word "significant" before the words "adverse flooding or ecological impacts"
  - Incorporate as point i. in clause 3.9.3, under the heading of E. Standards, a reference to the *Ballina Shire Council Stormwater Management Standards for Development* being the primary standard and deletion of the *Note* as contained within the exhibited draft DCP documentation.
2. That Council provide a copy of Ballina Shire DCP 2012, once amended, to the NSW Department of Planning and Environment as required by the Environmental Planning and Assessment Regulation.

## **9.1 Development Control Plan 2012 - Amendment No 6**

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3. That Council provide public notice of the adoption of Ballina Shire Development Control Plan Amendment No. 6, with the amended DCP taking effect on 1 February 2016.

### **Attachment(s)**

1. Attachment One - Schedule of Proposed DCP Amendments as Exhibited
2. Attachment Two - Submission - Newton Denny Chapelle
3. Attachment Three - Submission - Planners North

## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

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### 9.2 Pop Denison Park, East Ballina - Draft Master Plan

**Delivery Program** Strategic Planning

**Objective** To report on the submissions received in response to the public exhibition of the draft Master Plan for Pop Denison Park in East Ballina and seek direction from the Council with respect to the adoption of the plan.

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#### Background

Council commenced 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 and promotion of Pop Denison Park as a regional park facility (see Figure 1 for the extent for the project study area).

Figure 1 - Pop Denison Park (outlined in red)



## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

Council staff subsequently engaged landscape architect Jackie Amos 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 session 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 master plan.

At its Ordinary Meeting held on 22 October 2015 the Council (including Council as Manager for the Ballina Shaws Bay Reserve Trust) considered the draft master plan and resolved as follows [Minute No. 221015/8]:.

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.*

In accordance with the Council's resolution the draft master plan (see extract in Figure 2) was placed on public exhibition between 4 November and 2 December 2015.

Figure 2 - Draft Master Plan Pop Denison Park



## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

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The purpose of this report is to provide an overview of the submissions received in response to the public exhibition of the draft Master Plan and seek direction from the Council (and Reserve Trust) with respect to the adoption of the Pop Denison Park Master Plan.

Attachment 1 contains a copy of the complete draft Pop Denison Park Master Plan, inclusive of the master plan and supporting information, as exhibited.

### **Key Issues**

- Outcomes of public exhibition

### **Information**

The draft Master Plan was placed on exhibition for community feedback between 4 November and 2 December 2015. In response, 11 written submissions have been received which are further considered within the consultation section of this report. Issues of more major significance raised within the submissions and resulting from further internal analysis are discussed below.

#### *Staging of Park Development Works*

The draft Master Plan contains an indicative staging and cost schedule which is reproduced below (Figure 3). The staging schedule and equipment composition is indicative only and it is anticipated that it will be varied from time to time depending on availability of funding and demand for facilities. Obviously it would be preferable to deliver the various elements of the plan within a shorter timeframe. However, the reality is that in the absence of an alternative or additional funding source, there aren't too many alternatives to staging the work over the period identified within the plan.

It is noted that works proposed within the exhibited staging schedule do not specifically include shade structures over the junior and senior play areas. The inclusion of shade structures within the Master Plan has been addressed within the recommendations to this report.



## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

Figure 3 – Indicative Staging and Cost Schedule

Proposed Item	Approximate Quantity	Anticipated Cost	Proposed Staging
new toilet block		\$ 90 000	2015 - 2018 Stage 1
foreshore path	385m long x 2m wide	\$ 70 000	2015 - 2018 Stage 1
extend road		\$ 25 000	2015 - 2018 Stage 1
install new southern car park	536m <sup>2</sup>	\$ 84 000	2015 - 2018 Stage 1
shelter to existing petanque piste with seating	1	\$ 6 000	2015 - 2018 Stage 1
<b>Sub total Stage 1 works</b>		<b>\$ 275 000</b>	
install new northern car park	310m <sup>2</sup>	\$ 70 000	2018 - 2023 Stage 2
remove two existing southern carparks and regrass		\$ 15 000	2018 - 2023 Stage 2
central spine path	200m long x 2m wide	\$ 36 000	2018 - 2023 Stage 2
Junior Playground with softfall		\$ 210 000	2018 - 2023 Stage 2
Senior Playground with softfall		\$ 250 000	2018 - 2023 Stage 2
new picnic shelters	5	\$ 50 000	2018 - 2023 Stage 2
new picnic settings	12	\$ 24 000	2018 - 2023 Stage 2
new seating	6	\$ 15 000	2018 - 2023 Stage 2
new water bubblers or taps + provision of water	5	\$ 10 000	2018 - 2023 Stage 2
new bins	4	\$ 6 000	2018 - 2023 Stage 2
new bike racks	2	\$ 4 000	2018 - 2023 Stage 2
new BBCs + provision of electricity	3	\$ 22 000	2018 - 2023 Stage 2
new tree planting		\$ 30 000	2018 - 2023 Stage 2
<b>Sub total Stage 2 works</b>		<b>\$ 742 000</b>	
new picnic shelters	4	\$ 40 000	2023 - 2028 stage 3
new picnic settings	10	\$ 20 000	2023 - 2028 stage 3
new bins	4	\$ 6 000	2023 - 2028 stage 3
curved eastern path	400m long x 1.5m wide	\$ 55 000	2023 - 2028 stage 3
new seating	6	\$ 15 000	2023 - 2028 stage 3
boardwalk to ecological protection zone	80m long x 1.5m wide	\$ 96 000	2023 - 2028 stage 3
interpretive signage		\$ 8 000	2023 - 2028 stage 3
information sign at foreshore area		\$ 1 000	2023 - 2028 stage 3
park entry signs		\$ 6 000	2023 - 2028 stage 3
new petanque piste with shelter and seating		\$ 20 000	2023 - 2028 stage 3
establish defined bush trails and revegetate disused trails		\$ 25 000	2023 - 2028 stage 3
car parking along Fenwick Drive	560m <sup>2</sup>	\$ 95 000	2023 - 2028 stage 3
bollards along Fenwick Drive	100	\$ 12 000	2023 - 2028 stage 3
path along Fenwick Drive frontage	260m x 1.5m	\$ 40 000	2023 - 2028 stage 3
childrens cycle path	225m x 1.2m wide	\$ 23 000	2023 - 2028 stage 3
exercise stations along foreshore path	6	\$ 18 000	2023 - 2028 stage 3
structure at end of central path with seating		\$ 15 000	2023 - 2028 stage 3
public art projects to park		\$ 100 000	2023 - 2028 stage 3
weed removal programme to bushland		\$ 35 000	2023 - 2028 stage 3
<b>Subtotal for Stage 3 works</b>		<b>\$ 630 000</b>	<b>2023 - 2028 stage 3</b>
<b>TOTAL</b>		<b>\$ 1 647 000</b>	

### *Adequacy of Proposed Car Parking Facilities*

The draft Master Plan makes provision for a total of 87 car parking spaces. There are proposed to be 58 spaces located within the park and 29 spaces accessed from Fenwick Drive.

Pop Denison Park currently contains approximately 20 parking spaces located within three small hard stand car parking areas. Vehicles also park parallel to the existing internal access road in peak usage periods. Therefore, in terms of formal car parking, an additional 67 spaces are proposed to be provided. Two of the existing hard stand parking areas, having a combined capacity for 12 spaces, are proposed to be removed in Stage 2, and replaced with park facilities.

Whilst 87 car parking spaces are shown in the draft Master Plan, including along Fenwick Drive where it adjoins the park, Pop Denison Park and its surrounds have significant additional capacity to accommodate further parking over time (100 plus cars estimated). A recommendation arising from this report is that areas suitable for accommodating additional car parking be identified as *potential future car parking*. In this way the provision of additional car parking can be considered if and when required without compromising the integrity of the Master Plan.

### *Shaws Bay Coastal Zone Management Plan (CZMP)*

A number of submissions expressed concerns related to issues addressed within the CZMP including water quality within Shaws Bay, the proposed Ecological Protection Zone at the northern end of the park, and the rate of progress in terms of implementing the CZMP.

The planning process for the development of the draft Master Plan required full consistency to be achieved with relevant actions arising from the CZMP and it is considered that this has been achieved through the draft plan and the associated recommendations set out in this report. It is also noted that the Council, at its Ordinary Meeting held on 26 November 2015 has now resolved to submit the CZMP to the Minister for approval and certification.

### *Through Road Link to Fenwick Drive*

The incorporation of a through road linking the internal north-south road with Fenwick Drive was considered during the development of the draft Master Plan. It was considered that with careful planning of internal pathways and placement of parking spaces, there is no immediate need to incorporate a through road link, as its benefits are unclear. As the park develops and its usage grows it may be possible to provide a road link to Fenwick Drive without compromising other park facilities if this is seen as desirable.

### **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 residents and our visitors. The nature of facilities proposed to be provided should ensure that the social benefits derived from a well designed, constructed and maintained 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 visitor destination. This in turn will provide positive 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 Department of Primary Industries - Lands has been undertaken to ensure that the State Government is kept informed of proposals impacting its land. A copy of Lands' response is contained within Attachment 2 and a summary of issues raised has been considered within the Consultation section of this report.

There are no significant immediate resource implications arising from the recommendations of this report. In the forthcoming period the Master Plan will be used as the basis for the allocation of financial resources.

The indicative budget to fully implement the Masterplan was originally set at \$1.675 million to 2028. This was based on the Council's adopted 2008 s94 Contributions Plan allocating \$1.5 million for major park upgrade works over a 20 year period. The remaining \$175,000 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. This \$100,000 in funding is 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.

The staging and cost schedule shown in Figure 3 has allocated \$90,000 for the construction of a new toilet block as part of Stage 1 works proposed to be sourced from s94 funds. Given Council has funded the park amenities separately this effectively extends the indicative budget by an additional \$100,000. It therefore provides the opportunity to fund shade structures for playground areas as previously discussed.

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

### **Consultation**

The consultation strategy for the exhibition of the draft Master Plan consisted of the following elements:

- Advertisement in the Ballina Shire Advocate,
- Press release for Northern Rivers media,
- Interview on ABC radio,
- Story within Council's eNews,
- Information display on Council's web site, Customer Service Centre and libraries,
- Written advice to sporting club users of Pop Denison Park,
- Written advice to persons who provided contact details at previous consultation events,

## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

- Written advice to in excess of 300 property owners in the Shaws Bay estate and adjoining areas, and
- Letters to NSW Fisheries, NSW Lands, Police and Lakeside Caravan Park.

A total of 11 written submissions were received in response to the exhibition of the draft Master Plan. Attachment 2 contains copies of these submissions. A summary of matters raised in the submissions, together with comments from staff and/or the consultant Landscape Architect is contained in the table below.

Table 1 –Submission Summary

Submitter	Submission Comments	Response
<i>Police</i>	Police recommend consultative inclusion at each stage of the proposed works given that works are proposed in three stages in the period 2015 - 2028. This will allow definitive comment on the proposed works in order to minimise crime risk as required under Crime Prevention Guidelines.	Involvement of Police in the detailed design for each stage is considered appropriate.
<i>Department of Primary Industries - Lands</i>	Commend Council on the draft Master Plan which it is indicated provides a level of review and planning commensurate with the significant recreational values of the reserve. Suggest that the draft Master Plan may benefit from a statement of context in relation to the suite of management plans for Shaws Bay. Indicate that the statutory context section should make reference to the Crown Lands Act 1989 and acknowledges the "Principles of Crown Lands Management".	The draft Master Plan can readily be amended to incorporate the context and legislative references made by Lands. It is also noted that the Council at its meeting held on 26 November 2015, when giving consideration to the Shaws Bay CZMP, resolved to give consideration to amending its s94 Contributions Plan to incorporate all open space and reserves adjacent to Shaws Bay including Pop Denison Park. This decision is also proposed to be referenced within the draft Master Plan and will assist in establishing the context of Pop Denison Park with the broader issue of open space facilities located within the Shaws Bay precinct. The draft Master Plan is consistent with the Council's objective of integrating all open space land along the foreshore of Shaws Bay.

## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

Submitter	Submission Comments	Response
<p><i>Department of Primary Industries - Fisheries</i></p>	<p>Indicate that they look forward to working with Council's Draft PDPM to achieve the best outcomes for the ongoing management of Shaws Bay. Advise that direct impacts on seagrass resulting from proposed dredging of Shaws Bay (under the CZMP) would need to be assessed and potentially offset.</p> <p>Indicate that they are pleased that the draft PDPM incorporates strategies to design facilities that reflect the designation of the northern end of Shaws Bay as an Ecological Protection Zone (EPZ as per CZMP). Appreciate the incorporation of signage that encourages an understanding of the significance of mangrove habitat and protection of salt marsh areas.</p> <p>Indicate that management of mangroves is to be as per CZMP recommendations and in accordance with Council's existing permit. Support the recognition of the saltmarsh on the point and its protection with dune style fencing.</p> <p>In respect to the proposed boardwalk advice provided that any dredging or reclamation work associated with the proposal will trigger a need for approvals under the Fisheries Management Act prior to commencement of works. Suggest that mesh decking would reduce direct impact on aquatic vegetation.</p>	<p>The comments of Fisheries have been noted and will be of assistance when preparing detailed designs. The consistency of the draft Master Plan with the CZMP for Shaws Bay has been acknowledged in the Fisheries submission.</p>
<p><i>Aspect Community Connections - Autism Spectrum Australia</i></p>	<p>Propose specific inclusion measures be incorporated within the detailed designs for the park:</p> <ol style="list-style-type: none"> <li>1. Junior playground be fenced, incorporation of inclusive play space that caters for vision, hearing and mobility impairments as well spectrum disorders. Create a fenced playground or one surrounded by a clear, wide perimeter path.</li> <li>2. The proposed junior playground to contain play equipment that caters to sensory needs such as sight, touch and sound, for example nature, sand, water or musical play.</li> <li>3. Consider including a wheelchair swing (Liberty swing) in the playground for inclusive play.</li> <li>4. Consider including a ramp into Shaws Bay to allow inclusive swim access.</li> </ol> <p>Indicate that Autism Spectrum Australia is available to provide further recommendations or consultation.</p>	<p>The comments made by <i>Autism Spectrum Australia</i> are proposed to be further considered during the detailed design phase for each stage of the parks enhancement with a view to incorporating appropriate inclusion measures.</p>

## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

Submitter	Submission Comments	Response
<p><i>Mick Howland, Hydrosphere Consulting (Prepared Shaws Bay CZMP on behalf of Council)</i></p>	<p>Extension of the roadway through the park is supported. It may be advantageous to extend this further such that it connects with Fenwick Drive, thereby allowing access to either end, and allow additional parking options. The potential for through-traffic is considered to be low and this option may actually reduce the amount of cars travelling the full length of the roadway.</p> <p>Although use of a pontoon at the south-western end of Shaws Bay adjacent to the steps (to facilitate additional access to the water) considered in the CZMP, the inclusion of an island like pontoon near Pop Denison Park isn't supported. It is likely to detract from the visual amenity of this section of the Bay. The location identified also appears to be in shallow water which may present a diving safety hazard.</p> <p>The concept of clearing some understorey scrub in favour of opening up views is supported. This should be planned carefully to ensure some segregation of recreation areas, maintenance of wind breaks, protection of trees, etc. There are opportunities to provide more use of the understorey area through inclusion of seats and possibly picnic tables in this area as well as providing better pathways to encourage access to the westward facing beach.</p> <p>Support the new pavement/path concept. However, care should be taken to ensure that the path does not bisect key areas or disrupt the feeling of space. The water side areas of Pop Denison Park are relatively constrained and achieving the right balance of pathway and open space near the water is important.</p> <p>The structure to 'celebrate' the arrival from the central pedestrian access at the foreshore is unnecessary and has significant potential to detract from the area.</p> <p>The board walk concept is excellent and is in a good location.</p> <p>Some fencing of the saltmarsh areas is likely to be necessary, but care should be taken to ensure that fencing remains unobtrusive and that access around the sandy beach area is not unduly hindered.</p>	<p>It is possible to extend the southern access road to link with Fenwick Drive at some future time without compromising other facilities contained within the draft Master Plan.</p> <p>Incorporating provision for the road extension within the Master Plan at this time is not supported as it remains unclear as to whether it will provide any significant benefits. It may for example encourage through traffic, an increase in traffic speed within the park and give rise to concerns from Fenwick Drive residents as to anticipated impacts. Traffic flow within the park may also be improved by restricting car parking along the internal access roads. As a general rule, limiting vehicular access within open space areas is preferred as it maximises the area available for recreation activities and reduces the potential for vehicular and pedestrian conflict.</p> <p>Giving consideration to extending the internal road in the future, if required, is supported by Council's Landscape Architect.</p> <p>The pontoon was raised during the community consultation process and received strong support. The Master Plan does not make any funding provision for the installation of a pontoon as this facility is not contained within Pop Denison Park. Reference to a pontoon is contained within the Master Plan document which nominates it as a seasonal facility. The comments made in the submission from Hydrosphere are considered reasonable and at this stage it will be recommended that reference to a pontoon be deleted from the Master Plan.</p> <p>Areas for clearing would be identified in detailed designs for each stage. The Master Plan indicates seats and picnic tables. The specific location of these, relative to retained trees and clearing, would be identified during the detailed design phase. Potential to include another trail to connect to the beach is not supported as additional road crossing points would increase potential conflict between pedestrians and vehicles. No changes proposed to the Master Plan.</p> <p>In relation to pathways, it is considered that an appropriate balance has been achieved. The foreshore pathway will encourage through traffic to keep to the path and will reduce compaction of the foreshore open space. No changes proposed to the Master Plan.</p> <p>The Master Plan proposed the construction of a shade structure with seating at the end of the east – west internal pathway to "celebrate" the arrival at the water. The comment made in the submission is not supported. A well designed element could be a visual feature at this location. No changes proposed to the Master Plan.</p> <p>The draft Master Plan indicates that dune style fencing will be provided to protect saltmarsh areas. The use of this fencing has been supported in the Fisheries submission.</p>

**9.2 Pop Denison Park, East Ballina - Draft Master Plan**

Submitter	Submission Comments	Response
<p><i>Chris Mills</i></p>	<ol style="list-style-type: none"> <li>1. Parking – Considers parking will be inadequate for major events.</li> <li>2. Traffic flow – Considers that there will be flow problems, cars entering will need to back track if all sections are full, the use of one way traffic with a "ring road" may work better? Suggest moving the senior playground further south and put the road between the playgrounds with extra parking.</li> <li>3. Overall indicates that it is good to see some "tidy up" of the area.</li> </ol>	<p>Provision could be made to accommodate major event parking within the proposed grassed area at the north – eastern end of the park. This would be similar to the existing situation.</p> <p>The park currently contains approximately 20 parking spaces within 3 hardstand parking areas. Additional informal parking takes place along both sides of the internal roadway during peak period.</p> <p>The draft Master Plan proposes to retain the most northern parking area (8 spaces) and remove two southern car parks (12 spaces – Stage 2) and replace them with a park shelter, two picnic facilities, landscaping and pathway.</p> <p>In terms of additional car parking spaces, the draft Master Plan makes provision for 58 spaces accessed from within the park and 29 spaces accessed from Fenwick Drive. In total some 87 car parking spaces have been provided within the design. This includes 27 additional car parking spaces within Stage 1, 11 additional spaces within Stage 2 and 29 additional spaces within Stage 3.</p> <p>The size of the site and the location of proposed facilities is such that significant additional car parking (100 plus spaces) could be provided if required in the future. It is recommended that the draft Master Plan be amended to indicate areas suitable for potential future car parking.</p> <p>A ring road system is not supported due to the loss of open space. The alternative of extending the southern access road to Fenwick Drive, at some future time, as discussed above, is a matter that may require consideration depending on park usage levels.</p>

## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

Submitter	Submission Comments	Response
<p><i>Victoria O'Connor</i></p> <p><i>Boules Artistes Pétanque Club</i></p>	<p>Generally support the draft Master Plan subject to the following:</p> <ol style="list-style-type: none"> <li>1. Prefer option 2. Options 1, 3 and 4 are located in a position where people would need to walk across the petanque piste to get to the junior play area, closeness to junior play area may encourage inappropriate use, co-location of the piste makes managing games more convenient.</li> <li>2. Welcome shade structures and request tree planting to supplement shade.</li> <li>3. Encourage Council to include storage within the toilet block as they have a need to store their equipment.</li> <li>4. Support bubblers and request positioning in a location that does not encourage non players to walk across the piste.</li> <li>5. Support lighting but only in the early evening for BBQs as later lighting may encourage anti-social behaviour. Solar is their preference. Could have twilight games if lighting was available.</li> <li>6. Disappointed that timing for construction for the new petanque piste is within proposed Stage 3 scheduled for 2023-2028.</li> <li>7. Comment that the existing picnic shelters do not meet the needs of users.</li> <li>8. Amount of proposed parking appears inadequate.</li> <li>9. Strongly support the fitness facilities, play areas, boardwalk and signage.</li> </ol>	<p>Option 2 which co-locates the petanque piste as indicated below is not supported.</p> <p>Option 2 lacks connectivity across the park. The landscape architect is of the view that the surrounds to the petanque piste and path could be designed using planting to encourage pedestrian movement in certain directions. Park elements should co-exist, and be designed in a way that encourages appropriate use. This can be achieved in the detailed design stage.</p> <p>Specific location of trees will be considered in the detailed design stage.</p> <p>The draft Master Plan made no specific provision for a storage facility although it has acknowledged that the need for storage facilities was an issue raised by sporting groups which use the park. Storage for park maintenance purposes will also be required given the proposed nature of the facilities within this park.</p> <p>The draft Master Plan contemplates that storage could be incorporated within the design of the proposed new amenities building. It will be recommended that the draft Master Plan be amended to indicate that storage areas and a kiosk be incorporated within this facility. This will enable the detailed design stage for this building to consider these facilities.</p> <p>Lighting for the early evening was intended to enable use of the BBQ areas as opposed to play and sporting facilities.</p> <p>Staging of works is a matter for Council. The staging plan incorporated within the draft Master Plan is indicative only and may be amended in the future depending on the availability of funding and the final costs associated with the "as built" work as well as demand for specific facilities.</p> <p>Proposed Stage 1 includes a shelter for the existing petanque piste and seating (\$6,000). The proposed new petanque piste and seating (\$20,000) is contained within Stage 3. It is recommended that the draft Master Plan be amended to indicate that the area for the new petanque piste be labelled as a potential petanque piste site. This will enable further consideration to be given to the appropriateness of such a facility within the regional park in the period 2023 to 2028.</p> <p>Three existing park picnic shelters are proposed to be retained due to their overall good condition. The Master Plan proposes 5 new picnic shelters (\$50,000) in Stage 2 (2018 – 2023) and 4 new picnic shelters (\$40,000) in Stage 3 (2023 – 28).</p> <p>In relation to car parking, refer to previous comments in responses to submissions above.</p>

## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

Submitter	Submission Comments	Response
Bruce Casselden	<p>Concerns relate to the foreshore of the lake adjoining the area of Pop Denison Park and other areas.</p> <p>The Pop Denison Park proposal mentions addressing issues related to the CZMP, as part of the program.</p> <p>It appears that very little work has been done in respect to the CZMP that was introduced in the early 2000s.</p> <p>The use of Pop Denison park is related in many ways with the ability to utilise the water areas that adjoin the park. Families and other users use the park area in conjunction with the water areas.</p> <p>Mud, mangroves and various water vegetation are overtaking and reducing the actual beach type area that people can utilise.</p> <p>Understanding that Council did have (or does have) a Permit to remove and control some mangrove areas. It would appear that Council has not utilised that Permit to enhance the various areas adjoining the lake. Many of the sand areas are now also covered with mud, reducing the enjoyment by users.</p> <p>It appears that enhancing the park area would in many instances be a waste of capital if the users do not have a clean and open lake foreshore to enjoy.</p> <p>Council should, commence to undertake the recommendations of the CZMP before actually improving the land base of the Park.</p>	<p>Council has a recurring Fisheries permit to harm mangroves within Shaws Bay. This is limited to certain access areas around the foreshore and is mapped. These mangrove-free areas are maintained as such each year under the specific permit conditions and do not include all foreshore areas only limited access areas.</p> <p>The Master Plan has been developed to integrate relevant works and actions arising from the Shaws Bay CZMP.</p>
Tracey Nobbs	<p>Main issue is the car parking along Fenwick Drive. Especially in front of her home. Concerned that it will:</p> <ul style="list-style-type: none"> <li>• Attract people arriving for fitness activities very early (in the dark) in the mornings, dogs barking, car doors slamming, noise etc.</li> <li>• Be a nightmare with road congestion - caravans arriving &amp; departing from Holiday Park on Fenwick Dr.</li> </ul> <p>Extra car parking could be along the left hand side of existing road on entering Pop Denison from Compton Dr with some more closer to water and picnic areas</p>	<p>In relation to car parking, refer to previous comments in responses to submissions above.</p> <p>The draft Master Plan makes provision for 29 formal 90 degree spaces in Fenwick Drive associated with Stage 3 (2023 – 2028) works. It is considered that irrespective of the provision of formal car parking in Fenwick Drive, some park users will use Fenwick Drive for parking purposes and then access the park. It is therefore preferable from a traffic management viewpoint to formalise car parking as proposed.</p> <p>Cars currently park either side of the internal access road in peak usage periods. Internal traffic management measures, such as limiting car parking to one side of the internal access road, or prohibiting car parking depending on park usage levels, may be necessary in the future.</p>

## 9.2 Pop Denison Park, East Ballina - Draft Master Plan

Submitter	Submission Comments	Response
June Beresford	<p>Concerned about adequacy of car parking and distance of car parking to foreshore given existing car parking near foreshore is proposed to be removed.</p> <p>Indicates that car parking in Fenwick Drive is a good idea but would not service the users of the bay. Suggests existing car parking be retained.</p> <p>Concerned about location of the junior playground near the toilet block.</p> <p>Suggests that exercise stations be located along the informal running track as it's the runners that would use these not the walkers.</p> <p>Wonders whether the pontoon idea was discarded as it's not included in any of the stages of the park development.</p> <p>Concerned that condition of Shaws Bay will not encourage use of park.</p> <p>Concerned about location of the Ecological Protection Zone (as per CZMP) and loss of water access.</p> <p>Concerned about limited area designated for dredging of the bay.</p>	<p>In relation to car parking, refer to previous comments in responses to submissions above.</p> <p>It is the case that 6 car parking spaces within the south-western picnic area have been removed and replaced with 3 parking spaces parallel to the access road. Removing parking spaces close to the water has enabled the freed up area to be used to provide shelter and picnic facilities.</p> <p>The rebuilding of the park amenities building, including provision for a kiosk and storage, as well as the anticipated substantially higher usage levels associated with new park facilities, are considered to act as a disincentive for claimed current unsavoury activities.</p> <p>Exercise stations are proposed to be located along the main north- south pathway system which links to the reserve area adjoining Shaws Bay to the south. It is considered that this pathway will become the main path used by walkers and runners due to its circuitous nature.</p> <p>Facilities within Shaws Bay are outside the area affected by the draft Master Plan. A pontoon is however shown within the north-eastern corner of Shaws Bay and discussed within the draft Master Plan document. As indicated above though, it is recommended that this be deleted from the plan.</p> <p>Issues relating to the ecological protection zone and dredging are matters for the Shaws Bay CZMP which has been separately considered by Council. The draft Master Plan was required to be consistent with the provisions of the Shaws Bay CZMP.</p>
Karen Morgan	<p>Requests consideration to an additional toilet block on the eastern side of the park near the running track. Also considers showers should be contained within these facilities.</p>	<p>The \$100,000 cost of an additional toilet block precludes the incorporation of such a facility within the draft Master Plan at this time.</p>

### Options

1. That the Council does not adopt the Pop Denison Park Master Plan and cease further action on the project.

Due to the extensive consultation undertaken in the preparation of the plan to date and the rationale underpinning the key elements of the proposed use of the park, this option is not recommended.

2. That the Council defer the adoption of the draft plan.



## **9.2 Pop Denison Park, East Ballina - Draft Master Plan**

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This option could involve further consideration of the draft plan by way of another Councillor briefing or additional community engagement. Given that the Council has already workshopped the matter, considered the draft plan and the outcomes of the community engagement undertaken to date, this option is not recommended.

3. That the Council adopt the plan as exhibited, or with changes.

The Council, including Council in its role as Manager for the Ballina Shaws Bay Reserve Trust, can adopt the draft plan as is, or with minor changes. This option is recommended on the basis of the rationale underpinning the plan and that the consultation to date has been extensive.

A number of submissions on the draft plan warrant further consideration prior to the implementation of works. However, it is suggested that none of the matters raised present a need to significantly change the draft plan in its current form. As manager of the reserve, Council has the benefit of being able to adjust the master plan in the future if it becomes evident that such action will be beneficial from a social, environmental or economic perspective.

If the Council elects to adopt the plan, it is recommended that the plan be adopted as exhibited with the incorporation of some minor changes as discussed in the reporting above (and embodied within the recommendation below). Under this approach, staff will proceed to finalise the plan incorporating the recommended changes and including any final formatting and typographic adjustments. The plan will then be used to guide further development of the park and the preparation of detailed design plans.

### **RECOMMENDATIONS**

1. That Council, including Council in its role as Trust Manager for the Ballina Shaws Bay Reserve Trust, adopts the Pop Denison Park Master Plan as exhibited for community comment, subject to incorporation of the following amendments:
  - Remove the pontoon shown within the north-eastern corner of Shaws Bay.
  - Provide for a kiosk and storage facilities in the design of the proposed new toilet facility and that this be recognised in the indicative staging and cost plan with a revised costing of \$100,000.
  - Indicative staging and costing plan to make provision for shade structures over senior and junior playground areas to the value of \$90,000 within Stage 2.
  - Areas suitable for potential future car parking within the park and on Fenwick Drive to be shown in the Master Plan.
  - Petanque piste site within Stage 3 be labelled as a potential site.
  - The Master Plan to incorporate a reference to appropriate inclusion measures being considered during the detailed design stages, as suggested by Aspect Community Connections.

## **9.2 Pop Denison Park, East Ballina - Draft Master Plan**

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- The Master plan to include appropriate references to existing management plans for the Shaws Bay precinct and references to the *Crown Lands Act* 1989 and the Principles of Crown Land Management.
- 2. That Council provide a copy of the finalised Master Plan to the NSW Department of Primary Industries - Lands for information.
- 3. The funding of the Pop Denison Master Plan is to be incorporated into Council's Long Term Financial Plan as part of the formulation of the 2016/17 Delivery Program.

### **Attachment(s)**

1. Attachment One - Pop Denison Park Draft Master Plan (Under separate cover)
2. Attachment Two - Copy of Submissions

### **9.3 Classification of Land - Selkirk Place Wollongbar**

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### **9.3 Classification of Land - Selkirk Place 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.

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#### **Background**

Lot 76 in DP 1213425 is located in Selkirk Place, Wollongbar, 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 One.

The lot comprises part of the stormwater management system in place for the Avalon Estate which was approved under Development Consent No. 2007/876, and authorised for registration by Council in Subdivision Certificate No. 36/2015 on 25 September 2015.

The purpose of this report is to determine the classification of lot 76 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 lot 76 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 20 October 2015 upon the registration of DP 1213425 and therefore the three month classification “window” expires on 20 January 2016.

### 9.3 Classification of Land - Selkirk Place Wollongbar

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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 displayed in the Ballina Shire Advocate on 4 November 2015 in accordance with section 34 of the Act, with submissions invited until 2 December 2015. 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 76 in DP 1213425 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 public utility 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 2 December 2015. No submissions in response to the notification were received.

#### 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 - Selkirk Place Wollongbar**

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Where land is classified as community land, Council would be obliged to manage the land for community purposes and make provision 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 76 DP 1213425, Selkirk Place, 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 Map

## **9.4 Private Structures within Council Owned Waterways - Management**

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### **9.4 Private Structures within Council Owned Waterways - Management**

**Delivery Program** Strategic Planning

**Objective** To seek the Council's direction regarding policy and procedures relating to private structures within Council owned waterways.

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#### **Background**

At its Ordinary Meeting held on 22 August 2013, Council considered a report outlining a number of issues relating to the management of private structures within Council owned waterways. In considering the matter the Council resolved to prepare a draft policy for the management of private structures within Council owned waterways and that this matter be reported to the Council for its consideration [Minute No. 220813/13].

By way of clarification, this report relates only to waterways which are owned by Council. These areas have been previously dedicated to Council as outcomes of development which has occurred adjacent to them, or which those waterways have formed part of. Prospect and Chickiba Lakes are both also Council owned waterways, but these water bodies are contained within larger public reserves and do not have freehold allotments immediately abutting them, nor private structures extending into them.

Similarly, the report does not address private structures which extend into the Richmond River or North Creek. Whilst there are many of these, the river and creek comprise Crown land and structures placed within them are administered by the State Government, rather than Council.

The placement of private waterway structures on Council owned land was further considered at the Council's Ordinary Meeting held on 24 April 2014 where it was resolved to adopt an interim position [Minute No. 240414/22]. This interim position authorises the General Manager to enable the processing of development applications for waterway structures on Council land subject to conditions requiring the applicant to obtain legal tenure and appropriate public liability insurance coverage.

Further, the identified approach for authorisation of private structures on Council land required the reclassification of the subject Council owned waterways from 'Community Land' to 'Operational Land' for the purposes of the *Local Government Act 1993*. Council resolved on 27 March 2014 to proceed to reclassify the land containing the Council owned waterways at Ballina Quays and Banyanda Lake to operational land [Minute No. 270314/3]. The reclassification was completed in July 2014.

The purpose of this report is to outline the various management issues relating to the use of Council owned waterways and the placement of private boating and recreational structures (such as boat ramps, jetties and pontoons) over Council owned land. The report examines a number of options relating to the ongoing use of the waterways for such structures including Council's potential liability risks.

## **9.4 Private Structures within Council Owned Waterways - Management**

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In addressing these issues, the Council has the option of adopting a policy position to guide the management and establishment of private structures within waterways which it owns. These options were also discussed with Councillors at a briefing session held on 30 November 2015.

As detailed in the report considered at the Council's Ordinary Meeting held on 22 August 2013, Council owns a number of waterways that are navigable by recreational boating vessels and that are adjoined by private allotments that benefit from waterfront access. The subject waterways are identified in the map contained in Attachment One and comprise the following:

- Ballina Quays Canals – Lot 63 DP 263861 & Lot 132 DP 775228;
- Banyanda Lake – Lot 50 DP 259593; and
- Endeavour Lake (Canal/Southern Cross Industrial Estate) – Lot 72 DP 778628.

The land parcels identified above comprise artificial tidal waterways created as part of the surrounding land developments. In the case of Ballina Quays and Banyanda, the waterways were created to provide improved amenity and waterfront access benefits to adjoining residential allotments. These land parcels which comprise the water bodies/ways were dedicated to Council as public reserves upon registration of the respective subdivision plans.

In the case of Endeavour Lake, this waterway is situated within land comprising the residue of the Canal/Southern Cross Industrial Estate developed by Council in the early 1980s.

For the purposes of the *Local Government Act 1993* (LG Act), both the Ballina Quays and Banyanda waterways were previously classified as community land and were subject to the management requirements specified in the LG Act. The LG Act's provisions had the effect of limiting (and preventing in some cases) the private use of community land. As outlined above, Council has reclassified the subject lots from community land to operational land, which enables the ongoing use of these waterways for private waterway structures, subject to limitations that the Council seeks to impose.

