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DA 2006/148 -31-35 Cherry St Ballina Locality Plan

ballina shire council
 geographical information system
 Projection: GDA94 / MGA zone 56
 Date: 18/07/2017

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Date: 24th August 2017
Our Ref: 04/600
Your Ref: 2006/148

General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Attention: Ms Naomi McCarthy

Dear Madam,

**Re: Section 96AB Review of Modification Application No. 2006/148
31-35 Cherry Street, Ballina – Lot 1 DP 1146004**

Newton Denny Chapelle have been instructed by the proponent Dojoo Pty Ltd to be the lodgement agent for a review of determination in respect to the Section 96 application lodged for Development Consent Notice 2006/148 in accordance with Section 96AB of the Environmental Planning and Assessment Act 1979.

Pursuant to section 96AB of the Environmental Planning and Assessment Act 1979 the applicant requests the Council to review the determination of the section 96 application which was made by the elected Council at the Ballina Shire Council Ordinary meeting on 27 July 2017 to refuse the payment of contributions in lieu of providing accessible car parking. Council adopted the following resolution at the Ordinary meeting.

270717/8 RESOLVED

[Cr Sharon Cadwallader/Cr Phillip Meehan]

- 1. That Council refuse the application to modify development consent 2006/148 as the application is not a good outcome for the town centre and will have a range of detrimental impacts, as identified within this report and that development should provide on-site accessible parking as per the existing consent.*
- 2. That increased signage be placed to advertise the availability of public parking.*
- 3. That the provision for ambulance be removed and be replaced with appropriate disability car parking, subject to Local Traffic Committee approval.*

FOR VOTE - Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Nathan Willis and Cr Keith Williams

ABSENT. DID NOT VOTE - Cr David Wright and Cr Jeff Johnson

Reason 1 of the refusal provides the primary matter needing review within this letter. Details of the 96AB review are therefore outlined for reason 1 below for Council's consideration.

JOHN NEWTON B. Surv. M.I.S. Aust. **TONY DENNY** B. Surv. (Hons) M.I.S. Aust. **DAMIAN CHAPELLE** BTP CPP
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1. **the application is not a good outcome for the town centre and will have a range of detrimental impacts, as identified within this report and that development should provide on-site accessible parking as per the existing consent.**

Comment: In reviewing the outcome of the proposal on the Ballina town centre, the following key factors need to be considered.

- i. Quantum of Parking;
- ii. Access to Parking; and
- iii. Impact on Public Parking.

i. Quantum of Parking

Pursuant to Condition 5.5. of Development Consent 2006/148 a minimum of 50 car parking spaces shall be provided and available at all times for parking purposes. The Section 96 application did not modify the quantum of car parking offered on-site. That is, the 50 on-site car spaces will be available to the tenancies and their staff.

Accordingly, whilst the modification relates to accessible parking, the fact remains the predominant number of people utilising the currently available accessible parking spaces are the staff of the tenancies of the building.

Furthermore, as the proposal does not reduce the quantum of parking, there is no impact upon the availability of parking within the Ballina CBD as staff would either be parking in the building (as proposed and currently occurring) or parking within the public parking network. Simply, all parking on the second floor is to be available for tenant/staff parking purposes. All public parking is to be on-street.

We submit there is no impact upon the town centre as the proposal does not result in the net loss of parking spaces available within the Ballina CBD.

ii. Access to Parking

This amendment does not seek in any way to prohibit the opportunity for each tenant to access on-site parking. Each tenant of the building is able to secure parking through an agreement with the landowner.

Each tenant, as a minimum, will be supplied with car parking spaces to accord with the minimum prescribed level under the Ballina DCP for their designated land use. Additional parking spaces for staff may then also be secured should the tenant seek additional parking.

In respect to access to public parking within the nearby public car parking areas in Tamar Street, it is necessary to reference the Ballina Shire Car Parking Contribution Plan 2014. This plan provides that 75 spaces existed within the Wigmore Arcade Car Parking Area (at No. 80-84 Tamar Street) and that car parking contributions were collected under the Ballina CBD Car Parking Contributions Plan 2004 for the future expansion of this car parking area to provide for a multi-storey car park and/or the purchase and development of additional land in Tamar Street for car parking.

Additional land has been purchased and developed in Tamar Street (at No.'s 74 and 78 Tamar Street) for public car parking purposes. A total of 140 car parking spaces now exist between the three land holdings (No.'s 74, 78 and 80-84 Tamar Street).

In addition to the existing parking provided at No.'s 74 and 78 Tamar Street, the Section 96 Application lodged sought to provide a monetary contribution under Ballina Parking Contributions Plan 2014 for 17.18 car spaces, being the accessible spaces under Council's Development Control Plan.

The Contribution per car space equates to \$25,803, hence the total parking contribution proposed to be paid to Council totals \$443,295.54. The proposed contributions would be injected directly into the preliminary plans for the multi-storey car park facility which is planned to provide for 255 car parking spaces at 80-84 Tamar Street.

The Ballina Shire Car Parking Contribution Plan 2014 also identifies that additional land is expected to be purchased in close proximity to Council's current landholdings for car parking. This additional land will also be utilised for public car parking purposes.

Council staff have identified any extra land purchased will be approximately 600m² in area, which has been estimated to yield approximately 20 car parking spaces.

Accordingly, based on the current supply of public parking at No.'s 74 and 78 Tamar Street ready access to parking is available, whilst the contributions will facilitate additional parking through either the purchase of additional land in the short term or the long-term vision under the Section 94 Plan for a multi-level car park. Importantly, Council's Civil Services Group, as stated in the business paper, advised that they consider the payment of the monetary contributions for the 17.18 car parking spaces as an acceptable outcome.

iii. Impact on Public Parking

As stated previously, the proposed modification does not seek to reduce the total number of car parking spaces physically provided on the site and that the 50 spaces will be still available to tenants through their lease agreement. Furthermore, the parking spaces on site, which are counted as the required accessible parking spaces, are currently being utilised by staff of existing businesses tenanted the building and that the roof top parking design does not attract the public to use the parking spaces (due to it not being a convenient access).

In addition, the application provides that each tenancy will be provided with the minimum number of car parking spaces that are generated by their use (in accordance with the Ballina DCP), with the balance available to the tenancies should they require additional parking for their staff.

The applicant has stated that with the development of additional public car parking by Council in the locality (No.'s 74 and 78 Tamar Street), the demand for car parking in the locality is more easily catered for and will not be impacted by the proposed payment of the 17.18 accessible parking spaces. In recommending approval of the Section 96, we submit Council's technical staff were in support of this position that the proposal would not result in an adverse impact on the function of town centre. Specifically, Council's technical staff stated;

As has been discussed in this report, as long as the landlord/proponent is providing access to the car parking spaces required (as per Council's DCP requirements) for each tenancy, then Council should be satisfied that adequate access is provided.

