



## Notice of Ordinary Meeting

Notice is hereby given that an Ordinary Meeting of Ballina Shire Council will be held in the Ballina Shire Council Chambers, Cnr Cherry & Tamar Streets, Ballina on **Thursday 27 January 2010 commencing at 9.00 am**

### Business

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

A handwritten signature in black ink, appearing to read 'Paul Hickey', with a long horizontal stroke underneath.

Paul Hickey  
**General Manager**

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

## **Deputations to Council – Guidelines**

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

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

The use of powerpoint presentations and overhead projectors is permitted as part of the deputation, provided that the speaker has made prior arrangements with the General Manager's Office at the time of booking their deputation. The setup time for equipment is to be included in the total time of 5 minutes allocated for the deputation.

## **Public Question Time – Guidelines**

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

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

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

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

The Chairperson will respond to questions indicating that either the matter will be referred to staff for rectification (where the matter is of a minor or urgent nature) or referred to staff for report to a later meeting of the Council or a Committee.

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

Recording of the questions will not be verbatim.

The standard rules of behaviour in the Chamber will apply.

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

## **Disclaimer**

The advice or information contained within the Minutes enclosed with this Business Paper is given by the Council without liability or responsibility for its accuracy. Reliance cannot be placed on this advice or information until the Minutes have been duly accepted as an accurate record and confirmed by Resolution of Council (usually at the next Ordinary Meeting of Council).

## **Confidential Session**

The confidential session is normally held as the last item of business.

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

The National Anthem will be performed by Nick Wheeler.

**2. Acknowledgement of Country**

In opening the meeting the Mayor provided an Acknowledgement of Country by reading the following statement on behalf of Council:

I would like to respectfully acknowledge past and present Bundjalung peoples who are the traditional custodians of the land on which this meeting takes place.

**3. Apologies**

Nil

**4. Confirmation of Minutes**

A copy of the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 16 December 2010 were distributed with the business paper.

**RECOMMENDATION**

That Council confirms the Minutes of the Ordinary Meeting of Ballina Shire Council held on Thursday 16 December 2010.

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

**6. Deputations**

**7. Mayoral Minutes**

Nil items

## 8. Regulatory Services Group Reports

### 8.1 DA 2007/703 - Dual Key Arrangements - Riverside Suites

<b>File References</b>	DA 2007/703
<b>Applicant</b>	sj Connelly Pty Limited (on behalf of owners of the relevant apartments and no longer with the support of the Owners Corporation)
<b>Property</b>	Lots 12,13,16,22,25,30,31,34,37,38 in SP 70891, comprising parts of No. 25-35 Fawcett Street, Ballina known as "Riverside Suites" (formerly "Riverside Ramada Hotel") Commercial/Tourist/Residential Development
<b>Proposal</b>	DA 2007/703 - Change of Use and required Structural/Layout Changes to allow "Dual Key" apartments (for 10 apartments) – i.e. originally involved 11 apartments however one owner has withdrawn from the proposal
<b>Effect of Planning Instrument</b>	The land is zoned Business under the provisions of the Ballina LEP
<b>Locality Plan</b>	The subject land is depicted on the locality plan attached

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### **Background**

At an Extraordinary Meeting held on 11 March 2009 Council considered a report in relation to the "dual key" arrangements/additional apartments.

At this meeting Council resolved:

1. *That the determination of Development Application No. 2007/703 be deferred pending the satisfactory submission to Council and assessment of the following additional information:*
  - *Full details of the methods of achieving compliance with Clause C3.11 (Bounding Construction) of the BCA to the affected sole occupancy units;*
  - *Estimated construction costs of the work that is the subject of, or that is needed in response to, the development application and, if then needed, BASIX certification covering all the suites that are included in the application;*
  - *A report from a suitably qualified mechanical engineer certifying that the existing air handling system complies with the BCA requirements for the proposed "dual key" use or detailing the works that would be required to achieve compliance; and,*

- *A building management plan that comprehensively provides for meeting and responding to the behaviour, service needs and requests of guests, occupants of, and visitors to the building over 24 hour day, 7 day week, 52 week year periods.*
2. *That Council delegate to the General Manager the authority to determine the subject Development Application following the satisfactory receipt of the additional information required by Recommendation 1 above.*

Despite the application having been submitted since 24 April 2007 and numerous requests for information, documentation and/or reports in accordance with Recommendation No. 1 having been made by Council Officers over almost two years, the responses provided by the applicant are still considered deficient in relation to the clear resolution of Council and/or the applicant is still refuting the need to address various matters i.e. payment of contributions.

Consequently, both the applicant and the Owners' Corporation have been advised over a substantial period of time that if documentation was not satisfactorily received within generous timeframes that the Council would determine the application based on the deficiencies outlined to them and the information at hand.

Although, as part of the resolution, delegation was given to the General Manager to determine the application subject to the satisfactory receipt of the matters outlined in Recommendation No. 1, the purpose of this report is to advise Council that:

- at the time of writing this report the General Manager still does not have sufficient documentation as resolved and requested by Council to favourably determine the application
- the Owners' Corporation has now withdrawn from any involvement with the application and the required support/consent to the proposal may consequently have lapsed
- the applicant has continued to refute the need for and/or has not provided sufficient and satisfactory documentation/reports in accordance with Council's resolution (on some but not all matters).

This does not allow Council Officers to assess the application further or the General Manager to make a favourable determination in relation to the application seeking consent for the conversion of ten strata titled allotments to allow for their use for "dual key" tourist/hotel accommodation purposes.