The land comprising Endeavour Lake, forming part of the residue of the Canal/Southern Cross Industrial Estate has been classified as operational land since the commencement of the LG Act in 1993.

### **Key Issues**

- Enabling the placement of new and replacement private waterway structures within Council owned waterways
- Effectively regulating and managing existing private waterway structures within Council owned waterways
- Acknowledgement of the private benefit obtained through the placement of private waterway structures on public land
- Addressing the Council's liability exposure in relation to the placement of private waterway structures over land for which Council is responsible.

### Information

The key issues being addressed in this report relate to the placement of private structures on Council land and addressing Council's liability exposure in relation to those structures. Specifically, this report seeks to address the issues relating to private structures (such as boat ramps, jetties and pontoons) located over Council owned waterways.

In summary, the actions taken to date on this matter have aimed to improve conformity with the requirements of the LG Act. This has been undertaken to better enable Council to address liability and risk concerns and recognise the presence of structures that have a private benefit on public land. The next step in this process is consideration of policy for authorisation of waterway structures to occupy Council owned waterways.

The Council has a number of options in relation to recognising and authorising the occupation of its land by private parties and addressing its liability risks. It should be noted in consideration of these options that any new structures within the waterways will require development consent under the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Ballina Local Environmental Plan 2012*. As such, it is recommended that any approval or regulatory framework the Council adopts for private structures in Council owned waterways should operate in conjunction with the approval requirements under the EP&A Act.

There appears to be three options available to the Council for the authorisation of the private occupation of the subject land (waterways), being:

- Authorisation by permit;
- Authorisation by the issue of legal tenure through sale or lease; or
- Authorisation by the issue of legal tenure through licence agreement.

For the reasons set out below, the approach recommended in this report is that of authorisation by the issue of legal tenure through the grant of licence agreements to those who benefit from the structures. The details of these three options are set out below.

#### Authorisation by permit

One option for addressing the placement of private structures over Council owned waterways is to issue a simple letter of authorisation or permit to enable the occupation. Such a letter or permit can state Council's terms of approval such as repair and maintenance by the owner, requirements for public liability insurance etc. Prior to the commencement of changes to the EP&A Act in 1998, Council issued similar letters of approval to residents. An example of such an approval letter is contained in Attachment Two.

Following the commencement of new approval and certification requirements in the EP&A Act in 1998, proposals for waterway structures required development approval. Since that time, Council has issued development consent for waterway structures in accordance with the requirements of the EP&A Act. These notices of consent typically specify Council's approval requirements for the structures. An example of such an approval is contained in Attachment Three.



## **9.4 Private Structures within Council Owned Waterways - Management**

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A consent notice could be considered sufficient to constitute written authorisation to occupy Council owned land. These types of approval are limited, however, in that they provide enforcement or compliance options only in relation to the EP&A Act as opposed to the broader principles of public land management. Another shortcoming of this option is that the details of a development consent are not necessarily conveyed at the time of property exchange. This means that the purchaser of a property having the benefit of a private waterway structure may not be made aware of their obligations in relation to the structures at the time of purchase.

### Authorisation by issue of legal tenure

Other options for addressing the placement of private structures on Council land and enhancing understanding of Council's requirements involve the issue of some form of legal tenure over the land. This could vary from a relatively simple licence agreement, through to a formal lease or the sale of the land. Each of these options has its benefits and shortcomings, and it is open to the Council to consider the application of any of these approaches.

The benefit of the sale or lease of the land is that it removes Council's liability and transfers responsibilities to the owners of the structures. Under this approach though, the owners of the structures would have permanent tenure and occupation of the land which potentially detracts from the public ownership of and access to the waterways. It could also place significant limitations and unnecessary constraints on Council's regular maintenance activities within the waterways.

The issue of a licence agreement, as a form of legal tenure, is an alternative means of providing formal recognition and authorisation of private structures over Council owned land. Licence agreements are applied to numerous land uses, enabling Council to retain a significant level of control over the land, and are one of the most common forms used to acknowledge and manage the use of Council owned land. A licence agreement can also be issued in conjunction with a standard development consent issued under the EP&A Act.

The main benefit of a licence agreement, rather than a simple letter of approval, is that a licence agreement provides greater legal certainty for both parties and provides for a more formal occupation arrangement. The licence agreement also provides Council with the ability to set conditions on the occupation of the land, including the holding of appropriate insurances and establishing clear maintenance requirements for structures. A licence agreement can also be linked to an approval under the EP&A Act and contain provisions to enable Council, as the landowner, to take action in the event of non-compliance with conditions which have been applied.

Further to the above, Council has the option of providing a link between the licence and the benefitting property such as a notation on title or through a notification on a certificate issued under section 149 of the EP&A Act. This would serve to inform prospective purchasers of the benefitting properties of the existence of the licence agreement for the adjoining waterway structures. Should the Council resolve to proceed with the licensing of private waterway structures, it is recommended that arrangements be made to provide a notation on all certificates issued under section 149(5) of the EP&A Act for all benefitting properties where a licence agreement is issued.

## **9.4 Private Structures within Council Owned Waterways - Management**

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For the reasons outlined above, the licence agreement option is recommended as it addresses key management issues. The issue of a licence agreement for the owners of private structures in Council owned waterways is considered to be the best option to enable the continued use of Council waterways for private waterway structures while minimising the regulatory burden and adequately addressing Council's risk. Should the Council resolve to proceed with this option, it is further recommended that legal advice and assistance be obtained in preparing and implementing a licensing regime for the waterway structures.

### Policy

Once the most appropriate form of legal recognition and authorisation for the private structures within the waterways is determined, consideration should then be given to the establishment of a policy framework to guide the implementation of the preferred regulatory regime. In adopting a policy position on the regulation of private waterway structures, it should be noted that the structures will fall into four possible categories, being:

- Existing structures authorised in writing (pre-1998) (see Attachment Two);
- Existing structures authorised with development consent (see Attachment Three);
- Existing unauthorised structures; or
- New structures.

As detailed above, the recommended approach for the regulation of private structures within Council's waterways is to issue licences for the structures in conjunction with consent obtained under the provisions of the EP&A Act. This approach will be able to be implemented in conjunction with approvals for new structures, and new licence agreements can be issued in association with existing consents. Issuing of a licence under similar arrangements would also be extended to current structures that have development consent. Aside from the above, consideration is also required with respect to the issue of licences for structures that do not benefit from development consent.

It is in the Council's and the public interest to ensure structures on Council owned land are installed/erected in a manner that complies with relevant standards and does not present an unreasonable safety risk. In this regard, it is recommended that a system relating to the unauthorised and pre-1998 structures that do not have development consent be implemented to gradually ensure compliance of these structures with relevant construction and safety standards. This approach focusses resources in terms of determining structural adequacy on the older structures.

To minimise the regulatory burden on both Council and the owners of affected structures, it is recommended that a transitional scheme be implemented to enable these (non DA approved) structures to be certified as complying with the relevant standards. This approach allows for the issue of a limited term and/or non-transferable licence which requires the subject structure to be formally certified by a competent person as compliant with applicable standards prior to renewal or transfer of the licence.

## 9.4 Private Structures within Council Owned Waterways - Management

The draft policy contained in Attachment Four is based on the licensing approach outlined above and enables Council, subject to its adoption of the policy, to commence the implementation of a formal licensing and authorisation regime for private structures within Council owned waterways.

### Cost Recovery

If the Council resolves to proceed with the implementation of a policy requiring the licensing of private waterway structures as recommended above, the option of levying fees for the administration of the licensing system should be considered.

In the adoption of a licensing program for the waterway structures, an additional level of administration and activity will need to be undertaken by Council in its implementation. This administration is expected to include obtaining legal advice, maintenance of a system to manage the licences, the drafting and finalisation of licence agreements, and the transfer of the licences when properties are sold.

Preliminary details relating to the charging of fees for waterway structures has been presented to the Council previously, at its Ordinary Meeting held on 22 August 2013. The previously reported details of the fees and charges levied in other jurisdictions are reproduced in Table One below (updated to reflect fees for the 2015/16 financial year).

<b>Authority</b>	<b>Application Fee*</b>	<b>Recurring Fees*</b>
Crown	\$214 (annual)	Annual market based rent calculated via formula including base fee, area of occupation and generic land values, with a current fee of \$3.59 per m <sup>2</sup> . A typical scenario is 100m <sup>2</sup> equivalent to \$359.
Tweed Shire Council	\$154	\$231 annual licence fee
Clarence Valley Council	\$80 (plus \$132 inspection fee)	\$60 annual lease fee
Port Macquarie Hastings Council	N/A	\$128 annual licence fee
Gosford City Council	Solicitor's fees to establish licence agreement	\$819 annual licence fee

If the recommendations in this report relating to the authorisation of private waterway structures on public land through a licence agreement are endorsed by the Council, it is also recommended that Council implement a fee regime generally in line with the fees charged for the licensing of similar structures by other jurisdictions.

In the circumstances, it is recommended that a (comparatively) mid-level fee regime be implemented, with the initial fee set for a period of four years (adjusted annually for CPI). The initial proposed fee regime, being the licensing fees for private waterway structures, is detailed in Table Two below.

## 9.4 Private Structures within Council Owned Waterways - Management

<b>Fee Type</b>	<b>Amount (incl. GST)</b>	<b>When Payable</b>
Application (new) & Licence Transfer Fee (change in ownership)	\$132	Upon application or request to transfer licence to new owner. Would not be applied to licenses for existing approved structures.
Licence Fee (per year)	\$220	Upon issue or renewal of a licence

It is expected that the above fee structure will meet the costs of Council's administration of the licensing system. It also recognises that a private benefit is being gained from the use of public land. Alternatively, Council may prefer to apply a lower or higher fee. In this instance it is recommended that the fees be set no lower than \$66 for a licence and \$55 for a transfer and application; and no higher than the fees nominated by the Crown (refer to Table One).

### **Sustainability Considerations**

- **Environment**

The issues for consideration in this report do not directly affect the natural environment. In conjunction with the recommended outcomes, Council's currently adopted standards for the construction and placement of structures within the waterways will be maintained. These standards seek to minimise the impact structures may have on the natural attributes of the waterways.

- **Social**

This report seeks to address the various issues relating to the current practice of allowing the placement of private structures within Council owned waterways. Enabling the retention and ongoing ability to place private structures within the waterways facilitates their recreational use by adjoining residents and occupants. It is expected that the recommended licence fees will, at a minimum, meet Council's administrative costs for the system.

- **Economic**

The recommendations of this report will result in an additional but minimal regulatory burden on the affected landowners as well as additional administrative responsibilities for Council. The recommended licence fees are proposed to address the cost of the policy administration and to recognise the private benefit associated with the use of public (Council owned) waterways.

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

As identified in previous reports to the Council (see report to Ordinary Meeting held on 28 August 2013), there are potential risk liabilities for Council where private structures are placed on public (Council owned/managed) land. There are means for Council to address this risk as outlined in this report.

## **9.4 Private Structures within Council Owned Waterways - Management**

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This will be primarily managed through the public land portfolio but may also have implications for Council's risk, building and compliance sections. Fees are proposed in response to this and in recognition of the exclusive occupation of public land by private structures.

### **Consultation**

Though there has previously been comprehensive community engagement in relation to the reclassification of the land containing the waterways (as referred to above), including an independently facilitated public hearing, no public consultation has been undertaken to date specifically in relation to the policy and fee-related issues addressed in this report. Should the Council resolve to endorse the draft policy in Attachment Four, it is recommended that the draft policy be placed on public exhibition for six weeks, having regard for the Christmas holiday period.

Should the Council also resolve to pursue the proposed licence fees as detailed above, it is recommended this be also publicly exhibited concurrent with the draft policy referenced above. Following the public exhibition period, the matter will be again reported to the Council for further consideration.

### **Options**

As detailed in this report, the Council has a number of options available to address the issues relating to the placement of private structures within Council owned waterways.

#### **1. Do nothing**

Council has the option to take no action in relation to regulating the placement of private structures within Council owned waterways. However, the existing approval procedure for waterway structures provides only a limited regulatory and compliance framework for the structures, particularly in relation to addressing Council's risk exposure for the private structures on its land and in relation to older structures. For these reasons, this option is not recommended.