Conclusion

We seek Ballina Shire Council's review of the determination to approve the Section 96 application for DA 2006/148.

The development will continue to operate as a commercial development containing retail and commercial floor space. The proposal does not modify the approved number of car spaces located within the building, being 50 spaces. These spaces will continue to exist on the development site and be available for parking purposes.

The only change to the development is the ability for parking spaces on the site to be accessed by the public, as the proposal seeks to close the security gates during business hours and only permit tenant (and their staff) access to the car parking area. To address the re-classification of the parking spaces, our Client has proposed the payment of a monetary contribution which pursuant to Council's Section 94 Plan is an acceptable response supported by Council's Civil Services.

As the proposal does not reduce the total parking spaces available, combined with the parking accessible at 74 and 78 Tamar Street, we submit the Section 96 application lodged with Council will generate a good outcome for the town centre and will not have a range of detrimental impacts.

We trust this information is sufficient for your purposes at this stage to permit the favourable determination of the Section 96AB review. Should you require clarification of any aspect of the content of this letter or need any further information, please do not hesitate contacting Mr Damian Chapelle of this office.

Yours sincerely,
NEWTON DENNY CHAPELLE



DAMIAN CHAPELLE
Town Planner BTP. CPP.

8.1 **DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina**

8.1 **DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina**

Applicant	Newton Denny Chapelle (on behalf of Dojoo Pty Ltd)
Property	Lot 1 DP 1146004, No. 31-35 Cherry Street, Ballina
Proposal	To amend Development Consent 2006/148 to enable the payment of Section 94 Developer Contributions in lieu of providing publicly accessible car parking spaces
Effect of Planning Instrument	The land is zoned B3 Commercial Core under the provisions of the Ballina LEP
Locality Plan	The subject land is depicted on the locality plan attached (Attachment 1)

Introduction

Council is in receipt of an application to modify development consent 2006/148 (as lodged by the applicant on 14 February 2017) via Section 96(2) of the Environmental Planning and Assessment Act 1979 in the following manner:

- Payment of monetary contributions under the Ballina Shire Parking Contributions Plan 2014 for 17.18 car parking spaces. The 17.18 car parking spaces are the required number of accessible spaces, which can be utilised by the public, customers etc., within the car parking area on the second floor of the development
- Amendment to the Parking Management Plan (approved via consent condition 2.21) to enable the closure of the security doors and to now state that access to the car parking area will be available to the tenancies of the building only.

Refer to Attachment 2 for a copy of the modification application and supporting documentation.

The purpose of this report is to seek the determination of the Section 96 Application to Modify Development Consent 2006/148.

Background

Assessment of DA 2006/148

DA 2006/148 was approved on 15 March 2006 for the demolition of an existing service station building, ancillary structures, removal of underground fuel storage tanks and associated earthworks (remediation works) and the subsequent erection of a three storey commercial/retail development, associated rooftop car parking spaces, advertising signs and vehicular access off Winton Lane.

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The development, as approved, comprised ground floor retail space with four shops (756m² GFA) and two cafes (186m² GFA), first floor commercial (office) space with six individual office units (1,064m² GFA) and a second floor 50 space car park.

As part of the assessment of the development, credits for 15 car parking spaces were attributed to the subject property, due to the road widening requirements along the Tamar Street and Winton Lane frontages of the property, with land of a width of 6 metres and 1.9 metres respectively, required to be dedicated to Council.

In this regard, the assessment of DA 2006/148 indicated that a total of 65 spaces (actual and credit spaces) was being provided by the development.

The car parking assessment for the DA was as follows:

- Total proposed retail/refreshment room floor space = 942m²
- Total car parking required at rate of 1/25m² floor area = 37.68 spaces

- Total approved office floor space = 1,064m²
- Total car parking required at rate of 1/40m² floor area = 26.6 spaces

- Total parking required to be provided = 64.28 spaces
- Total parking provided on site = 50 spaces
- Parking credits granted due to road widening = 14.65 spaces

Two of the consent conditions imposed on DA 2006/148 iterates the above assessment, being:

- 5.5. Car parking spaces
A minimum of 50 car parking spaces shall be provided and available at all times for parking purposes.

- 5.6. Road dedication – car parking requirement
A total of 65 car parking spaces would ordinarily be required to be provided, however as part of the site required for road widening purposes, a credit of 15 car parking spaces is given, reducing the minimum number required to 50 car parking spaces.

In terms of publicly accessible parking, the traffic report prepared by Skildtraffic, dated 29 August 2005, as lodged with the development application, states that “the second (rooftop) level contains a customer and employee parking area, with a total of 50 spaces”.

The accessible parking requirements within DCP No. 1 – Urban Land that were in effect at the time of the assessment of DA 2006/148 were as follows:

- Shop (retail) and Refreshment rooms – a minimum of 75% of total spaces provided on site are to be accessible parking

- Office (commercial) – a minimum of 25% of the total spaces provided on site are to be accessible parking.

- In relation to the development proposed via DA 2006/148, the following assessment has been made with respect to accessible parking:

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- Total accessible parking spaces at 75% (shop and refreshment room) = 28.26 spaces
- Total accessible parking spaces at 25% (office) = 6.65 spaces.
- Total overall accessible parking spaces required for the development = 34.91 spaces.

Also, of relevance to the provision of the second floor car parking area is the existence of gates (at Winton Lane) which were installed in order to address safety and security issues for staff arriving and leaving out of normal business hours. The security gate was proposed to be closed at the end of trading each day and on non-trading days.

In addition to the above matters regarding parking for the development, a condition was imposed on the consent in relation to the submission of a parking management plan for the development.

2.21. *A plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to visitors. Details are to be submitted to and approved by Council prior to the issue of the Construction Certificate.*

The Parking Management Plan for DA 2006/148 was prepared by Peter Lucena & Associates Pty Ltd, dated 27 September 2007.

This plan stated the following in relation to the security gates installed to the car parking area:

3. *Gates*

Gates are installed for night time security. They are to be kept open between 7.00am – 7.00pm Monday to Friday and between 8.00am and 12.00pm Saturday.

A Final Occupation Certificate for DA 2006/148 was issued by Tecton Building Services on 29 April 2011.

Compliance action

On 30 April 2014, Council staff carried out an inspection of the subject development where it was observed that the entrance to the roof top car parking area (accessed off Winton Lane) was closed off to the public during business hours.

This information was conveyed to the owners of the development via correspondence dated 1 May 2014, requesting an explanation for non-compliance with development consent conditions. Council's letter referred to the approved Parking Management Plan (via consent condition 2.21 of DA 2006/148).

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Council received a response in relation to this matter, via letter from the applicant (Newton Denny Chapelle) dated 8 July 2014. The letter highlighted safety and security issues being experienced by the owners and tenants of the building, in relation to their use of the car parking area.