In response to Council's Regulatory Services Group advising the applicant that the outstanding matters had to be suitably addressed by the 1 October 2010 or a report would be presented to the October 2010 Ordinary Council Meeting, the applicant by way of letter dated 15 October 2010 (copy **attached**) requested that the report be deferred until the November Ordinary Meeting.

The report was not presented to the October, November or December 2010 Ordinary Meeting, (at the request of the applicant and due to Council awaiting further advice from the NSW Fire Brigades on the bounding construction matter – refer to Point No. 1 of this report) and the application is now presented to Council for determination.

The current proposal now only relates to ten strata titled allotments rather than the originally proposed eleven apartments previously considered by Council at its Extraordinary Meeting of 11 March 2009 (due to owner(s) of one strata lot withdrawing their consent as landowners).

Due to the lengthy amount of time that has transpired (i.e. the application was lodged on the 24 April 2007) and the extensive history in relation to this site and various applications, Councillors should familiarise themselves with the relevant sections of the report and attachments that formed part of the report to the Extraordinary Meeting of 11 March 2009 (report only **attached**). A comprehensive briefing paper was also included with that agenda, however due to the size of the document it has not been included with the attachments.

Additionally, as the application's documentation is also extensive, Councillors may make arrangements to examine the application and other documentation, including detailed floor plans by contacting the Regulatory Services Group.

### **Introduction**

A range of development assessment matters (including deficiencies and departures from Council's current requirements) that Council is required to consider prior to determining this application remain outstanding and/or are still being refuted by the applicant.

The outstanding and contended matters include clarification on possible BASIX requirements, additional demands on parking, traffic generation, services and acoustic privacy (building management plan). Only those matters that remain outstanding and/or are contested by the applicant or Council's staff are canvassed in the following report as the bounding construction and mechanical ventilation matters (dot points one and three within Council's resolution) have been suitably addressed.

Orders have previously been issued for the cessation of use of the "dual key" apartments as two separate occupancies by unrelated guests. Despite the Orders being issued 2½ years ago, they remain current and applicable as the "dual key" apartments do not comply with the mandatory requirements of the Building Code of Australia (BCA) in relation to fire/acoustic separation.

As these deficiencies pose a fire threat to occupants/tourists (only if utilised as "dual key" apartments), and are required by the Regulations, it is important to note that Council is not in a position to waive these requirements.

### **Reportable Political Donations**

The development application was lodged prior to this requirement.



## Report

The following comments are made in relation to the Heads of Consideration of Section 79C of the Environmental Planning and Assessment Act 1979. Only those outstanding matters and/or matters of contention raised in the Extraordinary Meeting in March 2009 will be specifically detailed in this report. Notwithstanding this, a copy of all the heads of consideration listed under Section 79C of the Act is **attached** to this report.

These heads of consideration need to be considered by Council in determining the application.

The Owners' Corporation (and the applicant) are still seeking to rely upon the Construction Certificate plans approved by a private certifying authority in relation to the floor layouts. These readily allow two separate occupancies ("dual key") to occur in what the terms of development consent only identified, considered and approved as single strata unit/apartments in the Strata title allotments that are the subject of this application.

Council's legal advice considers that the Construction Certificate plans are not consistent with the floor layout plans approved by the Council as part of the approved consent no. 2000/680.

Additionally, whilst the Construction Certificate and the building's floor layout/works approved by the private certifying authority may be considered by the applicant as being valid until such time as it is revoked by the NSW Land and Environment Court; the **use** of the strata apartment as two "dual key" or separate occupancies has not been approved, nor does the building's construction comply with the mandatory requirements of the BCA in this regard (refer to the following section).

The Owners' Corporation is also seeking to rely upon the issue of the Strata Subdivision Certificate issued by Council in relation to the approval for recognition of the "dual key" apartments.

This view is also inconsistent with Council's legal advice and the Owners' Corporation have been advised in this regard.

### **Building Code of Australia (BCA)**

As outlined in the previous report to Council on 11 March 2009 and as subsequently resolved by Council, the application could not be favourably determined until the following information had been satisfactorily provided to Council.

1. *Full details of the method of achieving compliance with Clause C3.11 (Bounding Construction) of the BCA to the affected sole occupancy units;*

**Comment**

Although the applicant accepted that bounding construction works are required to meet the BCA and the applicant's Fire Engineer consultant (Defire Pty Limited) on the 28 May 2010 confirmed that bounding construction works would be required for certain proposed "dual key" apartments, Council Officers obtained an expert opinion from the Superintendent NSW Fire Brigades due to the Owners' Corporation refuting bounding construction compliance for fire protection of the building and its occupants.

A joint inspection of the premises was conducted by a representative of the Owners' Corporation, Council Officers and the Superintendent (who was visiting the area in relation to other fire safety matters).

The Superintendent provided a report on the matter and is of the opinion that the building provides a satisfactory level of fire protection to the occupants in relation to bounding construction. This conclusion was reached following consideration being given to the width of the balconies, the separation distances to adjoining properties, the existing fire detection and early warning occupant alarm system being linked to the brigade, the existing fire loads, and fire rated construction between fire compartments.

Consequently, on the 4 November 2010, Council Officers advised the Owners' Corporation that no further action would be taken regarding the previous Notice of Intention to serve an Order No. 6 dated 21 May 2009 (i.e. protection to, or raising of, the window openings to the public corridor areas as required by the BCA).

This matter should not be confused with the BCA requirements for fire separation between the "dual key" units. This requirement still applies and if the application is approved, it can be appropriately conditioned.