#### **2a. Adopt a policy to regulate private structures within Council owned waterways (with no annual licence fee)**

As detailed above, Council can issue licences for the occupation of Council owned land in conjunction with development consents or approvals issued for the erection/installation of waterway structures. The issue of licences for waterway structures would be based on the reasons outlined in this report and in accordance with the draft policy in Attachment Four.

This option does not include the levying of licence fees and as such is not considered to adequately address the impacts on Council's resources or the private benefit from occupation of public land. As such, this option is not recommended.

## **9.4 Private Structures within Council Owned Waterways - Management**

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2b. Adopt a policy to regulate private structures within Council owned waterways including the levying of an annual licence fee

As in Option 2a, this option provides for the issuing of licences for the occupation of Council owned land in accordance with the draft policy in Attachment Four.

This approach is also consistent with the application of licence and lease arrangements that formalise uses and occupation of Council owned (public) land by other individuals and groups. In addition, this option includes the levying of licence fees. This approach also reinforces the recognition of the exclusive private occupation and use of public land. For these reasons, this is the recommended option.

3. Commence processes to either sell or formally lease the affected parts of the waterways

Earlier in this report, the option of either disposal (sale) or leasing of the land affected/occupied by the private structures was referenced. This is also an option available to Council, albeit not an attractive one. This option is not recommended due to the logistics associated with its implementation and the potential impacts expected on the public accessibility and Council's overall maintenance obligations in relation to the waterways.

### **RECOMMENDATIONS**

1. That the attached draft policy in relation to the management of private structures within Council owned waterways be placed on public exhibition for a period of six weeks.
2. That in conjunction with the public exhibition of the draft policy referred to in point 1, Council also publicly exhibits the proposed licence fees to be levied, which are as follows:
  - Application & Licence Transfer Fee \$132 (inclusive GST)
  - Annual Licence Fee \$220 (inclusive GST)
3. That following the conclusion of the public exhibition period the Council receive a further report on the matter including a review of the content of any submissions received.

### **Attachment(s)**

1. Locality Map - Council owned waterways containing private structures
2. Example - Letter of approval
3. Example - Notice of consent
4. Draft Policy - Private Structures within Council Owned Waterways

## 10.1 Use of Council Seal

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### 10. General Manager's Group Reports

#### 10.1 Use of Council Seal

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#### RECOMMENDATION

That Council affix the Common Seal to the following document.

US15/17	<p>Ballina Shire Council Variation of Lease to The Australian Steel Company (Operations) Pty Ltd for Lot 871 DP 1158234, 6 Cessna Crescent, Ballina.</p> <p>Explanation: The variation to lease is required as Australian Steel Company (Operations) Pty Ltd exercised its option to renew their lease. Under the provisions of the option clause, the rental is to be reviewed to market and subsequently negotiations were entered into with ARC to agree a new rental.</p> <p>An agreement could not be reached and under the terms of the lease and independent valuer was appointed who determined the rental at \$247,000 p.a. + GST effective from 1 September 2015 for a period of five years with annual CPI rent reviews. Under the provision of the lease there is no right of appeal to the determination. The previous rental was \$341,188 p.a. + GST.</p> <p>The financial performance of the property is as follows:</p> <table border="1" data-bbox="630 1066 1360 1432"><tr><td>Initial construction costs</td><td>\$2,576,000</td></tr><tr><td>Annual return on initial investment based upon revised rental of \$247,000 p.a.</td><td>9.59%</td></tr><tr><td>Estimated site value</td><td>\$937,000</td></tr><tr><td>Land value and construction costs</td><td>\$3,513,000</td></tr><tr><td>Annual return on initial investment and site value based upon revised rental of \$247,000 p.a.</td><td>7.03%</td></tr><tr><td>Rental payments for the period 2010 to 2015</td><td>\$1,652,758</td></tr><tr><td>Forecast rental payments for the period 2015 to 2020</td><td>\$1,298,313</td></tr><tr><td>Total estimated rental payments for the period 2010 to 2020</td><td>\$2,951,071</td></tr></table> <p>All funds from this property are transferred to Council's property reserves to finance future community infrastructure and property development activities.</p>	Initial construction costs	\$2,576,000	Annual return on initial investment based upon revised rental of \$247,000 p.a.	9.59%	Estimated site value	\$937,000	Land value and construction costs	\$3,513,000	Annual return on initial investment and site value based upon revised rental of \$247,000 p.a.	7.03%	Rental payments for the period 2010 to 2015	\$1,652,758	Forecast rental payments for the period 2015 to 2020	\$1,298,313	Total estimated rental payments for the period 2010 to 2020	\$2,951,071
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Rental payments for the period 2010 to 2015	\$1,652,758																
Forecast rental payments for the period 2015 to 2020	\$1,298,313																
Total estimated rental payments for the period 2010 to 2020	\$2,951,071																
US15/18	<p>Transfer Releasing Easement for Water Supply – Lot 5, DP536003, Smith Drive, Pimlico to Margitta Fitzner.</p> <p>Explanation: The new Smith Drive main is now located in the road reserve and this easement is no longer required (previous main traversed private properties).</p>																

#### Attachment(s)

Nil

## 10.2 Investment Summary - November 2015

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### 10.2 Investment Summary - November 2015

**Delivery Program** Governance and Finance

**Objective** To provide details of Council's cash and investments portfolio breakup and performance.

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#### Background

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a Council must provide a monthly report (setting out all money Council has invested), to be presented at the ordinary meeting of Council, immediately following the end of the respective month. This report has been prepared for the month of November 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 November was \$69,289,000. This represents no overall change from October. Council's investments as at 30 November are at an average (weighted) rate of 3.01%, which is 0.77% above the 90 Day Bank Bill Index of 2.24%.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 30 November 2015 was \$6,173,985. This balance is necessarily high due to large expected cash outflows in December, particularly \$4.2m for loan repayments and a third payroll pay period and other creditors in December.

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

Reserve Name	Internal/External Restriction	% of Portfolio*
Water Fund (incl developer contributions)	External	15
Wastewater Fund (incl developer contributions)	External	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



## 10.2 Investment Summary - November 2015

### A. Summary of Investments by Institution

Funds Invested With	Fossil Fuel Aligned	ADI Rating	Previous Month \$'000	Current Month \$'000	Quota %	% of Total	Total
<b>Grandfathered Investments</b>							
Goldman Sachs	N/A	A	1,000	1,000	0	1.4%	
National Australia Bank	Yes	BBB	1,788	1,788	0	2.6%	
National Wealth M'ment Holdings	Yes	A-	2,000	2,000	0	2.9%	<b>7%</b>
<b>Rated Institutions</b>							
AMP Bank	Yes	A+	6,000	6,000	20%	8.7%	
Bank of Queensland	No	A-	4,000	4,000	10%	5.8%	
Bank of Western Aust	Yes	AA-	10,000	10,000	20%	14.4%	
Bendigo & Adelaide Bank	No	A-	4,000	4,000	10%	5.8%	
Commonwealth Bank	Yes	AA-	6,501	7,501	20%	10.8%	
Defence Bank Ltd	No	BBB+	3,000	3,000	10%	4.3%	
Greater Building Society	No	BBB	2,000	2,000	10%	2.9%	
ING Bank Ltd	Yes	A-	1,000	1,000	10%	1.4%	
Members Equity Bank	No	BBB+	2,000	2,000	10%	2.9%	
National Australia Bank	Yes	AA-	10,000	8,000	20%	11.5%	
Newcastle Perm Bld Society	No	BBB+	1,000	1,000	10%	1.4%	
Suncorp-Metway Bank	No	A+	12,000	12,000	20%	17.3%	
Westpac Banking Corporation	Yes	AA-	3,000	3,000	20%	4.3%	
My State Bank Ltd	No	BBB	0	1,000	10%	1.4%	<b>93%</b>
<b>Unrated ADI's</b>					\$1m	0.0%	<b>0%</b>
<b>Total</b>			<b>69,289</b>	<b>69,289</b>		<b>100%</b>	

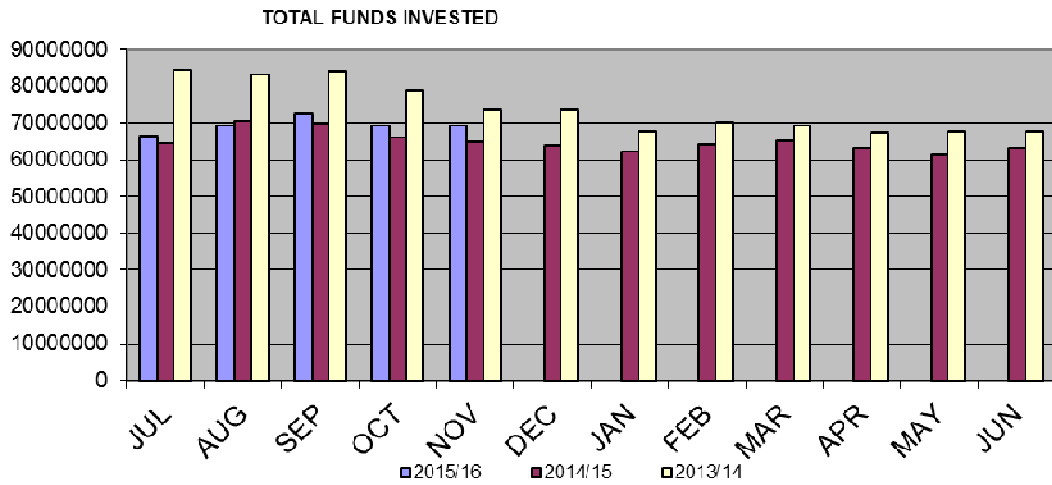
\* Note the determination of fossil fuel alignment is based on advice from Market Forces as follows:  
 Yes: Noted by Market Forces as funding fossil fuels  
 No: Noted by Market Forces as having no record of fossil fuels and having provided position statement.  
 N/A: No classified as information not available.

### B. Summary of Investments Fossil Fuel Aligned

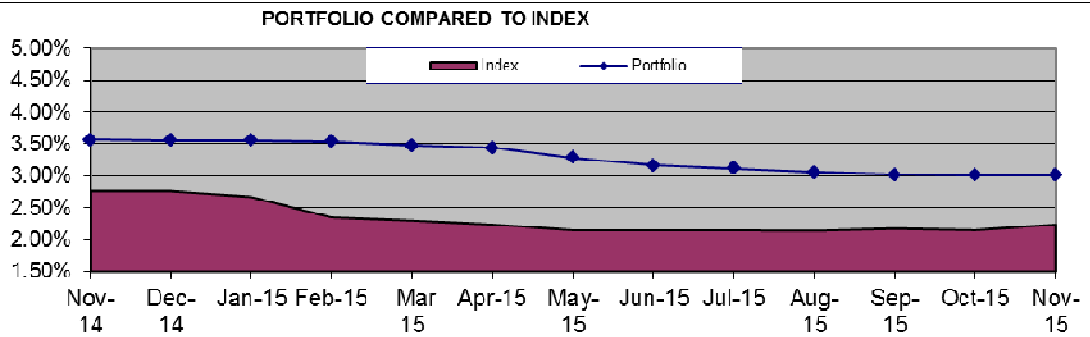
	Previous Month	Current Month
<b>Fossil Fuel Aligned</b>	40,289 <b>58%</b>	39,289 <b>57%</b>
<b>Non-Fossil Fuel Aligned</b>	28,000 <b>41%</b>	29,000 <b>42%</b>
<b>Not Classified</b>	1,000 <b>1%</b>	1,000 <b>1%</b>
<b>Total</b>	<b>69,289 100%</b>	<b>69,289 100%</b>

