



LATE ITEM

Ordinary Meeting 26 April 2018

**Held at Ballina Shire Council Chambers
40 Cherry Street Ballina**

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8.5 DA 2017/557 - Place of Assembly and Tourist Facility North Teven Road

8. Development and Environmental Health Group Reports

8.5 DA 2017/557 - Place of Assembly and Tourist Facility North Teven Road

Delivery Program Development Services

Objective To provide an update on the status of the proposal for a place of assembly and tourist facility (DA 2017/557) at North Teven Road, Teven.

Background

Council considered DA 2017/557 at its March 2018 Ordinary meeting. The proposed development involved the following elements:

- the erection of a purpose built building for use as a place of assembly (function centre); and
- the change of use of the approved dwelling house (DA 2016/601) to a tourist facility (accommodation).

The land the subject of the development application (Lot 1 DP 204760) is shown in the locality plan in Attachment 1.

Council determined the application by way of refusal as follows [Minute No.220318/4]:

That DA 2017/557 for the erection of a purpose built building for use as a place of assembly (function centre and refreshment room) and the change of use of the approved dwelling house (DA 2016/601) to a tourist facility (accommodation) at Lot 1 DP 204760, North Teven Road, Teven be REFUSED as Council is not satisfied that the proposed development will not have an unreasonable impact on the surrounding properties and the rural locality.

Council has subsequently been advised that the proponent has filed a Class 1 appeal in the NSW Land and Environment Court against the Council's decision to refuse the development application. The proponent is seeking to have the Council's decision overturned and the development proposal approved.

In response to the above, staff have sought legal advice as well as specialist consultant advice with respect to the defence of the appeal.

Key Issues

- Approach to address the appeal to the Land and Environment Court.

Information

The report to Council's March 2018 Ordinary meeting on DA 2017/557 incorporated a staff recommendation for the approval of the proposed development subject to conditions.

8.5 DA 2017/557 - Place of Assembly and Tourist Facility North Teven Road

The proposed conditions included a number of specific requirements tailored to address potential impacts associated with the development, including potential noise impacts

Other key issues arising and considered in relation to this application included traffic management and car parking, on site wastewater management, light spill, land use conflict and impacts on privacy, amenity and character.

Council's reason for refusal relates to the impacts of the development on adjoining properties and the rural locality more generally.

In response to the applicant's appeal to the Land and Environment Court, staff have sought expert advice from planning and acoustic consultants. The advice received and Council's approach to the appeal is discussed separately in a confidential report elsewhere in this agenda.

Sustainability Considerations

- **Environment**
The environmental and social impacts were considered as part of the assessment of DA 2017/557.
- **Social**
As above
- **Economic**
Council needs to be mindful of the cost of legal proceedings and the likelihood of success.

Legal / Resource / Financial Implications

An appeal against Council's decision to refuse DA 2017/557 has been lodged with the NSW Land and Environment Court. Council's involvement in the appeal proceedings will have staff resource and financial costs, which are dependent on the approach taken by Council in relation to the appeal.

Consultation

This late report, and the associated confidential report, will need to be considered as a matter of urgency. The reason for the urgency is that the court directions hearing is on 7 May 2018 and staff need advice on the direction to be taken at that hearing.