It was identified that there had been several anti-social incidents (unlawful damage, nuisance and intimidation) that had occurred within the car parking area. In order to address the security concerns of the tenants and their visitors, the doors had been closed by the managing agent, however the car parking area remained accessible to tenants and nominated visitors.

Subsequent to the 8 July 2014 letter, Newton Denny Chapelle lodged a Section 96 Application to Modify Development Consent to DA 2006/148 (on 30 September 2014) in order to permanently close the security gates for the development, such that the parking area was only accessible to tenants and nominated visitors.

After a lengthy assessment process, the application was withdrawn on 26 February 2016.

During the assessment process for the Section 96 Application to Modify Development Consent to DA 2006/148 (as lodged on 30 September 2014), the security gates remained closed and public access was not readily available.

Council's Compliance team recommenced compliance action against the property owner, following the withdrawal of the Section 96 Application. The security gates were inspected by Council staff as being open on 14 February 2017.

Reportable Political Donations

Details of known reportable political donations are as follows:

- Nil

Public Exhibition

The application was placed on public exhibition from 15 March 2017 to 30 March 2017. Two submissions were received during this period.

The issues raised in the submissions are as follows.

- No opposition is raised to the proposed modification as long as there is a strategy in place for the cash contribution to be paid into a separate car parking fund to increase the number of car parking spaces in the Ballina CBD and the cash is paid into that account.

Comment: The applicant proposes to pay a monetary contribution for the 17.18 car parking spaces under the Ballina Shire Car Parking Contribution Plan 2014. Further discussion is provided in the DCP and Contribution Plan section of this report.

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- By providing tenants with exclusive use of car parks and charging a fee at the same time, the landlord does not have a minimum of 50 car parking spaces available at all times and is in breach of Condition 5.5 of the consent.

Comment: The applicant has not proposed to amend Condition 5.5, which states:

5.5 Car parking spaces

A minimum of 50 car parking spaces shall be provided and available at all times for parking purposes.

If Council is mindful to grant consent to the Section 96 application, the existing 50 spaces on site will continue to be available for parking purposes, albeit for tenant parking only.

The consent does not currently distinguish between tenant and visitor/publicly accessible parking, however Council could propose to include additional text within condition 5.5 such that it is explicit to tenant parking only.

- By providing tenants with exclusive use of car parks and charging a fee for same, the landlord is in breach of the DCP as:
 - The landlord is not providing unrestricted access to all car parking spaces
 - The car parking spaces are not freely accessible at all times
 - Car parking spaces are being secured for exclusive use.

Comment: Refer to the DCP and Contribution Plan section of this assessment for discussion.

- Charging tenants a fee to use car parking spaces is in contravention of the Development Consent and as the landlord has made a request to change the terms of the Development Consent, the landlord is clearly aware that he/she is not entitled to charge a fee for the use of car parking spaces.

Comment: It is not a matter for Council's consideration as to whether the landlord charges additional fees for the use of car parking spaces to tenants of the building. This could be inbuilt into the rental agreement for the lease of each tenancy.

In the event that the tenancy has additional car parking spaces attributed to it (due to size, type etc.) or the tenant requests additional car parking spaces, the landlord could choose to charge additional rent, for which Council does not have a regulatory role.

The application is for the payment of car parking contributions to enable all publicly accessible spaces to be dealt with via a parking credit due to road widening/lane closure or payment of a monetary contribution.

This is the matter for which Council's consideration and determination is requested.

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- The proposal will result in a potential loss of business if customers/clients are unable to park their vehicles in the on-site car parking area, in the event that car parks are exclusively marked and/or they are required to pay fees for parking.

Comment: It is unknown as to whether this would be the case or not and Council cannot take these financial matters into consideration of planning/land use matters. The proposed modification seeks to restrict public access to the on-site car parking area.

- The closing of the security gate outside of the original hours, i.e. 7:00am to 7:00pm will have a negative impact on our business if our clients are unable to access the car park in order to attend our offices.

Comment: It is understood that not all persons visiting businesses within the building will seek to park in the second floor parking area, given the design of the building, and, if they can, will try to access street parking first for convenience reasons.

However, the unavailability of the second floor car parking area in those instances where there is no on-street parking available, is considered to be to the detriment of customers/clients of tenants. Council will need to carefully consider as to whether the proponent's proposal to pay a monetary contribution for those publicly accessible spaces is reasonable in the circumstances of this case.

- Given the breaches that have occurred to date against the existing development consent, any modification to the consent or conditions imposed as a consequence of the modification will not be complied with by the landlord.

Comment: Council cannot base its decision on the past actions of the land holder and can only determine the proposed modification, as has been lodged.

Council has enforcement powers available to assist in compliance with conditions of consent and to commence proceedings should compliance not be achieved.

- The proposed modification does not state the value of the car parking contribution sought by the landlord.

Comment: The proponent is seeking to pay car parking contributions, the equivalent of 17.18 car parking spaces under the Ballina Shire Car Parking Contributions Plan 2014. The total value is determined at the time of payment of the contribution.

- The proposed modification does not indicate a cap in any fee to be charged, leaving the landlord unfettered to increase the same.

Comment: The application has not been lodged on the basis that a separate lease fee is to be charged to each tenant of the building for car parking spaces. It is up to the landlord to determine whether a fee is charged, which could be inbuilt into the overall lease/rental agreement for each tenancy.

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Regardless of the determination of this application, Council requires that car parking be available to all tenancies within the development. Council does not have a role or involvement in whether an additional lease fee is charged by the landlord (including whether additional fees are charged for more car parking spaces required/requested, than the minimum for each tenancy).

- The proposed modification does not specify which, or if all car parks, will be subject to a car parking contribution.

Comment: The proposal seeks to make a cash contribution via the Ballina Shire Car Parking Contribution Plan 2014 for 17.18 car parking spaces. The applicant does not seek to identify any of the existing 50 spaces as those which are to be paid for as a cash contribution.

- The proposed modification does not state how many car parks (if any) will be kept available for employee and public use, i.e. Clients and customers of the tenants.

Comment: The supporting information which accompanied the proposed modification states that all parking on the second floor is to be available for tenant/staff parking purposes. All public parking is to be on-street. This would include client/customer parking.

Note: One of the submissions is provided within Attachment 3 to this report. The other submission is provided under separate cover, due to a request within the submission for it to remain confidential.

Report

Proposed Modification

The following information has been provided by the applicant in support of the proposed modification.

- The owners of the subject site are seeking to provide a monetary contribution to Ballina Shire Council for the supply of the accessible car parking spaces. This proposal would then allow the closure of the security door to enable the car parking spaces to be accessed in a safe environment, under the management of the landowner, by staff of the businesses occupying the building.
- This amendment does not seek in any way to prohibit the opportunity for each tenant to access on-site parking. Each tenant of the building is able to secure parking through an agreement with the landowner.