**10.2 Investment Summary - November 2015**

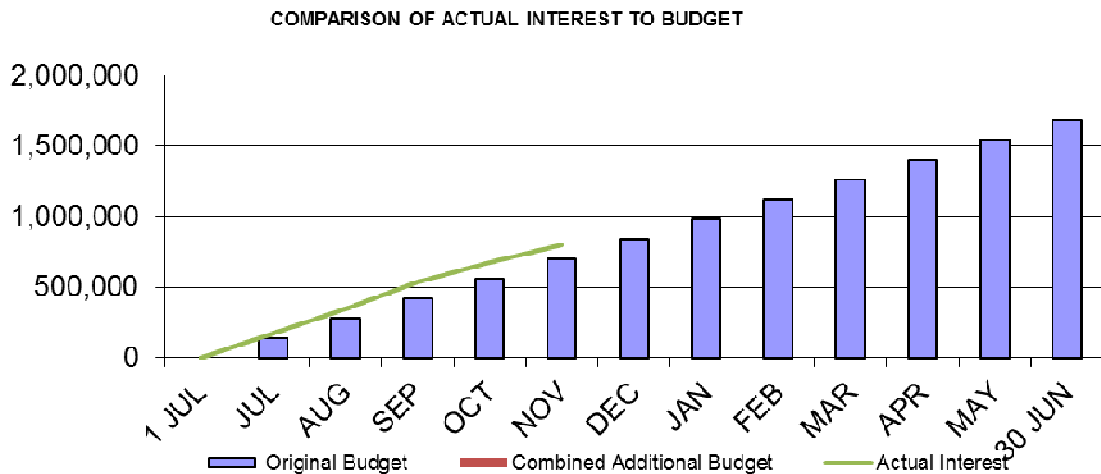
**C. Monthly Comparison of Total Funds Invested**



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



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



## 10.2 Investment Summary - November 2015

### F. Investments held as at 30 November 2015

PURCH DATE	ISSUER	TYPE	RATE	FINAL MATURITY DATE	PURCH VALUE \$'000	FAIR VALUE \$'000
at call	Commonwealth Bank Of Australia	CDA	1.95%	at call	507	507
20/09/04	National Australia Bank (ASX Listed)	FRN	3.49%	Perpetual	1,788	1,263
12/04/06	Goldman Sachs	FRN	2.70%	12/04/16	1,000	1,003
16/06/06	National Wealth M'ment Holdings	FRN	2.81%	16/06/26	2,000	1,986
24/01/12	ING Bank Ltd	FRTD	4.10%	24/01/17	1,000	1,000
06/02/12	Westpac Bank	FRN	3.84%	06/02/17	1,000	1,017
25/01/13	Commonwealth Bank Of Australia	TD	4.25%	25/01/18	1,994	2,096
07/06/13	Greater Bld Society	FRN	3.61%	07/06/16	2,000	2,015
25/02/14	Westpac Bank	FRN	3.20%	25/02/16	2,000	2,013
25/05/15	National Australia Bank	TD	2.97%	07/12/15	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%	08/12/15	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
06/10/15	BankWest	TD	2.85%	12/01/16	1,000	1,000
08/10/15	BankWest	TD	2.85%	15/01/16	2,000	2,000
13/10/15	Suncorp-Metway Bank	TD	2.90%	11/04/16	3,000	3,000
03/11/15	National Australia Bank	TD	2.85%	03/05/16	1,000	1,000
11/11/15	Bank of Queensland	TD	2.95%	12/05/16	1,000	1,000
18/11/15	Bank of Queensland	TD	3.00%	24/05/16	1,000	1,000
18/11/15	Commonwealth Bank Of Australia	TD	2.95%	16/03/16	1,000	1,000
26/11/15	My State Bank	TD	3.01%	31/05/16	1,000	1,000
<b>Totals</b>					<b>69,289</b>	<b>68,900</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 November 2015.

**Attachment(s)**

1. TCorp Local Government Economic Commentary - November 2015

### **10.3 Long Serving Employees - Recognition**

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#### **10.3 Long Serving Employees - Recognition**

**Delivery Program** Human Resources

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

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#### **Background**

Council has a practice of annually recognising employees who have completed either 10, 20, 30 and 35 years plus, of service by providing an annual presentation at the December Council meeting, along with joining the Councillors for morning tea.

#### **Key Issues**

- Acknowledgment of the service of employees.

#### **Information**

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

##### 35 Years

Graeme Izzard  
Phillip Randle  
Mark Newsham  
Peter Girvan  
Paul Henderson  
John Mostyn  
Peter Morgan

##### 30 Years

Anthony Farrugia  
Paul Witchard  
Tony Pearce

##### 20 Years

Joseph Sabine

##### 10 Years

Michael Barton  
William Capararo  
Matthew Wood  
Tai Woodlands  
Jan Saul  
Caroline Klose  
Richard Jerome

### **10.3 Long Serving Employees - Recognition**

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

#### **Sustainability Considerations**

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

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

Nil

#### **Consultation**

This report is provided to publicly recognise long serving employees.

#### **Options**

This report recognises long servicing employees.

#### **RECOMMENDATION**

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

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

Nil

## **10.4 Flat Rock Tent Park - Adoption of Fees and Charges 2016/17**

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### **10.4 Flat Rock Tent Park - Adoption of Fees and Charges 2016/17**

**Delivery Program** Commercial Services

**Objective** Setting of fees and charges for Flat Rock Tent Park for 2016/17

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#### **Background**

Council resolved to advertise a set of draft Flat Rock Tent Park fees and charges, and associated notes, for 2016/17 for public comment following the 15 October 2015 Commercial Services meeting.

A copy of the exhibited information is **attached**.

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

#### **Key Issues**

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

#### **Information**

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

#### **Sustainability Considerations**

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

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

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

#### **Consultation**

The documents were subsequently placed on public exhibition from 4 November to 2 December 2015.

## **10.4 Flat Rock Tent Park - Adoption of Fees and Charges 2016/17**

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

### **Options**

1. Council adopts the fees and charges for the 2016/17 year as exhibited.

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

2. Council does not adopt the fees and charges for the 2016/17 year as exhibited.

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

### **RECOMMENDATION**

That Council adopts the draft Flat Rock Tent Park fees and associated notes, as exhibited for 2016/17.

### **Attachment(s)**

1. Flat Rock Tent Park Draft Fees & Charges 2016/17



## 11.1 Tender - Construction of Coastal Recreational Path (part of Section One)

### 11. Civil Services Group Reports

#### 11.1 Tender - Construction of Coastal Recreational Path (part of Section One)

**Delivery Program**      Engineering Works

**Objective**              To advise Council that the results of an open tender dealing with construction of part of the Coastal Recreational Path between Angels Beach and Sharpes Beach, East Ballina, will be tabled at the 17 December 2015 Council meeting.

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#### **Background**

Open tenders were called for RFT817, Construction of Coastal Recreational Path during November 2015, with a closing date of 8 December 2015. At the time of preparing business papers for the 17 December 2015 Council meeting the tenders had not been opened or assessed due to the closing date being 8 December 2015. The purpose of this report is to advise that the assessment of tenders will be undertaken and distributed to Councillors prior to the 17 December 2015 Council meeting.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005.
- Achieve best value for money.
- Update of budget associated with Coastal Recreational Path and proposed works including tender (market) response.

#### **Information**

Council has provided a budget allocation for the construction of the Coastal Recreational Path (CRP), being Section 1 between Angels Beach and Sharpes Beach, within the current Operational Plan/Delivery Program.

RFT817 includes part of Section 1 CRP as follows:

- Boardwalk (515m) between Angels Beach overpass and to a point south of Flat Rock Tent Park.
- Path and structures (900m) between the north end of Flat Rock car park to the south end of Sharpes Beach car park. The structures comprise a 30m bridge across Sharpes Creek and a further 20m bridge some 200 metres north of Sharpes Creek.

RFT817 also includes elements of the Aboriginal Cultural Ways project comprising:

- Reconstruction of the old existing viewing platform at the major entry node located at the northern end of the current Angels Beach car park area (and immediately south of the existing asphalt path).

## **11.1 Tender - Construction of Coastal Recreational Path (part of Section One)**

- Incorporation of widenings along the boardwalk for viewing and linking with Aboriginal cultural heritage signage plus seating.
- Extension of the boardwalk at the north end to connect with a major node viewing platform for viewing and linking with Aboriginal cultural heritage signage plus seating.
- Installation of Aboriginal cultural heritage signage and seating at above locations.

RFT 817 excludes the following parts of Section 1 CRP:

- The southern (450m) section of the CRP connecting the existing Angels Beach underpass to the existing asphalt path at the northern end of the current Angels Beach car park.
- Proposed realignment of the CRP east of Flat Rock Tent Park.
- Environmental rehabilitation and compensation works program for Section 1.

The southern 450m of the CRP is proposed to be constructed by Council following the completion of the viewing platform and boardwalk works by contract. The contractor has limited access for the construction of the boardwalk and is likely to require access and storage through the current Angels Beach car park and the major entry node area. The construction of the southern 450m of CRP can be undertaken by Council following withdrawal of the contractor and includes:

- construction and landscaping of major entry node.
- construction of car park.
- closure of current Angels Beach car parking area and construction of CRP along the existing access.

The realignment of the CRP east of Flat Rock Tent Park currently has a new Part 5 application under the EP&A Act lodged with the DEHG and has not been determined as yet.

During the advertising of RFT817 a compulsory pre-tender meeting was held and six potential tenderers recorded attendance. The pre-tender meeting advised the potential tenderers of the conditions of consent for construction purposes including Aboriginal cultural heritage significance (being the East Ballina Aboriginal Place) and the environmental constraints including the limited work corridor.

### **Sustainability Considerations**

- **Environment**  
The tender process for RFT817 has necessarily included requirements of conditions of consent including environmental requirements during and after construction.
- **Social**  
The upgrading and development of the CRP between East Ballina and Lennox Head has been a longstanding objective of Council to enhance the community health and wellbeing, transport options plus provide further significant information regarding Aboriginal cultural heritage.

## **11.1 Tender - Construction of Coastal Recreational Path (part of Section One)**

- **Economic**

The upgrading and development of the CRP between East Ballina and Lennox Head is viewed as enhancing and extending the existing path network of the Shire, and adds to the potential to grow visitation and tourism

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

The tender results and budget information will be presented with the further reporting noted above.

It is also noted that the current budget of approximately \$1.3M for Section 1 of the CRP was initially established in 2012, when concept design was in progress and grant funding opportunities were being pursued. It is anticipated that a budget reassessment and adjustment will need to be made to accommodate the completion of design and receipt of current day "market" pricing, including the readjustment to scope of work and enhancements for the necessary Aboriginal cultural heritage components.

### **Consultation**

RFT817 has proceeded with normal coverage of advertising for an open tender of this size being local and Sydney and Brisbane notifications.

Regarding the overall CRP project the Council has been regularly advised regarding the progress with design and consultation, which has included the public exhibition of the Part 5 applications under the EP&A Act.

### **Options**

The purpose of this report is to provide information to Councillors and public notification of the intention of staff to provide a late report detailing the tender assessment for this project.

### **RECOMMENDATION**

That Council notes that the tender assessment for the Construction of the Coastal Recreational Path will be distributed prior to or on the day of the December Ordinary Council meeting.

### **Attachment(s)**

Nil

## **11.2 Tender - Construction Amenities Building - Wollongbar Sporting Fields**

### **11.2 Tender - Construction Amenities Building - Wollongbar Sporting Fields**

**Delivery Program** Open Spaces and Reserves

**Objective** To complete the tender assessment for the Construction of a Amenities Building Wollongbar Sporting Fields

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#### **Background**

The development of the Wollongbar Sporting Fields includes the construction of an amenities/change room building to service the sporting fields, in particular the rugby fields. The purpose of this report is to determine the assessment of the tenders.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005.
- Achieve best value for money.

#### **Information**

Tenders were advertised at the beginning of November in the Northern Star, Ballina Advocate and the Daily Telegraph, with tenders closing 26 November 2015.

Although eight companies downloaded tender documents, at the nominated closing time, no tenders were received.

The options available to Council in this situation are discussed below.