2. *Estimated construction costs of the work that is the subject of, or that is needed in response to, the development application and, if then needed, BASIX certification covering all the suites that are included in the application;*

**Comment**

The Environmental Planning and Assessment Regulations require BASIX affected development to be accompanied by a BASIX Certificate (i.e. with the submission of the Development Application) where the estimated cost of work is \$100,000 or more.

From the limited estimate of approximately \$80,000, excluding bounding construction, provided on the 8 April 2010 (and which did not include a number of required works outlined within mechanical engineer's statements/reports, extensions of fire separating walls to the underside of roofs, access panels for inspection of fire dampers, air conditioning to certain apartments, repairs to walls etc), it appears that the total cost of construction works would be close to or exceed \$100,000 for the application (i.e. \$10,000 per apartment).

As the applicant has not provided further estimates on required works, it is reasonable for Council to seek building construction quotation for the unitemised works in order to be satisfied that a BASIX certificate is not required to be submitted for the application as only an additional \$2,000 worth of work per apartment would exceed the \$100,000 threshold.

Without the further estimates on construction costs from the applicant, favourable determination of the application cannot be made with confidence that BASIX certification is not required.

Therefore without this information it is reasonable for Council to assume that BASIX certification is required.

BASIX Certificates, if required, must accompany the development application and cannot be conditioned for assessment and determination at a later stage.

3. *A report from a suitably qualified mechanical engineer certifying that the existing air handling system complies with the BCA requirements for the proposed "dual key" use or detailing the works that would be required to achieve compliance.*

#### **Comment**

From the reports submitted by the applicant's Mechanical Engineers it is clear that the air handling systems and separating walls of the Strata Lots still party to this application (only if utilised for "dual key" purposes) do not currently comply with the BCA.

Although some of the original air-conditioners have been made redundant/decommissioned (due to penetrations through the common/dividing wall of "dual key" apartments posing a smoke and fire safety issue) these will need to be completely removed to ensure they cannot be reused and wall penetrations repaired so that smoke and fire cannot be transferred between apartments.

In relation to this matter, if Council reaches a point where it can approve the "dual key" apartments, it is considered appropriate to impose conditions of consent to ensure separating walls between the "dual key" apartments are constructed to comply and that apartment owner(s) provide suitable fire/smoke protection (and sound ratings) between the "dual key" apartments as required by the BCA and relevant Australian Standards, for occupants.

#### **On-Site Management/Building Management Plan (Noise Management)**

4. *A building management plan that comprehensively provides for meeting and responding to the behaviour, service needs and requests of guests, occupants of, and visitors to the building over 24 hour day, 7 day week, 52 week year periods*

At the time of writing this report, the applicant had still not provided a satisfactory integrated building management plan as resolved by Council.

As outlined in the previous report to Council on 11 March 2009 and as subsequently resolved by Council, the application could not be favourably determined until this matter had been satisfactorily provided to Council.

The applicant is simply trying to rely upon the perceived “precedent” set by the Management Plan for the “Lennox Point Holiday Apartments” as a template for the “Riverside Suites” and also the perceived satisfactory operation of the premises (inclusive of the unauthorised “dual key” use) for the past five years (i.e. prior to the issue of Orders for the cessation of use).

Despite previous requests for this documentation, including a relaxation for the need to submit a Noise Impact Assessment, the submissions are still considered insufficient to provide reasonable certainty of adequately meeting and responding to the behaviour, service needs, and requests of guests, occupants of, and visitors to, the building at all times due to the:

- application not proposing (nor the building currently having) an on-site manager’s residence (apartment);
- current Hotel Management not having a nominated and allocated manager’s residence (apartment) in accordance with the existing and relied upon consent 2000/680 or proposing a twenty-four hour a day, seven day a week on-site manager/reception;
- a Noise Impact Assessment report not being provided;
- this proposal having the potential for 43 separate occupancies (i.e. if the ten additional dual key apartments are approved) or three times the number of apartments within the relied upon case;
- the larger number of apartments/suites creates further potential for conflict, particularly when different users could be within the one Strata Lot (i.e. a short term guest in the smaller occupancy and a permanent resident in the larger occupancy);
- from the records obtained from the Hotel Management (Ballina Booking Service) over a substantial period of time (i.e. to ensure that the Strata Lots are not being utilised for dual key purposes whilst the application is being considered), it is evident that the short term accommodation is not particularly seasonal within the “Riverside Apartments” and therefore the potential for disturbance/conflict between short term and long term occupants may be more regular;
- the location of the “Riverside Apartments” within the more populated Ballina township CBD and associated noise disturbances to occupants; and
- the location of commercial uses within the “Riverside Apartments” building itself at ground level possibly causing a noise nuisance to occupants.

Consequently, a Building Management Plan (prepared in consultation with the Owners’ Corporation and Hotel Management) is considered necessary to:

- (a) allow for the immediate needs of guests to be serviced and for potential conflicts between guests and residents to be appropriately managed.

