



Ballina East Lions Club Inc.  
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Mr. Paul Hickey  
General Manager  
Ballina Shire Council  
40 Cherry Street  
Ballina NSW 2478

Dear Sir,

In 2005 East Ballina Lions Club was approached to take over the Ballina Community Market. At that stage it had declined to the extent that it appeared that before long it would cease operating. The Lions had no experience in running such an event but were reluctant to see the market close and decided to accept the challenge of becoming the market organisers and develop the market into a community event for the town. The market take place on the third Sunday each month at Canal Road Ballina.

The Lions strive to provide families and the community with a place to meet and relax and spend time together while providing a venue where artists and crafts people together with fresh food growers are showcased and their goods offered for sale. It is also a performance place for local bands, schools, choirs and performers. Each month a number of free stalls are held by local charities such as the Refugee Association, Meals on Wheels, Westpac Helicopter and Relay for Life that use the market to fund raise with raffles or garage sales or hold information stalls to promote their services. Politicians regularly take a stall at the market to give themselves an opportunity to network with the local community.

The 'Café Under the Trees' makes the most of the leafy site and has been developed with twenty to thirty tables being put out under the shade of the big trees to give market goers a place to rest in the peaceful atmosphere. Here there is the opportunity to enjoy something to eat and drink such as local coffee and the Lions \$8:00 plated full 'Big Breakfast' comprising bacon, egg, sausage, hash brown, tomato and onions served with hot buttered toast which has proved to be a popular start to the day for many regulars. The café takes on a village green atmosphere when the Ballina Shire Concert Band take up their regular spot at 9:30am when the seats are all taken with market goers clapping and tapping their feet along with the music.

The Lions adopted the catch phrase 'the Friendliest Market Around' and they have made special efforts to make sure that all stall holders feel very welcome and their presence at the market is valued. A newsletter is given to every stall holder each month helping to foster the partnership that is essential between the Lions and the stallholders.

For the East Ballina Lions the market has developed into a major fund raising project with the money raised being donated back to the community. Profits have been donated to the Farmers Drought Appeal, the Bush Fire Disaster Fund and Childhood Cancer. Many local organisations such as the SES, Riding for the Disabled, The Ballina Hot Meal Centre and Meals on Wheels as well as local families in need have received donations and help from market profits.

East Ballina Lions have developed a very valued symbiotic relationship with the Ballina Shire Concert Band. The markets are a performance space for the Band which is very beneficial for the markets and the markets provide a generous donation to the Band from the Lions each year. The stall fees are still, however, the cheapest across the Northern Rivers being a low \$15:00.

Two years ago the Lions were devastated when a fire totally destroyed their storage shed and toilet facilities with most of the equipment such as marquees, barbecues and custom built barbecue trailer used at the market being burnt. Most of the equipment had been collected by the Lions from grants and sponsorships over many years. It looked as if the market would no longer be able to take place but with determination it was able to continue even though it was and still is with great difficulty.

Since the fire and the loss of the toilet facilities on the site the market has been operating with portable toilets which have been financed from the insurance money from the loss of the shed. This money will be expended in April and should the Lions Club then have to pay for their provision it would result in a deep cut into any profit that the market makes and could in the long term make the market unviable. The Lions would therefore like to request that the Council continues to provide the portable toilets.

The Lions are looking forward to working with the Ballina Shire Council in finding a new site for the market to operate from in order to ensure it's sustainability into the future and to continue to grow and flourish but in the meanwhile East Ballina Lions Club would be extremely grateful if the Ballina Shire could continue to finance the provision of portable toilets at the market site.

Yours sincerely,

*Dawn Sword*

Dawn Sword O.A.M.  
President  
East Ballina Lions Club

### 8.3 Ballina Community Markets - Provision of temporary toilets

#### 8.6 Community Events and Markets on Public Land

##### Delivery Program

Strategic Planning

##### Objective

To present options to Council regarding the provision for markets on public land.

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#### Background

This report outlines issues of regulatory inconsistency between local and State planning policy that may necessitate amendment to Council's policy arrangements for 'special events' on public land.