#### **Sustainability Considerations**

- **Environment**  
Relevant approvals are in place for this project.
- **Social**  
The Wollongbar Sporting Fields will provide significant infrastructure to improve the social and sporting amenity for the Shire.
- **Economic**  
This project is an integral component of the sporting fields.

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

Compliance with Part 7 Tendering of the Local Government (General) Regulation 2005 is required.

## **11.2 Tender - Construction Amenities Building - Wollongbar Sporting Fields**

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### **Consultation**

A public tender process was conducted.

### **Options**

In accordance with Part 7 Clause 178 of the Local Government (General) Regulations 2005, 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.*

Option (a) is not proposed as the works are considered essential to the Wollongbar sports fields.

Options (b), (c) and (d) are a possible direction for Council. The disadvantage of this option is there is no certainty that a better result to the current tender process will be achieved. It is an option for Council to call for the tenders again using the prequalified panel administered by NSW Public Works.

This option may enable us to reach a more extended market than our advertising has achieved. However, this approach would likely take a longer time than option (e) discussed below.

Option (f) is not recommended as Council does not have suitable resources to undertake these works.

Options (e) is considered the preferred direction. In response to the current circumstances, staff have held preliminary discussions with three reputable building companies, Greg Clark Building, Woollam Constructions and Bennett Constructions to gauge their willingness to provide pricing to undertake the works as specified.

Although Woollam Constructions were not in a position to proceed further at this point in time, Greg Clark Building and Bennett Constructions indicated they are willing to negotiate directly with Council.

By negotiating with these two companies, Council can consider value for money in a competitive market for these works.

Both Greg Clark Building and Bennett Constructions have undertaken a number of projects for Council and have delivered works meeting our project expectations and objectives.

**RECOMMENDATIONS**

1. That in accordance with the provisions contained in Clause 178 of the Local Government (General) Regulations 2005, as no complying tenders were received for the Construction of the Amenities Building for the Wollongbar Sports Fields, Council resolves to enter into direct negotiations with Greg Clark Building and Bennett Constructions for the pricing of a proposed contract.
2. Subject to a satisfactory outcome being achieved through the negotiation process in point one above, and the cost estimate remains within the available budget, Council authorises the General Manager to execute a contract with either Greg Clark Building or Bennett Constructions to undertake the construction of the amenities building for the Wollongbar sports fields, along with attaching the Council seal.

**Attachment(s)**

Nil

### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

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#### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

**Delivery Program** Operations Support

**Objective** To complete the tender assessment for the Construction of the Search & Rescue Co-Ordination Centre Contract

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#### **Background**

Council resolved in October 2015 to call tenders for the construction of a new search and rescue co-ordination centre. The purpose of this report is to determine the assessment of the tenders. Tenders were advertised early November 2015 and at the close of the tender period on 26 November 2015, three submissions were received. The report provides the outcomes from the tender evaluation process.

#### **Key Issues**

- Comply with the Local Government (General) Regulation 2005.
- Achieve best value for money.

#### **Information**

Tender submissions were received from:

- Momentum Built Pty Ltd \$1,724,927 (ex GST)
- Woollam Constructions \$1,781,786 (ex GST)
- Edwards Constructions (NSW) Pty Limited \$1,872,536 (ex GST)

All tenders were initially assessed for conformity with the tender specification. This includes an assessment of the capability, systems and work experience of the tenderers. From this assessment all tenders were deemed to be conforming. The tender documentation defined two areas, by which each tender would be assessed:

- Total Price - 85%
- Local and Community – 15%

The table below provides a summary of the evaluation and rankings of the three tender submissions.

<b>Item</b>		<b>Momentum Built</b>	<b>Woollam Constructions</b>	<b>Edwards Constructions</b>
<b>Mandatory Criteria</b>				
Demonstrated capability to perform the works as specified		✓	✓	✓
Satisfactory performance history		✓	✓	✓
Work Health and Safety System developed in accordance with AS4801-2001		✓	✓	✓
<b>Evaluation Criteria</b>				
<b>Total Price</b>	85%	85.0%	82.2%	77.7%
<b>Local and Community</b>	15%	2.3%	14.3%	2.3%
<b>Total</b>	<b>100.0%</b>	<b>87.3%</b>	<b>96.4%</b>	<b>80.0%</b>
<b>Ranking</b>		<b>2</b>	<b>1</b>	<b>3</b>

### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

When the non-priced and priced evaluation criteria are combined, Woollam Constructions is the highest ranked tender. Woollam Constructions was not the lowest overall priced tender, however Woollam Constructions have an office in Ballina and scored very high in the Local and Community component of the evaluation. Momentum Built Pty Ltd and Edwards Constructions (NSW) Pty Limited are based in Sydney and Wollongong respectively.

At this point in time our assessment of local and community is relatively unsophisticated and is essentially limited to the extent of presence of a company's administration in the local area.

For a contract of this size, arguably a company like Momentum Built intend to utilise significant local sub contract resources.

Typically our Tender Evaluation Plans deal with the inherent subjectivity in these assessments by recommending awarding the tender to the lowest priced tenderer, if they are within 5 percentage points of the overall highest ranked tenderer.

Looking at the earlier table, for the Momentum Built tender to be preferred, the Council assessment of the local and community would need to increase the rating of 2.3% by 4.1% to 6.4%.

Further information may or may not determine a change in the assessment outcome is reasonable in the circumstances. Staff would be able to invite further particulars if the Council was of the mind the coarseness in the application of the 15% weighting for local and community is not meeting its overall objective to balance local economic development and value for money for Council projects and procurement.

#### **Design Issues**

In relation to the design, two matters are discussed below for Council's consideration.

Firstly, the Marine Rescue representative to the A Ward Committee has communicated to Council it is the preference of the Association for the training room above the toilet facility to be retained. Council has previously considered this matter and determined that it was preferred to remove this second floor as it enabled a more aesthetically pleasing roof and building design and avoided ongoing maintenance and operational costs.

Furthermore, the design of the new tower includes the provision of a meeting room/training area on the second floor of the tower, separate to the observation floor. If the Council preferred to retain the room, it is expected that this can be achieved without a major variation to the overall budget.

The removal of the second floor remains the preferred option.

Secondly, Council is advised the current tender specification included the provision of glazed bricks to the exterior of the building. These bricks were recommended by the architect. The capital costs associated with these bricks are more than a traditional brick, adding approximately \$65,000 to the project. However, the finish of these bricks is such that the whole of life cost will result in potential savings to Council.



### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

The reason for this outcome is the glazed bricks require little or no ongoing maintenance, where as a rendered and painted finish will require repainting on a regular basis. In addition, the glazed bricks are more easily cleaned with water if vandalised by graffiti. Maintenance considerations are important having regard to the proximity of the building to the coastal elements. The glazed bricks are also considered to assist the architectural style and appeal of the building.

The retention of the glazed bricks remains the preferred option.

If the Council would prefer to change the specification of the bricks or retain the training room, a resolution to this effect would be required.

#### **Sustainability Considerations**

- **Environment**

The building will be constructed in accordance with conditions of development consent to manage potential impacts to the environment.

- **Social**

The Marine Rescue volunteers provide an important service to the community and the provision of a new tower will enhance the service.

- **Economic**

Tourism is a key economic driver for the Ballina Shire and improved safety to the waterways will support tourism interests within the Shire.

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

Compliance with Part 7 Tendering of the Local Government (General) Regulation 2005 is required.

Based on the recommended tender the total estimated cost of this project is as follows.

<b>Item</b>	<b>Amount (\$)</b>	<b>Amount (\$)</b>
Expended (Design, approval, Council Fees)		140,000
<b>Tender</b>		
Construction of new building	1,415,000	
Refurbishment of public toilets including removal of top deck room etc.	98,000	
Demolition of existing tower	28,000	
Construction of car park, stormwater drainage works etc.	189,000	
Landscaping	52,000	1,782,000
<b>Other</b>		
Design/Project Management	25,000	
Contingency (15% due to location of building)	268,000	293,000
<b>Total</b>		<b>2,215,000</b>

This figure excludes fit out costs which the Ballina Marine Rescue Volunteers have always stated they will fund from the approximately \$150,000 they have available from fund raising activities.

### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

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The funding that is now available for this project is as follows:

<b>Item</b>	<b>Amount (\$)</b>	<b>Amount (\$)</b>
Ballina Shire Council – Funds allocated		1,025,000
<b>NSW State Government</b>		
Marine Rescue (2016/17 budget)	200,000	
Public Reserves Management Fund	350,000	
Community Building Partnership	200,000	
RMS	215,000	965,000
<b>Federal Government</b>		
National Stronger Regions Fund		850,000
<b>Total</b>		<b>2,840,000</b>

This means there is a surplus in available funds of \$625,000.

With Council currently contributing the largest amount for the construction of this facility, which provides a State Government service, it is reasonable, from Council's perspective, to reduce our contribution accordingly (i.e. from \$1,025,000 to \$400,000, a saving of \$625,000). This remains a more than reasonable contribution to the overall cost of the project.

If Council did achieve this saving, the recommendation for the expenditure of the funds saved would be to transfer the \$625,000 to the finalisation of the Wollongbar Sports Fields project.

Council has previously had to defer the construction of the new tennis courts, tennis clubhouse and fencing for that project due to budget shortfalls.

In recent discussions with the Federal and State Governments in respect to the Building Better Regional Cities (BBRC) Program, the verbal indications are that they will be seeking Council to increase the BBRC rebates if the full suite of works originally envisaged is not completed.

The estimated cost for the amounts deferred from the Wollongbar Sports Fields totalled \$800,000 as follows:

1. Tennis courts - \$300,000 (tender price)
2. Fencing - \$120,000 (tender price)
3. Clubhouse - \$380,000 (quantity surveyor estimate)

Council awarded the tender for this project to Synergy Resource Management Pty. Ltd., with the tennis courts and fencing removed.

With the contractor now on site it could be in Council's interests to have these items reinstated and completed as part of the current contract.

The current contract is expected to be completed by April 2016.

In respect to the clubhouse, it was not part of the original tender, and tenders would need to be called. It could also possibly be linked to the amenities building as per the previous report in this agenda.

### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

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When Council removed these three items from the project budget there was still \$210,000 available as a contribution towards these items. These funds are in addition to a \$416,000 contingency for the entire project.

What this means is that with the \$210,000 already available and a potential saving of \$625,000 from the Search and Rescue Co-ordination Centre budget, we could have \$835,000 to finalise the Wollongbar Sports Fields. This would be an excellent outcome for Council.

There are concerns that the clubhouse estimate of \$380,000 may be low however with \$835,000 there is some margin for an increase in that estimate.

Overall this is the preferred approach, with the risk being that the State and Federal Governments may review their proposed funding for the Co-ordination Centre based on the total funding now available. There may also be grant conditions that limit the ability of Council to reduce our contribution.

However on balance, from a Council perspective, our contribution still remains significant and it is recommended that Council pursue this funding strategy.

#### **Consultation**

A public tender process was undertaken.

#### **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.*

### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

Accordingly,

1. Council may award the contract to Woollam Constructions to undertake the construction of the Search and Rescue Co-Ordination Centre; 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.

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.

In respect to the total budget and funding it is also recommended that Council revise the Co-ordination Centre Rescue budget to the following summary as outlined earlier in this report.

<b>Item</b>	<b>Amount (\$)</b>	<b>Amount (\$)</b>
Expended (Design, approval, Council Fees)		140,000
<b>Tender</b>		
Construction of new building	1,415,000	
Refurbishment of public toilets including removal of top deck room etc.	98,000	
Demolition of existing tower	28,000	
Construction of car park, stormwater drainage works etc.	189,000	
Landscaping	52,000	1,782,000
<b>Other</b>		
Design/Project Management	25,000	
Contingency (10% due to location of building)	268,000	293,000
<b>Total</b>		<b>2,215,000</b>

In respect to funding it is recommended that the funding for this project be confirmed as follows:

<b>Item</b>	<b>Amount (\$)</b>	<b>Amount (\$)</b>
Ballina Shire Council		400,000
<b>NSW State Government</b>		
Marine Rescue (2016/17 budget)	200,000	
Public Reserves Management Fund	350,000	
Community Building Partnership	200,000	
RMS	215,000	965,000
<b>Federal Government</b>		
National Stronger Regions Fund		850,000
<b>Total</b>		<b>2,215,000</b>

It is also recommended that the \$625,000 saved be transferred to the Wollongbar Sports Fields project to allow that work to be completed in full to ensure that Council meets its liability under the BBRC grant.