- (b) minimise complaints against conflicting levels of noise tolerance between short term tourists and permanent residents; both between each other, ground floor commercial tenancies/loading dock and external noise sources, and if noise conflicts do occur that they can be suitably addressed and managed in a timely manner (inclusive of contingency plans);
- (c) ensure that the immediate requests/needs of occupants/guests/visitors can be attended to at all times;
- (d) provide a safe and secure environment for occupants/guests/visitors; and
- (e) ensure the current level of services and facilities within the building are adequate to cater for the additional ten (10) apartments proposed by the application, inclusive of the entire development including how:
  - (i) waste facilities are suitably provided and managed or how they are intended to be suitably provided and managed for the entire building, inclusive of the additional “dual key” apartments
  - (ii) site storage areas for hotel management and site storage for apartments etc. are suitably provided and managed for the entire building or how they are intended to be suitably provided and managed for the entire building, inclusive of the requirements for the additional “dual key” apartments; and
  - (iii) occupants / guests wash their vehicles within the basement carpark or how other alternatives will be available for the entire building, inclusive of the additional “dual key” apartments.

If the application is approved in the future, the development will have a substantial capacity involving up to 43 individual suites (without the manager's residence), restaurants and shops, and is likely to have a 24 hour demand for attention and service.

Such a plan is critical to the decision of whether the application should be supported or refused. This documentation has not been provided and would require the explicit input, co-operation and support of all tenancies within the building and hotel management.

It is considered that Council cannot favourably determine the application at this time for this reason alone.

### **Developer Contributions**

Approval of the dual key apartments would result in the creation of 10 more apartments than was approved under DA 2000/680 and, despite the applicant previously confirming in writing that owners' were made aware that contributions may be applicable and payable should the proposal be approved, and welcomed Council to condition certain monetary contributions, the applicant has subsequently submitted that there is no real need for additional contribution payments in accordance with Council's Contributions Plans.

Basically, the additional apartments (and occupation by separate guests) generate additional impacts and demands.

Council's Contributions Plans are not only based on the number of beds as advocated by the applicant but a number of factors such as occupancy rates, multiple tenancies and land uses etc., (and have previously been confirmed as being applicable by the applicant's own sub-consultants).

The demands within Council's contribution plans were developed based on the available industry data (and the statewide RTA Guidelines in relation to traffic generation and carparking) and are consistently applied to all developments within the Shire to ensure that a fair and equitable developer contribution process is maintained.

The requirement for payment of contributions (if approved) has been conveyed to the applicant both verbally and in writing on a number of occasions.

Council Officers are satisfied that Contributions Plans and relevant provisions of the Environmental Planning and Assessment Act and Regulations allow for and reasonably requires the payment of contributions in this case (if approved).

As the application now specifically refutes the need for the payment of monetary contributions in accordance with Council's Section 64 and Section 94 Contributions Plans, Council may not be empowered to impose such conditions if it was of a mind to approve the application.

Due to the substantial total monetary contribution required in this case (approximately \$350,000), if approved, Council would need to charge the entire contribution amount or nil.

Consequently, a nil contribution payment as now advocated by the applicant is not in the public interest and it is considered that Council may be statutorily barred from favourably determining the application at this time.

### **Implications of Refusal**

Whilst this application has been progressing and remained undetermined, Council has accepted Statutory Declarations from some of the owners party to this application (resulting from previously issued Orders) undertaking not to utilise the Strata lot for "dual key" purposes (i.e. as two separate occupancies).

Two other owner(s) still party to the application (one of which no longer owns the apartment) attempted to comply with the terms of the issued Orders and undertook building works to ensure that the Strata lots were not readily capable of being utilised as two separate occupancies.

These building works involved:

- The removal of separate identification unit numbers
- The complete removal of the hallway door and

- Removal of the swipe access card and replacement of a non-lockable handle on the door to the smaller “dual key” occupancy.

Consequently, if this proposal is refused, Council will need to ensure that those owners’ that have building layouts which readily allow the “dual key” use to occur and which have only provided Statutory Declarations, carry out the required building works in accordance with the Notice of Proposed Order No. 1 dated 23 June 2008 to ensure that they or future owner(s)/occupants cannot readily utilise the Strata lots as two separate occupancies.

The building works are necessary (not just the provided Statutory Declarations) as Council has previously confirmed that one of the owners who simply provided the Statutory Declaration continued to live in the larger sole occupancy apartment whilst renting out the smaller sole occupancy apartment to separate unrelated paying guests (not through on-site management but on their own accord).

### **Options**

Whilst there are three options available to the Council, only two of these are reasonably open to it as the application currently stands due to the outstanding mandatory matters under the Environmental Planning and Assessment Regulation 2000 (and BCA) that need to be addressed prior to determination (and possibly the non-support of the Owners’ Corporation).

#### Option 1

Council could refuse the application on the grounds that it does not provide sufficient information and certainty in addressing the planning and development assessment issues identified in this report and all the matters that need to be considered under the provisions of s79C of the Environmental Planning & Assessment Act, the Environmental Planning & Assessment Regulation 2000 and for any other reasons that the Council considers are justified.

It is generally considered not good practice to allow applications such as this to remain unresolved in the system for lengthy periods as they are supplemented, amended and redesigned in piecemeal fashion.

In the event that Council decides to refuse the application, the options open to Council for regularising the “Riverside Suites” and addressing the issues identified in this report have already commenced and need to be finalised (i.e. the relatively minor construction works involving the removal of a door, swipe access card and numbering to ensure the strata lots cannot be readily utilised for “dual key” purposes).

During this process it is still open for individual Strata lot owner(s) to submit a further Development Application for consideration, either individually or combined, for the “dual key” use of apartments. From this report it would be clear to the owner(s) what matters remain outstanding, the contributions likely to be payable and works required to ensure compliance with the BCA (if approved).

Option 2

Council could again defer the application on the grounds that there is insufficient information and/or confirmation regarding BASIX requirements, Noise, and Management Plan issues to enable the application to be favourably determined at this time.