Special events are defined as follows for the purpose of the Ballina LEP 2012:

***special event** means a function or event open to the public or a section of the public and includes a ceremony, concert, cultural celebration, dance, exhibition, fair, festival, fete, gathering, market, open air theatre, parade, sporting event or street parade.*

Special events on public land are identified as 'exempt development' for the purposes of the BLEP 2012 (Schedule 2) where such events meet the following criteria:

***Special events on land vested in, controlled or managed by the Council (including public roads and reserves)***

- (1) *Must not include the erection of a permanent structure on the land.*
- (2) *Must not include the clearing or disturbance of native vegetation.*
- (3) *Maximum period—52 days (whether or not consecutive days) in any period of 12 months.*

The requirements for Council's approval of special events, as owner/manager of the land, are outlined in Council's Special Events Policy (E05) and Markets on Public Land Policy (M01). These policies address, in general terms, the application and approval process, information requirements, tenure/licensing, insurance and risk management and dispute resolution.

Under the local planning framework established by Council community events on public land do not, in general terms, require development approval where undertaken within Council's policy requirements. These events are, however, subject to an internal assessment process undertaken by staff in accordance with Council's policies (referred to above) with the activity typically regulated by way of a licence for the use of public land.

In the administration of the policy an issue has been identified relating to the approval of temporary structures erected in association with such events (including markets).

The purpose of this report is to outline the nature of the issue and invite Council's consideration of options to determine the future regulatory approach to community events.

### 8.3 Ballina Community Markets - Provision of temporary toilets

#### Key Issues

- Community events
- Temporary structures
- Regulatory approval

#### Information

Special events and markets (a form of special event) often involve the erection of temporary structures such as tents or marquees. In the case of markets, the erection of temporary structures forms part of the definition of a market, as per the following (Standard Instrument definition in the BLEP 2012):

*market means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.*

During the implementation of the above arrangements for special events, an issue has been identified relating to a conflict with State Government Codes applying to the erection of temporary structures such as tents and marquees.

In summary, *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* sets a number of development standards applying to the erection of tents and marquees in association with 'community events' (including markets).

In order to be exempt from development consent, the following criteria must be met:

*"(a) for all tents, marquees and booths being used at the same time – the development must not have a total floor area exceeding 300m<sup>2</sup>"*

Further, Clause 1.9(1) of the Exempt and Development Codes SEPP has the effect of switching off planning controls in local environmental plans, where the same form of development is addressed in both planning instruments.

As a consequence of the above, notwithstanding Council's local exempt and complying development provisions, where events involve the erection of temporary structures (such as tents and marquees) with a total combined floor area greater than 300m<sup>2</sup>, development consent is required.

This issue only arises in relation to larger community events and markets involving more than approximately 30 stalls (assuming one standard 3m x 3m market 'tent' per stall).

The Shire's existing community events, including the Prawn Festival and Ballina Country Music Festival are (currently) below this threshold, meaning a development application has not been required.

Similarly, smaller markets such as the Ballina Farmers Market operating at Commemoration Park (at its current scale) are not affected. Should these events and markets grow beyond this threshold, a development application would be required.

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Any relocation of existing larger scale markets such as the Lennox Head Community Market and Ballina's Canal Street Markets would likely require development approval to proceed at their current scale. Any new markets of a similar scale would also require development consent.

The additional requirements associated with having to obtain development consent, of the kind typically required in accordance with the *Environmental Planning and Assessment Act 1979*, compared with internal assessment and licensing requirements may pose a disincentive or barrier to some proposals.

Such additional requirements include:

- The need to have a town planning report prepared (costing in the order of \$2,500)
- The need for a traffic assessment and/or parking survey to be prepared (costing in the order of an additional \$2,500)
- Additional time to complete the statutory planning assessment required under the development assessment process.
- The payment of development application fees (estimated \$550).

Although development consent imposes a greater burden on the establishment of such events (in terms of additional cost and complexity), it is not unreasonable that larger scale activities be subject to a greater level of assessment.

The development assessment process also provides opportunities for community input, noting that certain special events and use of public land has the potential to impact on other users of public land and affect nearby residential amenity.

#### Council initiated development applications

Due to the social benefits associated with community events, Council may wish to consider taking on the responsibility for the preparation of development applications for key event sites in order to minimise the regulatory burden imposed on community events (above the exempt threshold) where they occur on public land under the management and control of Council.

In the first instance it is suggested that Council's effort be focused on market activities and similar events (although not to the exclusion of other activities where they can be reasonably incorporated into an application). Key sites in this regard include Missingham Park, Pop Denison Park, Kingsford Smith Park, Williams Reserve and Geoff Watt Oval.

Over time, Council could also consider extending its program of seeking overarching approvals for expected events to cover activities such as concerts and other forms of periodic performances and entertainment that may occur in Ballina Shire.

It is acknowledged that these measures would impose costs on Council in terms of development assessment resources and obtaining specialist town planning and traffic analysis advice (for markets the costs is estimated in the order of \$5,550 in each case) for each 'event site'.