### **11.3 Tender - Construction of the Search and Rescue Co-Ordination Centre**

Prior to relocating the \$625,000, discussions will need to be held with the various State and Federal Government agencies to ensure that this transfer of funds does not impact on our ability to receive the full amount of the funds committed to date by the State and Federal Governments.

#### **RECOMMENDATIONS**

1. That Council accepts the tender for the construction of a new Search and Rescue Co-Ordination Centre from Woollam Constructions.
2. That Council authorises the Council seal to be attached to the contract documents.
3. Based on the currently available information Council confirms that the estimate and funding for this project is as follows:

#### **Estimated Cost**

<b>Item</b>	<b>Amount (\$)</b>	<b>Amount (\$)</b>
Expended (Design, approval, Council Fees)		140,000
<b>Tender</b>		
Construction of new building	1,415,000	
Refurbishment of public toilets including removal of top deck room etc.	98,000	
Demolition of existing tower	28,000	
Construction of car park, stormwater drainage works etc.	189,000	
Landscaping	52,000	1,782,000
<b>Other</b>		
Design/Project Management	25,000	
Contingency (10% due to location of building)	268,000	293,000
<b>Total</b>		<b>2,215,000</b>

#### **Funding**

<b>Item</b>	<b>Amount (\$)</b>	<b>Amount (\$)</b>
Ballina Shire Council		400,000
<b>NSW State Government</b>		
Marine Rescue (2016/17 budget)	200,000	
Public Reserves Management Fund	350,000	
Community Building Partnership	200,000	
RMS	215,000	965,000
<b>Federal Government</b>		
National Stronger Regions Fund		850,000
<b>Total</b>		<b>2,215,000</b>

4. As this revised funding model results in a \$625,000 saving to Council's previous commitment to this project, Council authorises the transfer of these funds to the Wollongbar Sports Fields project to allow that project to be completed in full by the agreed timelines for the Building Better Regional Centres Program. This transfer of funding is to be advised to the State and Federal Governments to ensure it does not impact on their current funding commitments to the Search and Rescue Co-Ordination Centre. If there any impacts the transfer to Wollongbar Sport Fields will need to be reviewed and reported back to Council.

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

Nil

## **11.4 Tuckombil and Stokers Quarries - Operating Lease**

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### **11.4 Tuckombil and Stokers Quarries - Operating Lease**

**Delivery Program**      Operations Support

**Objective**              To review the future of the operating lease at our quarries.

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#### **Background**

In November 2014, Council received a report in relation to the status of the lease to Lismore City Council (LCC) to operate the Council's Tuckombil and Stokers Quarries. The report advised that one lease managed both sites with a 10 year lease term due to expire 14 October 2018. The report also advised that LCC had provided a notice to terminate the lease on the basis they held concerns in regards to the ongoing viability of their operation of this facility under the current lease terms.

In the opinion of staff, and our legal advisor, the termination notice was defective and a response to this effect was provided to LCC. No reply was received in response to our correspondence at the time, however later subsequent discussions were held with LCC and the outcome was LCC formally made a request to vary the terms of the lease. The lease variation request was reported to Council in February 2015. Briefly, the key concern for LCC is the cost to manage overburden on the site. In response to this report, Council resolved the following.

1. *That the proposal from Lismore City Council, as per attachment one to this report, be accepted subject to an annual review of market conditions and the reported operating result of the Lismore City Council quarry operations, and subject to the following points.*
2. *Following an annual review conducted as per point one above, the General Manager be delegated authority to adjust the agreement to vary the lease subject to such an adjustment representing an increase in the return to Council based on an equitable sharing of any improvements to the operating result of the Lismore City Council quarry operations.*
3. *Council also reserves the right to make its own sales of overburden direct to customers, with all sales of overburden, above a limit to be determined by the General Manager, to be referred to Ballina Council for approval.*

## **11.4 Tuckombil and Stokers Quarries - Operating Lease**

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These arrangements were put in place. Ballina Shire Council was able to make a substantial sale of overburden to a customer and other potential customers were identified and approached with preliminary negotiations in mind. However the full extent of the potential sales to the first customer was not achieved for two reasons. Firstly, the customer reassessed the material and determined the quality was not of the required standard for their purposes. Secondly, the amount of material that was sold meant the annual extraction limit, which is a condition of development consent, was reached and we were therefore prohibited to sell more without an approved variation to the consent. An agreement was made with LCC that they would prepare and lodge a S96 application to see if this issue could be avoided in the future.

In light of this, and after further operational reviews, LCC have determined that the lease variation is not sufficient for them to meet their commercial objectives. We have now received a request from LCC to terminate the lease and this request is the subject of the following report and a report in the confidential section of this agenda.

### **Key Issues**

- Best commercial advantage to Council

### **Information**

The remainder of the information in relation to this matter is directly relevant to the legal status of the LCC request and the details of the commercial negotiations that have been undertaken to date. For this reason, there is no further information that can be reported publically at this point in time. The confidential report later in this agenda provides that detail.

### **Sustainability Considerations**

- **Environment**  
An environmental management framework is place for the operation of the quarry and Council and LCC are both required to meet certain statutory, regulatory and license requirements.
- **Social**  
The returns from the quarry have been used to support the delivery of community services.
- **Economic**  
Existing quarries are an important economic resource.

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

There is a risk of exposure to legal expenses if a negotiated outcome is not possible. The forecast revenue for the quarry is unlikely to be achieved during the forthcoming period and while the quarry is a valuable resource, the short term future for the management of the quarry is uncertain. Furthermore, there is a chance that the returns from new operations may not be equivalent to the recent historical performance of the quarry.

### **Consultation**

Lismore City Council has been consulted regarding this matter.

## **11.4 Tuckombil and Stokers Quarries - Operating Lease**

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### **Options**

This report is for information. The confidential report provides options for Council's consideration.

### **RECOMMENDATION**

That Council notes the contents of this report regarding the operating lease for the Tuckombil and Stokers Quarries.

### **Attachment(s)**

Nil



12. Public Question Time

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**12. Public Question Time**

13. Notices of Motion

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**13. Notices of Motion**

Nil Items

## 14.1 Environmental and Sustainability Committee Minutes - 2 December 2015

### 14. Advisory Committee Minutes

#### 14.1 Environmental and Sustainability Committee Minutes - 2 December 2015

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##### Attendance

Cr David Wright (Mayor - in the chair), Jeff Johnson, Sharon Cadwallader, Keith Williams, Susan Meehan, Ken Johnston, Paul Worth and Robyn Hordern.

Paul Hickey (General Manager), John Truman (Civil Services Group Manager), Matthew Wood (Strategic Planning Manager), Simon Scott (Strategic Planner) and Sandra Bailey (Secretary) were in attendance.

There were four people in the gallery at this time.

### 1. Apologies

Apologies were received from Crs Keith Johnson and Ben Smith.

#### **RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Robyn Hordern)

That such apologies be accepted.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Keith Johnson and Cr Ben Smith

### 2. Declarations of Interest

Nil

### 3. Deputations

- **Brett McLaren** – spoke in relation to Item 4.1 – Ballina Major Regional Centre Strategy.
- **Julie Halvorsen** – spoke in relation to Item 4.1 – Ballina Major Regional Centre Strategy.
- **Susan Hennessy** – spoke in relation to Item 4.1 – Ballina Major Regional Centre Strategy.

**4. Committee Reports**

**4.1 Ballina Major Regional Centre Strategy**

**RECOMMENDATION**

(Cr Sharon Cadwallader/Cr Robyn Hordern)

1. That the Council notes the progress of the Ballina Major Regional Centre Strategy project, the community engagement undertaken and the content of this report.
2. That the Council authorizes the draft Ballina Major Regional Centre Strategy for public exhibition for a period of six weeks.
3. That the Council receive a report on funding options for the Ballina Major Regional Centre Strategy in conjunction with the reporting on the outcomes of the public exhibition undertaken in accordance with item 1.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Keith Johnson and Cr Ben Smith

**4.2 Ballina Local Environmental Plan 2012 - Environmental Protection Zones**

**RECOMMENDATION**

(Cr Keith Williams/Cr Sharon Cadwallader)

1. That the Council receives and notes the information regarding the NSW Department of Planning and Environment's Northern Councils E Zone Review contained in this report.
2. That the Council convene a briefing session concerning the Northern Councils E Zone Review to examine options to respond to the policy directives made by the Department of Planning and Environment.
3. That Ballina Shire Council send a delegation of staff and Councillors to speak face to face with the current Planning Minister, Local Government Minister and the NSW Premier to address Council's LEP issues and inconsistencies and its unique situation in the Northern Rivers Region.

FOR VOTE - All Councillors voted unanimously.

ABSENT. DID NOT VOTE - Cr Keith Johnson and Cr Ben Smith

**MEETING CLOSURE**

5.45 pm

**RECOMMENDATIONS**

That Council confirms the minutes of the Environmental & Sustainability Committee meeting held 2 December 2015 and that the recommendations contained within the minutes be adopted.

**Attachment(s)**

Nil

## 15.1 Mayoral Meetings

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### 15. Reports from Councillors on Attendance on Council's behalf

#### 15.1 Mayoral Meetings

**Councillor** David Wright

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Activities since the November 2015 Ordinary meeting:

<u>Date</u>	<u>Function</u>
29/11/15	Climate Change Walk
30/11/15	Meeting Shark Shield
1/12/15	Prawn Festival Debrief
1/12/15	Alstonville Wollongbar Chamber Meeting
2/12/15	Meeting Men's Shed
2/12/15	Forward To The Past – Ballina Public
2/12/15	Environmental & Sustainability Committee
2/12/15	Wardell Light Up
3/12/15	Port Ballina Taskforce Meeting
4/12/15	Ballina Chamber Meeting
6/12/15	Lennox Head Carols
7/12/15	Marine Rescue – Federal Announcement
8/11/15	Coastal Fontainea Planting
9/12/15	Local Traffic Committee
9/12/15	Emmanuel Anglican College Presentation Ceremony - Primary
9/12/15	Emmanuel Anglican College Presentation Ceremony – 7 to 11
9/12/15	Meeting Australian Forest Products Association
9/12/15	Wollongbar Progress Association
10/12/15	Shark Advisory Committee
10/12/15	Local Shark Meeting
10/12/15	Meeting Deputy General DPI Fisheries
10/12/15	Meeting Prawn Festival – Council Staff
10/12/15	Aboriginal Community Committee
10/12/15	Gallery Launch
11/12/15	Southern Cross School 7 – 11 Presentation Assembly
11/12/15	Prawn Festival Debrief
11/12/15	Alstonville Christmas in the Park
13/12/15	Lennox Markets
13/12/15	Alstonville Markets
13/12/15	Riverside Carols
14/12/15	Southern Cross School K - 6 Presentation Assembly
14/12/15	SES Medal and Awards Presentation
15/12/15	Ballina Aboriginal Child and Family Centre - Graduation
15/12/15	Meeting Macadamia Castle
15/12/15	Australia Day Committee
16/12/15	Wardell Progress Association
17/12/15	Council Meeting
12/15	Tourism Ambassador Function
31/12/15	Alstonville NYE Family Festival

#### **RECOMMENDATION**

That Council notes the contents of the report on Mayoral meetings.

16. Questions Without Notice

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**16. Questions Without Notice**

**17. Confidential Session**

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

17.1 Tuckombil and Stokers Quarry - Operating Lease (confidential)

Please refer to Item 11.4 of this agenda.

**RECOMMENDATION**

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

**17.1 Tuckombil and Stokers Quarry - Operating Lease (confidential)**

**Reason for Confidentiality**

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(c) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as the report contains information pertaining to commercial negotiations and a possible legal dispute.