As the applicant has not met previous timeframes, is still refuting the need for the payment of contributions if approved (in the order of \$350,000) and despite having the past 1¾ years to resolve matters outlined within the resolution of Council, the expenditure of further public monies by continued deferral and re-assessment is not good practice.

Option 3

Council could grant consent to the application, however due to statutory uncertainty and significant issues relating to:

- (i) the triggering of BASIX certification;
- (ii) lack of owners' corporation support/consent;
- (iii) the applicant not suitably providing all of the additional information as resolved by Council to allow reasonable assessment to occur;
- (iv) the potential conflict issues/uses and incompatibility between residential and tourist accommodation involving carparking access, allocation and availability;
- (v) noise disturbances related to tourist and visitor behaviour and the on-site commercial uses and lack of certainty for mitigating issues of incompatibility and the impacts of the proposal on amenity without a comprehensive Plan of Management;
- (vi) the part time management of the site and potential inadequacies of mechanisms for determining complaints without a comprehensive Plan of Management as agreed to by all relevant parties;
- (vii) the inability of management to control and regulate conflicts on a 24 hour basis;
- (viii) the inability to determine the adequacy of facilities/storage areas without a comprehensive Plan of Management;
- (ix) potential excessive reliance on conditions to overcome the deficiencies of the supporting documentation; and
- (x) that important issues remaining unresolved, and the imposition of conditions will have the effect of changing the nature of the development proposed and compel reliance of supervision on Council.

It is suggested that Council is not really in a position to reasonably grant consent to the application as submitted.

In all the circumstances, Option One is the preferred course of action.



### **Conclusion**

Given the current state of the application (including the non-support of the Owners' Corporation), the lengthy amount of time that has transpired since Council's resolution of 11 March 2009 where only two of the four matters have been suitably addressed, the extensive use of Council's resources to date *Option 1* is the preferred and recommended action due to the significance of the identified outstanding planning, building and development matters and works relating to BASIX and hotel management plan, some of which are mandatory under the Regulations and BCA.

The applicant (and/or the Owners' Corporation) continues to refute the need for these mandatory works and the required substantial contribution payments.

The application's determination should not be further delayed. Determination by way of refusal will provide for an effective finalisation of the matter, and allow finalisation of the current Orders that have been in place for approximately 2½ years thereby ensuring public fire safety issues are addressed through making the unauthorised "dual key" use of the apartments less easy to reactivate.

### **RECOMMENDATIONS**

1. That Development Application No. 2007/703 for an additional ten (10) "dual key" apartments be **REFUSED** for the following reasons:
  - a) The required consent/support of the Owners' Corporation has not been obtained.
  - b) The development application has provided insufficient information for the Council to reasonably assess and support the physical suitability of the land and building for the proposed development.
  - c) The development application has provided insufficient information with respect to the likely impacts of the proposed development, to enable the Council to reasonably assess and support the proposed development.
  - d) The development application has not demonstrated consistency or adequately considered all relevant matters under Section 79C of the Environmental Planning and Assessment Act 1979.
  - e) The development application has not demonstrated that it can comply with the Environmental Planning and Assessment Regulations 2000.
  - f) The building does not allow for the suitable functioning/level of amenity and services for additional "dual key" apartments and the existing apartments/commercial premises within the building.
  - g) The development application as submitted is not in the public interest.
2. That Council continue to follow through with the previously issued and existing Orders dated 4 July 2008 to ensure that the relevant Strata lots cannot be readily occupied by two unrelated and/or separately paying guests at any time thereby creating a public fire and smoke safety risk and unauthorised land-use.

**Attachment(s)**

1. Locality Plan
2. Request for further deferral by the Applicant dated 15 October 2010
3. Report to Council's Extraordinary Meeting 11 March 2009. (Note: Briefing paper prepared for Councillors dated 11 December 2008 and Submissions and responses to the briefing paper attached to 11 March 2009 Report have not been included)
4. Section 79C of the Environmental Planning & Assessment Act

**8.2 Compliance Work Plan 2010/2011 - Half Yearly Update**

<b>File Reference</b>	Compliance Work Plan 2010/2011
<b>CSP Linkage</b>	Transparent and accountable governance Diverse and balanced land use
<b>Delivery Program</b>	Development Services
<b>Objective</b>	To provide Council with a half yearly update report on the 2010/11 Compliance Work Plan.

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**Background**

At the June 2010 Ordinary meeting, Council adopted a Compliance Work Plan for the 2010/11 financial year. This report provides a half yearly update report on that Work Plan.

**Key Issues**

- Compliance with Work Plan
- Results achieved

**Information**

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

1. *Audit of Quarry sites.*
2. *Audit of Major Developments within the Shire.*
3. *School Zone Enforcement Programme.*
4. *Audit of Identified Development Consents*
5. *Review of all Development Consents issued within the Southern Cross Industrial Estate.*
6. *Audit of all Roadside Advertising Signage on rural land within the Ballina Shire.*
7. *Review of Advertising Signage displayed on Council assets within Ballina Town Centre*

In addition to these areas of identified priority, Compliance respond to customer requests received from members of the general public as well as Council employees and State and Federal Government Agencies. As the general public becomes more educated in relation to the legislative requirements within the Shire, as well as Council's role in the enforcement of these requirements, an increasing trend of customer requests being received within the Compliance area has been observed.

Council would also be aware of ongoing matters previously reported as Confidential Items or prosecutions previously reported within the Councillor Update.