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However, this approach is efficient in terms of minimising the overall cost to the community, and in particular would avoid the need for multiple studies and development applications on an event by event basis for similar activities that vary only in minor terms, such as the days or hours of operation or regularity (for example).

Further, undertaking a single integrated development consent (and traffic assessment) for each site would enable the consideration of cumulative impacts and determine the maximum level of usage (for community events) appropriate for each site, such that adverse environmental impacts and impacts on the amenity on other users of the reserves and residents of neighboring areas may be minimised.

In terms of funding for the provision of town planning advice and traffic analysis, it is anticipated that one event site assessment could be funded per year from within the existing economic development budget.

Under this approach, proposals for events outside of these key event sites could be considered on merit. In such cases it is recommended that the proponents of such events be responsible for preparing the related development assessment documentation.

#### Update of Council requirements/policy

In terms of policy arrangements, it is recommended that Council's Ballina Shire Markets Guidelines be updated to reflect the threshold issues outlined, so that market organisers are aware of the circumstances where a development application is required.

Council's Markets on Public Land Policy (M01) was adopted on 28 July 2016 with a four year review period. It is recommended that the policy be updated in the 2019/20 financial year to clarify the development assessment requirements where temporary structures are involved. This would mean the policy is reviewed in advance of its next scheduled review being in July 2020.

Council's Special Events Policy is sufficiently broad and does not require amendment at this time.

#### **Sustainability Considerations**

- **Environment**  
The consideration of potential environmental impacts, in a broad sense, associated with larger-scale community events will occur in the context of the development assessment process.
- **Social**  
Providing for community events on public land supports community wellbeing through encouraging social interaction.
- **Economic**  
Community events typically include elements of commercial activity that support economic diversity.

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

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The update of Council's markets guideline can be accommodated within existing resources. The effect of these changes is to clarify the regulatory requirements associated with markets that apply regardless of the wording of Council's policy documentation.

It is anticipated that the preparation of one development application (including traffic assessment) per year can be accommodated within existing resources. This work would be managed by Council's Strategic Planning Section utilising funding from the existing economic development budget or possibly other funding sources identified by the General Manager.

#### **Consultation**

No consultation with the community has been undertaken to date in relation to the matters identified in this report.

Should Council proceed to amend the Markets on Public Land Policy, the revised policy will be the subject of a public exhibition period.

Where development applications are prepared, these applications may be the subject of advertising to seek community feedback depending on the nature and scale of the proposed development. This will be determined in line with Council's adopted policy for the notification of development applications on a case by case basis.

#### **Options**

1. That Council seek development consent for community events (including markets) on key event sites located on public land under the control and management of Council and updates the Markets on Public Land Policy to address the matters raised in this report.

This option would involve the preparation, by Council, of one development application per year for key event sites. It is suggested that initially Council resolves to carry out this program for a period of three years.

It is recommended that the first application be for market and community event activities at Pop Denison Park to reflect the opportunities arising from the redevelopment of the park into a regional open space facility.

It is recommended that the priority for future years be determined in years two and three based on a review of need and prevailing circumstances.

Under this option, Council's Market on Public Land Policy (M01) would also be updated during the 2019/20 financial year.

This option is recommended on the basis that community events provide positive outcomes associated with social interaction and community cohesion. Requiring all community event applicants (of larger scale proposals) to submit individual planning reports and traffic assessments may discourage proposals which may have provided benefits to the community.

Further, it appears inefficient to require proponents to prepare multiple individual applications and traffic assessments where the details and

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impacts of the public events occurring on the same site are generally consistent.

2. That Council's Markets on Public Land Guidelines be updated in accordance with the information contained in this report.

This option would involve updating Council's Markets on Public Land Policy. Under this option, proponents of community events above the exempt development threshold would be required to submit a development applications on an individual basis.

This option is not recommended on the basis of the reasoning set out with respect to option one.

3. That Council take no further action.

This option is not recommended on the basis that at the very least Council's Market Guidelines document should be updated to clarify the requirements associated with the erection of temporary structures in association with larger scale community events (including markets).

#### **RECOMMENDATIONS**

1. That Council seek a single integrated development consent for markets and community events for three key event sites on a one per year basis for three years.
2. That the first development application be for market and community event activity at Pop Denison Park, with applications to be prepared in years two and three to be determined based on need and circumstances.
3. That Council's Market Guidelines be updated in accordance with the information contained in this report during the 2019/20 financial year.

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

Nil