Each tenant, as a minimum, will be supplied with car parking spaces to accord with the minimum prescribed level under the Ballina DCP for their designated landuse. Additional parking spaces for staff may then also be secured should the tenant seek additional parking.

Tenants will be able to access the car park via a security access device.

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- This application seeks to provide a monetary contribution under Ballina Parking Contributions Plan 2014 for 17.18 car spaces, being the accessible spaces under Council's Development Control Plan.

The Contribution per car space equates to \$25,803, hence the total parking contribution totals \$443,295.54.

The applicant proposes amendment to Condition 2.10 to incorporate the monetary payment in lieu of provision of public accessible parking for the aforementioned amount.

(Note: the rates provided in the lodgement documentation are incorrect and at the time of lodgement, the rate was \$26,310 per car parking space - 2016/2017 financial year and is currently \$26,793 per car parking space - 2017/2018 financial year).

- It is proposed to have the security door closed at all times to permit the desired secured car park to be retained.

This will alleviate many concerns of existing tenants who signed leases for the building due to security provided for the car park area as a matter of consideration.

All staff of businesses within the development are to be provided with access controls in order to provide unobstructed access to the car park.

(Note - Council comment: Some of the existing tenants may have signed leases at the time when the security gates were closed, which was in contravention of the conditions of development consent 2006/148. In this regard, if this was an important security consideration for those tenants, they were basing it on an illegality and something that the landlord could not legally sustain).

- Condition 2.21 of the consent notice required a plan of management be submitted to and approved by Council (prior to the issue of a Construction Certificate for the development) in relation to the parking area to ensure its satisfactory use and safety.

The plan had signage requirements, safety aspects, whilst also ensuring access and spaces are allocated and available to visitors.

Part of the Parking Management Plan that was prepared by Peter Lucena & Associates included a component that stated:

3. Gates are installed for night time security. They are to be kept open between 7:00am – 7:00pm, Monday to Friday and between 8:00am and 12:00pm Saturday.

The proposal provides for the amendment to Condition 2.21 and the associated deletion of the provision within the Plan of Management requiring the opening of the security doors.

Existing Condition 2.21

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- 2.21 A plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to visitors. Details are to be submitted to and approved by Council prior to the issue of the Construction Certificate.

Proposed Condition 2.21

- 2.21 A plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to *the tenants of the building*. Details are to be submitted to and approved by Council prior to the issue of the Construction Certificate.

Assessment of Parking Credits for the Development Site

The proposed modification to DA 2006/148 does not seek to modify the number of car parking spaces provided on the site as part of the development, however, it seeks to restrict the use of the onsite parking such that the car parking spaces are available to tenants within the development and their staff.

Any accessible parking (i.e. parking that is to be available to the public, customers, clients etc.) required by the development is to be paid for via the Ballina Shire Car Parking Contribution Plan 2014.

The number of accessible spaces generated by the development (as assessed at the time of its original approval) is calculated as follows:

Accessible car parking spaces required for the development	Spaces
75% of total required spaces for shop and refreshment room (ground floor)	28.26
25% of total required spaces for office (first floor)	6.65
Total overall accessible parking spaces required for the development	34.91

At the time of the assessment of the proposal, it was stated that 14.65 car parking spaces were credited to the site due to road widening being carried out in relation to Tamar Street and Winton Lane.

It has been acknowledged by Council staff since the time of the assessment of the development application that no consideration was given at the time to the driveway closures in Cherry Street, which enabled increased on-street parking adjoining the development site.

In this regard, the previous 17.282m of driveways (which were used to access the former BP service station at the site) is now available for on-street parallel parking.

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An additional 3.08 parking spaces can be attributed to the development site due to the removed driveways. This advice was provided to the applicant via letter dated 3 January 2017.

In view of this, the adjusted total number of car parking credits available to the development site is now $14.65 + 3.08 = 17.73$ spaces.

When considering the requirements for accessible parking spaces for the development, the calculations which can be made as to those required to be provided on site as part of the development are $34.91 - 17.73 = 17.18$ spaces.

It is these 17.18 spaces that the applicant is seeking to pay monetary contributions for, via the Ballina Shire Car Parking Contribution Plan 2014.

Chapter 2 – General and Environmental Considerations of the Ballina DCP 2012 and Ballina Shire Car Parking Contribution Plan 2014

The provisions of Chapter 2, which are relevant to the subject modification application, state the following in relation to car parking areas (generally and in relation to the Ballina Town Centre):

- All parking spaces in commercial and industrial developments must be available for unrestricted public access and employee use. (Ref: 3.19.3 Development Controls, A. Parking and Loading Layout Standards, i).
- Car parking spaces required for customer parking in commercial, business and retail developments are to be freely accessible at all times and must not be gated or secured for exclusive use in any form (Ref: 3.19.3 Development Controls, A. Parking and Loading Layout Standards, vi).
- The car parking requirements specified in Table 2.3 are minimum requirements. All required spaces associated with commercial and industrial uses shall be made available for unrestricted public access and employee use. Where car parking spaces are proposed to be designated for private use then such spaces are required to be additional to the minimum specified requirements (Ref: 3.19.3 Development Controls, E. Car Parking Requirements, iii).
- For development located within the Ballina Town Centre east of Kerr Street and south of Holden Lane, Council may accept a cash contribution in lieu of the provision of on-site car parking spaces for up to 20% of the required parking spaces. Such cases will be considered on merit with reference to:
 - The size of the development
 - The site's proximity to, and the accessibility of, existing or proposed public car parking areas
 - The demand for car parking generally in the locality and
 - The general traffic flow in the area. (Ref: 3.19.3 Development Controls, H. Monetary Contributions, i).

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- Note: The required contribution under (i) is to be made at rate applicable in Council's annual Schedule of Fees and Charges. (Ref: 3.19.3 *Development Controls, H. Monetary Contributions*).

The following comments can be made in relation to the above provisions:

- DA 2006/148 was assessed under a former DCP (DCP No. 1 – Urban Land), which did not contain the requirement for all on-site parking to be available for unrestricted public access and employee use. The DA was approved on the basis of the DCP provisions that were in effect at that time.

As part of the proposed modification, the proponent will provide access to the existing 50 on site car parking spaces to tenants, staff etc., however access will not be available for the public (including customers and clients of tenancies).

The "accessible" spaces (total of 34.91 spaces) are to comprise parking credits (for road widening and driveway closures) and monetary contributions to be paid to Council. The applicant argues that the monetary contributions are able to be used for the provision of on-street parking in the Ballina CBD (refer to discussion below).