Council is also working in conjunction with Rous Water auditing the on-site sewage management systems in the Emigrant Creek Catchment area. This Project has identified approximately 250 parcels of land within the 7(c) *Environmental Protection (Water Catchment) Zone* which are being inspected by Council's Rous Water Project Officer.

Of these 250 parcels of land, 65 parcels with operating on-site sewage management systems have been inspected to September 2010. 21 of these (or approximately 1 in 3 parcels inspected) have some unauthorised land use issues, including unauthorised conversions of rural outbuildings (sheds, bales etc) into second dwellings, unauthorised buildings, businesses, earthworks and the like.

These non-compliances, which were not anticipated at the time of the formulation of the current Compliance Work Plan, require immediate action to address the identified issues, with legal proceedings likely in some instances. Should litigation be contemplated, the issues will be reported to Council for endorsement prior to any action being commenced.

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

*1. Audit of Quarry sites.*

This programme first commenced in the 2008/09 Compliance Work Plan and as outlined in the last compliance update report, is almost complete.

Council has been able to identify and recover in excess of \$300,000 in unpaid heavy vehicle haulage contributions and further outstanding contributions are being sought at this present time.

This programme is on target for completion by the end of this financial year, when the ongoing auditing of quarries will be incorporated into the audit of major developments within the Shire.

*2. Audit of Major Developments within the Shire.*

Of the 114 major developments (comprising 25 outstanding from 2006 and 89 from 2007), 60 have been inspected for compliance with the terms and conditions of the development consent. Regarding these consents:

- 27 have not commenced at the time of the inspection. The majority of these consents will lapse, if not commenced within the next 12 months. Further inspections of these properties during the upcoming financial year will be undertaken to ascertain if the approved developments have physically commenced or have lapsed
- 20 developments have been inspected and all conditions of consent have been complied with

- 13 developments have been inspected and require further follow up inspections. This is due to works on site not being complete at the time of the inspection (4 developments), an amendment to an application by way of a section 96 application (1 development) or non compliance with conditions of consent being detected (8 developments).
- Of the 8 developments with non compliances, written correspondence has been sent to 5 of the developments seeking compliance with the remaining 3 developments having legal action commenced by way of the service of formal notices; and
- 54 developments have not been investigated at this time.

### *3. School Zone Enforcement Programme.*

This programme is designed to promote a safer environment for children attending local schools and is in response to a request from the NSW Minister for Local Government that all councils within NSW conduct ongoing enforcement action in and around schools.

This part of the programme involves a clearly visible uniformed officer conducting patrol duties within each school zone on a rotating and random basis. Drivers of motor vehicles that park illegally within identified school zones have been issued with Penalty Infringement Notices (PINs) for the offence committed and staff have also issued warnings to drivers for minor matters observed during these patrols.

Council has also increased public awareness of issues within school zones by coordinating the use of Council's speed awareness trailer and the provision of educational literature to all schools. This is providing a safer environment for local children attending schools and this is due in part to the ongoing enforcement and educational role of the Compliance Unit.

It is evident from these ongoing patrols that there is generally a decreasing trend in the numbers of detected parking offences within school zones during the year, however this trend reverses at the beginning of each school year and during inclement weather.

### *4. Audit of Identified Development Consents*

Of the 164 identified developments (comprising 33 outstanding from 2006 and 131 from 2007), 82 have been inspected for compliance with the relevant terms and conditions of the development consent. Regarding these consents:

- 21 have not commenced at the time of the inspection. The majority of these consents will lapse within the next 12 months if not physically commenced. Further inspections of these properties during the upcoming financial year will be undertaken to ascertain if the approved developments have physically commenced or have lapsed
- 48 developments have been inspected and all conditions of consent have been complied with

- 13 developments have been inspected and require further follow up inspections. This is due to works on site not being complete at the time of the inspection (1 development), or non compliance with conditions of consent being detected (12 developments). Of the 12 developments with non compliances, written correspondence has been sent requiring submission of final occupation/structural engineering certificates (10 developments) with the remaining 2 developments having legal action commenced by way of the service of formal notices and Orders; and
  - 82 developments have not been investigated at this time.
5. *Review of all Development Consents issued within the Southern Cross Industrial Estate.*

Of the 507 identified development consents within the Southern Cross Industrial Estate, 390 have been inspected for compliance with the relevant issued development consent. Regarding these consents:

- 28 have not commenced at the time of the inspection. These developments will be inspected during the upcoming financial year for commencement and if applicable compliance with the issued consents
  - 322 developments have been inspected and all conditions of consent have been complied with
  - 40 developments have been inspected and require further follow up inspections. This is due to a detected change in use where further investigations are required to determine if the use falls within the definition of "Exempt Development" under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (28 developments) or non compliance with conditions of consent being detected (12 developments). Of the 12 developments with non compliances, the non compliances relate to the storage of materials within required car parking spaces and the display of goods and signage within the Council road reserves. Written correspondence has been sent requiring compliance with the issued development consent conditions; and
  - 117 developments have not been investigated at this time.
6. *Audit of all Roadside Advertising Signage on rural land within the Ballina Shire.*

This programme is a new programme for the 2010/11 Compliance Work Plan. It is a proposal to audit roadside signage within the Ballina Shire to identify the current location of such signage and to ensure compliance with *State Environmental Planning Policy Number 64*.

This programme was due to commence in October 2010, but due to other operational requirements and the vacancy of the Compliance Officer's position from late July to late November 2010, has not commenced at this time.

A review will be conducted in March 2011 to identify if and when this programme could be commenced within this financial year.