Options

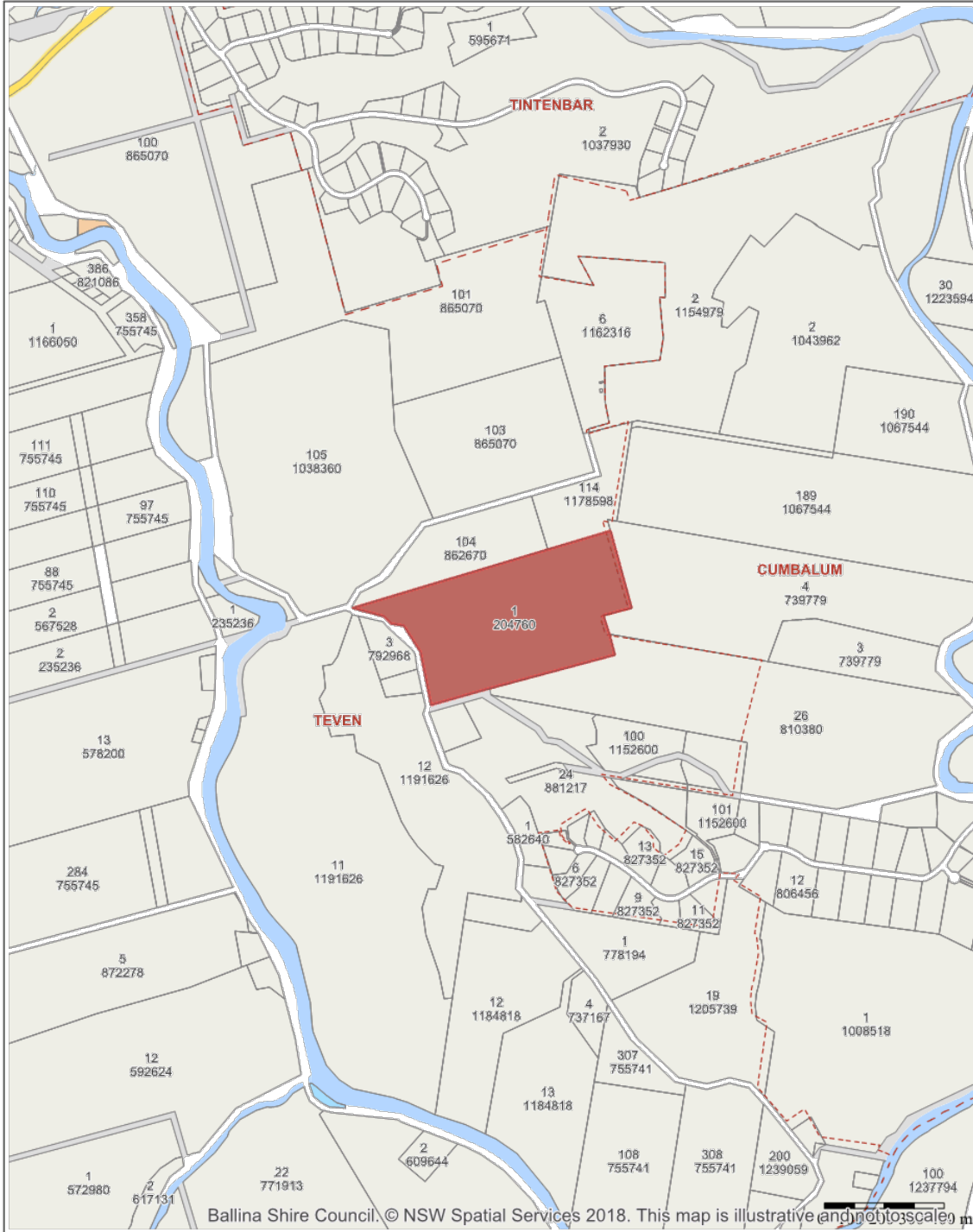
The primary purpose of this report is to provide an open Council overview of the basis for the confidential report. The recommendation is for the noting of the report on this basis.

RECOMMENDATION

That Council notes the contents of this report which provides an introduction to a confidential report on the appeal to the Land and Environment Court against Council's decision to refuse DA 2017/557 relating to a place of assembly and tourist facility at Lot 1 DP 204760 North Teven Road, Teven.

Attachment(s)

1. DA 2017/557 Site Locality Plan



Ballina Shire Council
 40 Cherry Street
 BALLINA NSW 2478
 PO Box 450
 BALLINA NSW 2478



**DA 2017/557 Lot 1 DP 204760 North Teven Road,
 Teven - Locality Map**

ballina shire council
 geographical information system

Projection: GDA94 / MGA zone 56
 Date: 15/03/2018

02 6666 4444
council@ballina.nsw.gov.au
www.ballina.nsw.gov.au

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16. 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:

16.2 DA 2017/557 - Legal Proceedings

Refer to Item 8.5 of these late agenda items. (DA 2017/557 – Place of Assembly and Tourist Facility North Teven Road).

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.

16.2 DA 2017/557 - Legal Proceedings

Reason for Confidentiality

This report is **CONFIDENTIAL** in accordance with Section 10A(2)(g) of the Local Government Act 1993. which permits the meeting to be closed to the public for business relating to the following:-

- g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as the release of this information may impact the outcomes of the legal proceedings.