It would not be reasonable to enforce the current requirements of the Ballina DCP 2012 upon an existing development, and as such, if the proposed modification is determined by way of refusal, then the proponent would only be required to provide access to the public (including customers/clients of tenants) to 17.18 car parking spaces within the existing car parking area on the second floor of the development.

- DA 2006/148 included the provision of security gates for the second floor car parking area, due to the design of the development and for safety and security reasons.

At the time of assessment and approval of the original DA, the architect for the development (Logan Bald Partnership) nominated hours for operation of the car parking area (as has been also referenced in the approved parking management plan). The hours were nominated in response to safety and security issues raised by the Crime Prevention Officer of the NSW Police.

The provision of security gates and nominated hours of operation for the car parking area were accepted by staff as a solution to address safety and security measures in relation to the design of the development, whilst still ensuring access to the car parking area during business hours for the public (including customers/clients of tenants) and staff.

It would not be reasonable to enforce the current requirements of the Ballina DCP 2012 upon an existing development (being the total removal of the security gates), given the existing security gates serve an important safety and security purpose for the development.

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

A matter for consideration for the Council is whether the gates should be closed at all times (i.e. in and out of business hours), with secure access provided for tenants and their staff only.

The applicant has advised that each tenant of the building is able to secure parking through an agreement with the landowner and that each tenant, as a minimum, will be supplied with car parking spaces that are generated by their use (in accordance with the Ballina DCP).

- If the proposed modification is granted consent, the development will result in a total of 84.91 car parking spaces (50 spaces on site + 17.73 spaces in credit + 17.18 spaces in monetary contributions) being provided by the development.

In this regard, there will be 20.63 car parking spaces provided on site that are additional to the minimum specified requirements (calculation: (84.91 provided spaces - 64.28 required spaces) and therefore in accordance with 3.19.3 *Development Controls, E. Car Parking Requirements, iii*, these 20.63 additional spaces can be designated for private use.

The applicant advises that these spaces will be available to tenants and their employees only.

- Chapter 2 does enable the payment of a cash contribution in lieu of the provision of on-site car parking spaces for up to 20% of the required car parking spaces.

In the case of the proposed modification:

- The payment of monetary contributions for 17.18 spaces will exceed the maximum 20% requirement of the total parking for the site. The development generates a total of 64.28 spaces, with the 17.18 spaces equating to 26.7% of the total parking supply. The 20% supply would equate to 12.85 car parking spaces.

The proposed variation to this development control is 6.7%.

A relevant matter for Council's consideration is whether a 6.7% variation is reasonable in the circumstances of this case, particularly given the modified development would result in no publicly accessible car parking being provided within the on-site car parking area.

The applicant has stated that the proposed modification does not seek to reduce the total number of car parking spaces physically provided on the site and that the 50 spaces will be still available to tenants through their lease agreement.

In addition, the applicant states that each tenancy will be provided with the minimum number of car parking spaces that are generated by their use (in accordance with the Ballina DCP), with the balance of the 50 spaces (being the 20.63 spaces) available to the tenancies should they require additional parking for their staff.

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

The applicant has also commented that the parking spaces on site, which are counted as the required accessible parking spaces, are currently being utilised by staff of existing businesses tenanted in the building and that the roof top parking design does not attract the public to use the parking spaces (due to it not being a convenient access).

- Chapter 2 also states that the consideration for the payment of contributions in lieu of providing on site car parking is on a merit basis, with reference to:
 - o the size of the development
 - o the site's proximity to, and the accessibility of, existing or proposed public car parking areas
 - o the demand for car parking generally in the locality and
 - o the general traffic flow in the area.

In relation to the size of the development, the development is one of the larger commercial developments in this area of the Ballina Town Centre, with a total leasable floor area of 2,006m².

In relation to the site's proximity to and accessibility of existing and proposed public car parking areas, the site is proximate to the public car parking areas located at No. 74 Tamar Street, No. 78 and No.'s 80-84 Tamar Street (Wigmore Car Park) – being 60 metres and 100 metres from the subject site.

These locations are relatively accessible to the development site.

There is no public car parking area proposed in the vicinity of the development at present. However the Ballina Shire Car Parking Contribution Plan 2014 does reference future land acquisition and development of 20 spaces. Refer to discussion below.

In relation to the demand for car parking generally in the locality, there is a high demand for parking in the immediate locality, given the range of retail, commercial, educational and office developments in the area.

The applicant has stated that with the development of additional public car parking by Council in the locality (presumably at the sites of No.'s 74 and 78 Tamar Street), the demand for car parking in the locality is more easily catered for and will not be impacted by the proposed payment of the 17.18 accessible parking spaces.

In relation to these nearby public car parking areas, it is necessary to reference the Ballina Shire Car Parking Contribution Plan 2014. This plan provides that 75 spaces existed within the Wigmore Arcade Car Parking Area (at No. 80-84 Tamar Street) and that car parking contributions were collected under the Ballina CBD Car Parking Contributions Plan 2004 for the future expansion of this car parking area to provide for a multi-storey car park and/or the purchase and development of additional land in Tamar Street for car parking.

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

Additional land has been purchased and developed in Tamar Street (at No.'s 74 and 78 Tamar Street) for public car parking purposes. A total of 140 car parking spaces now exist between the three land holdings (No.'s 74, 78 and 80-84 Tamar Street).

These existing public car parking areas have been funded directly from existing Section 94 Contributions collected under the Ballina CBD Car Parking Contributions Plan 2004.

The preliminary plans for the multi-storey car park facility provide for 255 car parking spaces at 80-84 Tamar Street. This includes 248 spaces, within Level two, three and four and seven disabled spaces directly accessed off Winton Lane.

The Ballina Shire Car Parking Contribution Plan 2014 also identifies that additional land is expected to be purchased in close proximity to Council's current landholdings for car parking. This additional land will also be utilised for public car parking purposes.

Any extra land purchased will be approximately 600m² in area, which has been estimated to yield approximately 20 car parking spaces.

The following table is produced from the Ballina Shire Car Parking Contribution Plan 2014 in relation to the Ballina CBD car parking infrastructure program.

Table 3-1 Ballina CBD car parking infrastructure program

Property	Description of infrastructure	Number of spaces provided	Demolition and Construction (\$)	Acquisition (\$)	Estimated cost (\$)
Wigmore Car Park 84 Tamar Street, Ballina	Wigmore car park extension Multi-storey car park	255	6,500,000 ⁽¹⁾	N/A ⁽³⁾	6,500,000
74 Tamar Street	At-grade parking	40	495,000 ⁽⁵⁾	N/A ⁽³⁾	495,000
78 Tamar Street	At-grade parking	25	630,000 ⁽²⁾⁽⁵⁾	N/A ⁽³⁾	630,000
Tamar Street	At-grade parking	20	200,000	800,000 ⁽⁴⁾	1,000,000
TOTAL		340 spaces ⁽⁶⁾	7,825,000	800,000	8,625,000

Notes:

(1) Correspondence from Turner and Townsend dated 29 July 2013.