*7. Review of Advertising Signage displayed on Council assets within Ballina Town Centre*

This is a new programme for the 2010/2011 Compliance Work Plan and is included at the request of Civil Services. Due to current staffing restraints within Council's Ranger Services, Compliance has been requested to enforce advertising restrictions within the Ballina Town Centre.

It was intended to commence this programme in January 2011, should sufficient resources permit, by conducting random patrols of River Street, Fawcett Park and the adjoining Arcade to:

- Identify any unauthorised advertising signage placed on Council assets
- To remove the unauthorised advertising
- To instigate action in accordance with Council's Enforcement Policy against the company or business promoted on the advertising as well as the person who erected the advertising.

Given the ongoing issues identified with the Rous Water Project as well as the extended vacancy of the Compliance Officer's role, this programme has not commenced at this time and may not be commenced within this financial year. A review will be conducted in March 2011 to identify if this programme could commence during this current financial year.

**Sustainability Considerations**

- **Environment**  
Compliance with issued development consents enhances the protection of the natural and built environment and attainment of Council's strategic planning objectives for the Shire.
- **Social**  
Not applicable
- **Economic**  
Not applicable

**Legal / Resource / Financial Implications**

The role of the Compliance Unit is to improve compliance with Council's adopted Local Environmental Plan (LEP), Development Control Plan (DCP) and Development Consents as well as NSW Government legislation, including State Environmental Planning Policies (SEPPs) and the like.

As previously stated, as the general public becomes more educated in relation to the legislative requirements within the Shire as well as Council's increased role in the enforcement of these requirements, there has been an increasing trend of customer requests being received within the Compliance unit. This trend, amongst other reasons more fully outlined above, has impacted on the service delivery of the adopted Compliance Work Plan.

There are areas of non-compliance by landowners and occupants within the Shire and in addressing these legal actions may be required in some circumstances.

There are a number of available legal avenues to ensure compliance as outlined within Council's Enforcement Policy, including:

- official warnings
- PINS (On the Spot fines e.g. parking tickets)
- Notices, Orders and other legal directives and
- Litigation through either the local or Land and Environment Courts.

Whilst it is preferred that co-operation is firstly sought and provided from land owners and occupants who may not be complying with Council's requirements, there will be instances where some form of enforcement action is required to achieve compliance. In these instances, each case will be assessed on its merits and an appropriate level of action will be taken.

A review of the current methodology in seeking compliance as outlined above as required in Council's Enforcement Policy has been undertaken. It would appear that the majority of the identified non compliances have been able to be resolved utilising this methodology without the need to commence formal litigation.

### **Consultation**

This report has been provided for public information.

### **Options**

This report has been provided for information.

### **RECOMMENDATIONS**

That Council notes the contents of the half yearly report for the Compliance Work Program for 2010/11.

### **Attachment(s)**

Nil



**8.3 DA Outstanding Report - January 2011**

The following schedule sets out current development applications that have not yet been dealt with for the reasons cited. Please note that duplex and dual occupancy applications are not included in this report.

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2006/242	20/10/2005	Ardill Payne & Partners	Site Filling - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2008/578	6/2/2008	A Koellner	Erection of a Shed for Steel Fabrication - No. 21 Cumbalum Road, Cumbalum	Awaiting Additional Information
2010/9	06/07/2009	Ballina Shire Council	Environmental Protection Works to the Chickiba Wetlands and Establishment of a Bush Fire Asset Protection Zone - Lot 207 DP 851318 Angels Beach Drive, Lot 114 DP 733248 Tuckeroo Drive, Angels Beach Road Reserve, Lot 406 DP 755684 The Coast Road, Lot 521 DP 729429 The Coast Road, Lot 222 DP 755684 Links Avenue, Lot 3 DP 580146 Jameson Avenue, Lot 2 DP 775614 Jameson Avenue; East Ballina	Awaiting Additional Information
2010/182	2/10/2009	SJ Connelly CCP Pty Ltd	Proposed Two Lot Residential Subdivision - No. 9 McLeans Street, Skennars Head	Awaiting Additional Information
2010/211	13/10/2009	Ardill Payne & Partners	Subdivision by way of Boundary Adjustment Subdivision – Sneaths Road, Wollongbar	Awaiting Additional Information.
2010/216	13/10/2009	Paul R Gray Architect Pty Ltd	Erection of a Retail Complex and associated Carparking –	Awaiting Additional Information

DA No.	Date Rec'd	Applicant	Proposal	Status
			Pacific Highway, West Ballina	
2010/278	6/11/2009	Ardill Payne & Partners	To Establish a dwelling/house site – No. 263 Sneesbys Lane, East Wardell	Awaiting Additional Information
2010/453	04/02/2010	Riordans Consulting Surveyors Pty Ltd	83 Lot Staged Residential Subdivision, 2 Public Reserve Lots, Construction of Roads, Associated Subdivision Works & Services – No. 57-59 Rifle Range Road, Wollongbar	Awaiting Additional Information
2010/506	10/03/2010	A Rich	Two Lot Torrens Title Subdivision and Minor Vegetation works – No. 543 The Coast Road, Lennox Head	Determination Pending
2010/628	17/05/2010	Ardill Payne & Partners	Use of premises for Bulky Goods Retail and Wholesale Showroom/Ware house - Stinson Avenue, Ballina	Awaiting Additional Information
2010/687	18/06/2010	All Steel Garages & Sheds	Demolition of existing Industrial Shed and Construction of a new larger Industrial Shed - No. 10 Robb Street, Alstonville	Awaiting Additional Information
2010/724	09/07/2010	Trevor Richard Murray	Change of Use (Recycled Garden) - Nos. 464/470 Pacific Highway, West Ballina	Being Assessed
2010/728	12/07/2010	Victor Holmes Town Planning	Boundary Adjustm ent Subdivision and Consolidation of Ten Existing Lots to Create Six Proposed Lots comprising 1 x 38.7ha, 1 x 41ha and 4 x 40ha	Awaiting Additional Information