(2) Estimated construction and demolition costs, along with cost of ancillary amenity facilities.

(3) Land already in Council ownership.

(4) Based on market advice and preliminary negotiations with existing property owners.

(5) Includes the cost of site remediation.

(6) Total number of spaces based on estimates prepared by Council staff in February 2014.

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

In relation to the general traffic flow in the area, the applicant has commented that the short-fall of public parking proposed in this instance and the additional demand placed on the public parking network will not impact the current traffic flow around the Cherry Street and Tamar Street area. This is generally considered to be the case.

Council's Civil Services Group has advised that they consider the payment of the monetary contributions for the 17.18 car parking spaces as an acceptable outcome.

This is based on the compliance issues for Council associated with the development to date (being the closure of the security gates during business hours, preventing public access) and that there is a mechanism to collect monetary contributions (through the Ballina Shire Car Parking Contribution Plan 2014) whereby public car parking can be provided in the locality in the future in accordance with an adopted Contribution Plan.

In addition, it has been advised by Council's Civil Services Group that with the payment of monetary contributions for the 17.18 car parking spaces, Council will have the option to fast-track the multi-level car parking development or be more actively looking for a property to purchase for public car parking purposes.

Council's Civil Services Group advise that in supporting the proposed modification, that they have an additional requested change to Condition 2.21 (as follows).

- 2.21 A plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to the tenancies of the building. ***The quantum of car parking spaces allocated and available to each tenancy is to adhere to the supply rate calculated per tenancy, in accordance with Table 2.3 within Chapter 2 of the Ballina Shire DCP 2012.*** Details are to be submitted to and approved by Council prior to the issue of the Construction Certificate.

If Council are supportive of the proposed modification, condition 2.21 can be further modified to require the submission of details demonstrating compliance with these requirements, along with payment of the monetary contributions for the 17.18 spaces, prior to the closure of the security gates.

Matters of consideration – Section 96 of the Environmental Planning & Assessment Act 1979 (EP&A Act)

In consideration of the proposal, the important matters as listed within Section 96(2) of the EP& Act 1979 are to be addressed.

- (a) *the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

The development will continue to operate as a commercial development containing retail and commercial floor space. The same number of car

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

parking spaces (being 50) will continue to exist on the development site and be available for parking purposes.

The only change to the development is the ability for parking spaces on the site to be accessed by the public, as the proposal seeks to close the security gates during business hours and only permit tenant (and their staff) access to the car parking area.

(b) Council has consulted with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

The original development application was not subject to concurrence or an integrated approval. Therefore there is no requirement to refer the proposed modification application to the Minister or any approval authority/body.

(c) Council has notified the application in accordance with the regulations (if the regulations so require), or a DCP (if a DCP requires the notification or advertising of applications for modification of a development consent), and

The modification application was placed on public exhibition from 15 March 2017 to 30 March 2017.

(d) Council has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan.

Two submissions were received during this period. Refer to the public exhibition section of this report for further discussion.

Considerations that are important in the assessment of the subject Section 96 Application to Modify Development Consent 2006/148 include the impacts of the development (including environmental impacts, on both the natural and built environment, and social and economic impacts in the locality) and the overall public interest.

In relation to impacts of the proposed modification, the proposal will result in there being no publicly accessible car parking spaces being provided on the development site, despite these spaces being available in the street system (due to parking credits – road widening/driveway closures) and within a public car parking area, as to be provided for via the Ballina Shire Car Parking Contribution Plan 2014.

This means that all customers and clients of tenancies will either have to park within the existing on-street parking surrounding the development site, or parking in public car parking areas 60 to 100 metres away from the development site and walk to their destination.

In the event that a person has mobility difficulties, and cannot access a car parking space in the adjoining street system, travelling at least 60 to 100 metres may not be considered reasonable.

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Whether these arrangements result in impacts for the existing tenancies of the development, in terms of a reduction in client/customers is unknown.

Given there had been a closure of the security gates for almost three years, with customers/clients not being able to access the on-site car parking area during that time, it is possible that there may not be a change in customer/clients frequenting the tenancies within the development.

Council also needs to consider the impacts of displacing the accessible spaces, from the development at No. 31-35 Cherry Street, into the public street system and public car parking areas and also the impacts on other businesses that rely on these parking areas for their customers/clients.

If Council is satisfied that the proximity of existing public car parking areas (in Tamar Street) and the potential to contribute to the future acquisition and development of a parking area containing 20 spaces or the future multi-level car park development (as per the Ballina Shire Car Parking Contribution Plan 2014) comprises a reasonable and suitable outcome for this development, then the proposed modification should be granted consent.

If Council is not convinced that the proposal is a good outcome for the Town Centre, that detrimental impacts will be created for the public street system, public car parking areas and surrounding businesses that also rely on these public car parking spaces, that each development should provide some on-site accessible parking and that the proposal will create a negative precedent by which other commercial developments may draw on also, then the proposed modification should be determined by way of refusal.

Options

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

Option One

That Council approve the application to modify development consent 2006/148 via Section 96(2) of the Environmental Planning and Assessment Act 1979 to enable the payment of Section 94 Developer Contributions in lieu of providing publicly accessible car parking spaces.

This would be subject to amendments to conditions 2.10 (contributions condition – to insert the requirement for payment for the 17.18 car parking spaces), 2.21 (parking management plan – to reference parking only being available to tenancies of the building), 5.5 (car parking condition – to reference the 50 on-site parking spaces being available for tenancies of the building only), 5.6 (road dedication – to reference the correct credit entitlements due to road widening and driveway closures) and deletion of condition 5.7 (parking signposting – visitor parking).

Option Two

That Council refuse the application to modify development consent 2006/148. This option could be taken up if the Council is of the opinion that the proposed modification is not a good outcome for the Town Centre and will have a range

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

of detrimental impacts, as identified within this report and that each development should provide some on-site accessible parking.

Conclusion

Whilst the proposal will result in a 6.7% variation, to the development controls within Chapter 2 of Council's DCP 2012, that relate to the ability to accept a monetary contribution in lieu of the provision of on-site car parking spaces, the subject development at No. 31-35 Cherry Street is in close proximity to existing public car parking areas and future planned public car parking areas, as identified in the Ballina Shire Car Parking Contribution Plan 2014.

The requested variation is relatively small, in context with other requested variations that Council receives to other development controls within Council's DCP (on a percentage basis).

However, it is acknowledged that, in this case, it will be one of the first developments in the Ballina Town Centre that does not provide for publicly available parking within the development's on-site car parking area.

There have been two submissions received in relation to the proposed modification. One of the submissions seeks to ensure that if Council grants consent to the proposed modification, the monetary contributions are paid into a separate car parking fund to increase the number of car parking spaces in the Ballina CBD.

As discussed in this report (and as can be imposed as a condition of consent), this will occur.

This submission raises many concerns regarding the ability of the landlord to charge additional rental fees for car parking spaces to tenants. As has been discussed in this report, as long as the landlord/proponent is providing access to the car parking spaces required (as per Council's DCP requirements) for each tenancy, then Council should be satisfied that adequate access is provided.

It is a commercial decision for the proponent/landlord to charge rental fees to their tenants, which includes the required (or any additional) car parking spaces. If this results in the development being less favourable to existing (or potential future tenants) and there are vacancies, then this is a matter for the landlord and they would be able to adjust their rental agreements.

The other submission also raises concern with their customers/clients not being able to access the car parking area. The approval of the proposed modification will result in no publicly accessible parking for the tenancy's customers/clients on the development site, with the options being on-street car parking or use of a nearby public car park.

In view of the content of this report, Option One is the recommended approach in determining the proposed modification application.

RECOMMENDATIONS

That the Section 96 Application to Modify Development Consent 2006/148 via Section 96(2) of the Environmental Planning and Assessment Act 1979 at Lot 1

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

DP 1146004, No. 31-35 Cherry Street, Ballina, be granted consent, subject to the following modifications:

New Condition

- 1.21 A revised plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to the tenancies of the building. The quantum of car parking spaces allocated and available to each tenancy is to adhere to the supply rate calculated per tenancy, in accordance with Table 2.3 within Chapter 2 of the Ballina Shire DCP 2012. Details are to be submitted to and approved by Council prior to the closure of the security gates to the car parking area and payment of the car parking contributions for 17.18 car parking spaces as per condition 2.10 of this amended consent.

Amended Conditions

- 2.10. Prior to the issue of the Construction Certificate for the development, total payment to Council of non-refundable monetary contributions is to be made towards the provision of public services and amenities, which are required as a result of the development. These contributions are required in accordance with s94 of the Environmental Planning & Assessment Act, 1979 and Council's adopted Contribution Plans.

The current amounts required are:

- \$62,687.00 for the provision of major shire wide road infrastructure, being for 942m² of retail floor area plus 1064m² of office floor area minus a credit for the existing service station development on site, in accordance with Plan No1: Ballina Road Contribution Plan.

- \$7,961.00 for the provision of planning and administration of section 94 funds, being at the rate of \$6.75 per m² of g.f.a minus a credit for the existing service station development on site, in accordance with Plan No.3: Section 94 Planning Studies and Administration.

The development is also required to make a monetary car parking contribution under the provisions of the Ballina Shire Car Parking Contribution Plan 2014 for the equivalent of 17.18 car parking spaces, in lieu of providing publicly accessible car parking spaces within the car parking area on the second floor of the development. Refer to Schedule 1 within this amended consent for the contribution rates applicable at the time of the issue of this amended consent.

The payment of the monetary car parking contribution is required to be paid prior to the closure of the security gates on Winton Lane.

These rates are reviewed periodically by Council and the contribution amounts will be calculated at the rate applicable at the time of payment. Copies of the Contribution Plans may be viewed at the Council Chambers, corner of Cherry and Tamar Streets, Ballina.

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

5.5. Car parking spaces
A minimum of 50 car parking spaces shall be provided and available at all times for parking purposes for the tenancies within the development.

5.6 Road dedication/Driveway closure - car parking requirement
A total of 65 car parking spaces would ordinarily be required to be provided for the development, however as part of the site was required for road widening purposes and also due to the closure of driveways adjoining the development site, a credit of 17.73 car parking spaces is given.

Deleted Conditions

2.21 A plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to visitors. Details are to be submitted to and approved by Council prior to the issue of the Construction Certificate.

5.7 Parking signposting
Permanent signposting is to be erected in front of the development stating that visitor parking is available on the site. The car parking spaces shall be clearly designated and kept available for such purpose.

New Schedule

Schedule 1

Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Contribution Units Payable	TOTAL COST
Ballina CBD Car Parking Contribution 2014	4603	per car park not provided	\$26,793.00	17.1800	\$460,303.74

Attachment(s)

1. Locality Plan
2. Section 96 Application to Modify Development Consent and Supporting Documents
3. Submission
4. Confidential submission (Under separate cover)

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
ON 27/07/17 AT 9.00 AM**

Adjournment

The Chair declared the meeting adjourned at 10.46 am

The meeting resumed at 11.04 am

8. Development and Environmental Health Group Reports

8.1 DA 2006/148 - Section 96 Application - 31-35 Cherry Street, Ballina

A **Motion** was moved by Cr Eoin Johnston

That the Section 96 Application to Modify Development Consent 2006/148 via Section 96(2) of the Environmental Planning and Assessment Act 1979 at Lot 1 DP 1146004, No. 31-35 Cherry Street, Ballina, be granted consent, subject to the following modifications:

New Condition

- 1.21 A revised plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to the tenancies of the building. The quantum of car parking spaces allocated and available to each tenancy is to adhere to the supply rate calculated per tenancy, in accordance with Table 2.3 within Chapter 2 of the Ballina Shire DCP 2012. Details are to be submitted to and approved by Council prior to the closure of the security gates to the car parking area and payment of the car parking contributions for 17.18 car parking spaces as per condition 2.10 of this amended consent.

Amended Conditions

- 2.10. Prior to the issue of the Construction Certificate for the development, total payment to Council of non-refundable monetary contributions is to be made towards the provision of public services and amenities, which are required as a result of the development. These contributions are required in accordance with s94 of the Environmental Planning & Assessment Act, 1979 and Council's adopted Contribution Plans.

The current amounts required are:

- \$62,687.00 for the provision of major shire wide road infrastructure, being for 942m² of retail floor area plus 1064m² of office floor area minus a credit for the existing service station development on site, in accordance with Plan No1: Ballina Road Contribution Plan.

..... MAYOR

MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
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ON 27/07/17 AT 9.00 AM

- \$7,961.00 for the provision of planning and administration of section 94 funds, being at the rate of \$6.75 per m2 of g.f.a minus a credit for the existing service station development on site, in accordance with Plan No.3: Section 94 Planning Studies and Administration.

The development is also required to make a monetary car parking contribution under the provisions of the Ballina Shire Car Parking Contribution Plan 2014 for the equivalent of 17.18 car parking spaces, in lieu of providing publicly accessible car parking spaces within the car parking area on the second floor of the development. Refer to Schedule 1 within this amended consent for the contribution rates applicable at the time of the issue of this amended consent.

The payment of the monetary car parking contribution is required to be paid prior to the closure of the security gates on Winton Lane.

These rates are reviewed periodically by Council and the contribution amounts will be calculated at the rate applicable at the time of payment. Copies of the Contribution Plans may be viewed at the Council Chambers, corner of Cherry and Tamar Streets, Ballina.

- 5.5. Car parking spaces
A minimum of 50 car parking spaces shall be provided and available at all times for parking purposes for the tenancies within the development.
- 5.6 Road dedication/Driveway closure - car parking requirement
A total of 65 car parking spaces would ordinarily be required to be provided for the development, however as part of the site was required for road widening purposes and also due to the closure of driveways adjoining the development site, a credit of 17.73 car parking spaces is given.

Deleted Conditions

- 2.21 A plan of management is to be provided for the parking area to ensure satisfactory use and safety of the parking area. This plan is to include signage to advise of the parking area, mirrors to assist with safety exiting the parking area onto the public road, and ensuring access and spaces are allocated and available to visitors. Details are to be submitted to and approved by Council prior to the issue of the Construction Certificate.
- 5.7 Parking signposting
Permanent signposting is to be erected in front of the development stating that visitor parking is available on the site. The car parking spaces shall be clearly designated and kept available for such purpose.

..... MAYOR

**MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
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New Schedule

Schedule 1

Contribution	Receipt Code	Contribution Unit	Rate per contribution Unit	Total Contribution Units Payable	TOTAL COST
Ballina CBD Car Parking Contribution 2014	4603	per car park not provided	\$26,793.00	17.1800	\$460,303.74

The **Motion LAPSED**.

A **Motion** was moved by Cr Nathan Willis and seconded by Cr Keith Williams

That Council defer this matter to a Councillor briefing in relation to the development application given that the proposed modification may not be a good outcome for the town centre.

An **Amendment** was moved by Cr Sharon Cadwallader and seconded by Cr Phillip Meehan

1. That Council refuse the application to modify development consent 2006/148 as the application is not a good outcome for the town centre and will have a range of detrimental impacts, as identified within this report and that development should provide on-site accessible parking as per the existing consent.
2. That increased signage be placed to advertise the availability of public parking.
3. That the provision for ambulance be removed and be replaced with appropriate disability car parking, subject to Local Traffic Committee approval.

The **Amendment** was **CARRIED**.

FOR VOTE - Cr Phillip Meehan, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Sharon Parry, Cr Nathan Willis and Cr Keith Williams

ABSENT. DID NOT VOTE - Cr David Wright and Cr Jeff Johnson

The **Amendment** then became the **Motion** and was **CARRIED**.

FOR VOTE - Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith

AGAINST VOTE - Cr Nathan Willis and Cr Keith Williams

ABSENT. DID NOT VOTE - Cr David Wright and Cr Jeff Johnson

..... MAYOR

MINUTES OF THE ORDINARY MEETING OF BALLINA SHIRE COUNCIL
HELD IN THE BALLINA SHIRE COUNCIL CHAMBERS
40 CHERRY STREET BALLINA,
ON 27/07/17 AT 9.00 AM

270717/8 RESOLVED

(Cr Sharon Cadwallader/Cr Phillip Meehan)

1. That Council refuse the application to modify development consent 2006/148 as the application is not a good outcome for the town centre and will have a range of detrimental impacts, as identified within this report and that development should provide on-site accessible parking as per the existing consent.
2. That increased signage be placed to advertise the availability of public parking.
3. That the provision for ambulance be removed and be replaced with appropriate disability car parking, subject to Local Traffic Committee approval.

FOR VOTE - Cr Phillip Meehan, Cr Sharon Parry, Cr Eoin Johnston, Cr Stephen McCarthy, Cr Sharon Cadwallader and Cr Ben Smith
AGAINST VOTE - Cr Nathan Willis and Cr Keith Williams
ABSENT. DID NOT VOTE - Cr David Wright and Cr Jeff Johnson

8.2 Development Applications – Variation to Development Standards

270717/9 RESOLVED

(Cr Keith Williams/Cr Nathan Willis)

That Council notes the contents of this report on the development applications approved under delegation for variations to development standards less than 10% for July 2017.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr David Wright and Cr Jeff Johnson

8.3 Development Consent and Infrastructure Approvals - June 2017

270717/10 RESOLVED

(Cr Keith Williams/Cr Nathan Willis)

That Council notes the contents of the report on development consent and public infrastructure approvals for 1 June 2017 to 30 June 2017.

FOR VOTE - All Councillors voted unanimously.
ABSENT. DID NOT VOTE - Cr David Wright and Cr Jeff Johnson

enquiries refer
Naomi McCarthy
in reply please quote
DA 2006/148.4

Newton Denny Chapelle
PO Box 1138
LISMORE NSW 2480



**NOTICE TO APPLICANT OF DETERMINATION OF A
DEVELOPMENT APPLICATION**
(Issued under Section 81(1)(a) of the Environmental Planning and
Assessment Act 1979)

Development Application No: DA 2006/148

Applicant: Newton Denny Chapelle

Subject Land: Lot: 1 DP: 1146004, No. 31-35 Cherry Street
BALLINA

Development Proposal: To amend Development Consent 2006/148 to:

- enable the payment of Section 94 Developer Contributions in lieu of providing publicly accessible car parking spaces; and
- modify the Parking Management Plan (condition 2.21) to enable closure of the security doors and to provide access to the car parking area for tenancies of the building only.

Determination: The development application has been determined by Ballina Shire Council on 27 July 2017 by way of **refusal for the following reasons:**

40 cherry street, po box 450, ballina nsw 2478
t 02 6686 4444 • f 02 6686 7035 • e council@ballina.nsw.gov.au • w ballina.nsw.gov.au

1. The proposed amendment is not a good outcome for the Ballina Town Centre and will result in detrimental impacts, including the displacement of publicly accessible car parking spaces into the public street system and public car parking areas.
2. The proposed amendment will result in no on-site publicly accessible car parking spaces being provided within the development.
3. For the reasons outlined above, the application is not considered to be in the public interest.

Signed:



16/08/2017

Andrew Smith
Acting Group Manager
Development and Environmental Health
On behalf of Ballina Shire Council

Right of Appeal:

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to appeal to the NSW Land and Environment Court within 6 months after the date on which you receive this notice or the date on which the application is taken to have been determined under Section 82(1).

Section 97 of the Environmental Planning and Assessment Act 1979 does not apply to the determination of a development application for local development that has been the subject of a Commission of Inquiry.

Review of Determination:

Section 82A of the Environmental Planning and Assessment Act 1979 gives you, the applicant, the right to request the Council to review the determination of your application. This request must be made within the time prescribed by Section 82A(2A) and be accompanied by the fee prescribed by Section 257 of the Environmental Planning & Assessment Regulation 2000. Review provisions do not apply to:

- (a) a determination to issue or refuse to issue a complying development certificate, or
- (b) a determination in respect of designated development, or
- (c) a determination in respect of integrated development, or
- (d) a determination made by the Council under Division 4 in respect of an application by the Crown.