DA No.	Date Rec'd	Applicant	Proposal	Status
			allotments - No. 165 Pimlico & Emigrant Point Roads, Pimlico	
2010/777	02/08/2010	Newton Denny Chapelle	Two Lot Rural Boundary Adjustment Subdivision - No. 93 Weis Lane, Rous	Awaiting Additional Information
2010/813	23/08/2010	G Whitfeld	Change of Use involving converting the guest house to residential use and construction of a carport - No. 5 River Street, Ballina	Determination Pending
2010/839	06/09/2010	Chris Longergan, Town Planner	To erect eight x 2 bedroom holiday cabins and associated works - No. 202 Midgen Flat Road, Newrybar	Awaiting Additional Information
2010/866	16/09/2010	Newton Denny Chapelle	Commercial redevelopment (Spastic Centre of NSW) inclusive of land dedication for public vehicular access and car parking at the rear of the site - No. 96 Main Street, Alstonville	Awaiting Additional Information
2010/867	16/09/2010	Sarwood Timbers Pty Ltd	To undertake the partial demolition of an existing industrial shed and the subsequent erection of additions to the industrial shed - No. 15 Kays Lane, Alstonville	Awaiting Additional Information
2010/875	21/09/2010	Michael Hajjar Surveying	Two Lot Torrens Title Subdivision - No. 13 North Creek Road, Ballina	Determination Pending
2010/880	27/09/2010	The Wheelchair & Disabled Association	Recreational Hall - No. 253 Wardell Road, Lynwood	Awaiting Additional Information
2010/887	29/09/2010	Newton Denny Chapelle	Extension to industrial building	Being Assessed

DA No.	Date Rec'd	Applicant	Proposal	Status
			- No. 65 Piper Drive, Ballina	
2010/892	05/10/2010	Ardill Payne & Partners	Residential subdivision comprising 73 lots and 2 residual lots, construction of roads and associated infrastructure works - Unara Parkway & Pacific Highway, Cumbalum	Awaiting Additional Information
2010/905	07/10/2010	WF, SL, MW & AE Sullivan	Extension to Existing Shed - No. 4 Ronan Place, West Ballina	Being Assessed
2010/912	12/10/2010	J White	Use of an Existing Building as a Place of Worship & Alterations & Additions - No. 52 De-Havilland Crescent, Ballina	Being Assessed
2010/923	14/10/2010	Ardill Payne & Partners	Two Lot Torrens Title Subdivision - Unara Parkway, Cumbalum	Awaiting Additional Information
2010/926	15/10/2010	Paul R Gray Architect	Tourist Facility comprising restaurant, plunge pool and car parking on ground level and seven holiday units and one manager's residence on first floor level - No. 45 Ballina Street, Lennox Head	Awaiting Additional Information
2010/945	27/10/2010	Lennox Head Cricket Club	Alterations & Additions to Existing Amenities Building to provide a canteen, first floor viewing room, storage and shelter shed - No. 20 Megan Crescent, Lennox Head	Being Assessed

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2010/960	05/11/2010	Chris Abbott Surveying	Boundary Adjustment Subdivision and Consolidation of three lots to create two lots (one x 13.51ha and one x 48.78ha), No. 660 & 959 Teven Road, Teven	Being Assessed
2010/962	08/11/2010	sj Connelly CCP Pty Ltd	Construction of a Highway Service Centre comprising Service Station, Fast Food Restaurants, Regional Expo Centre, Auto Repair Centre, Associated Vehicular Access (including signalised intersection on the existing Pacific Highway alignment), Car and Truck Parking, Infrastructure Works, Filling, Signage and Two Lot Subdivision (Lot 1 - Highway Service Centre & Lot 2 - Agriculture Residue) – 565-589 River Street, Ballina	Awaiting Additional Information
2010/990	18/11/2010	J Cornu	Strata Title Subdivision of an existing Duplex Development – No. 15 Alison Avenue, Lennox Head	Stop the Clock applied 1/12/10
2010/1013T	25/11/2010	S Radburn	Lennox Head VMO _ Remove 10 x Trees – No. 250 North Creek Road, Skennars Head	Awaiting Additional Information
2010/1014T	25/11/2010	S Radburn	Lennox Head VMO _ Remove 31 x Trees – No. 9 McLeans	Awaiting Additional Information

DA No.	Date Rec'd	Applicant	Proposal	Status
			Street, Skennars Head	
2010/1016	25/11/2010	J White	Change of Use involving construction works (divide existing building to accommodate new fruit & vegetable shop) – No. 253 Wardell Road, Lynwood	Being Assessed
2010/1017	26/11/2010	Ballina Landscape Supplies	Change of Use – Landscaping Supplies – No. 9 Simmons Street, Ballina	Awaiting Additional Information
2010/1025	02/12/2010	Nasmyth Pty Ltd	Construction of 3 x Industrial Sheds & 1 x Storage Shed and Subsequent 4 x Lot Strata Title Subdivision – Cessna Crescent, Ballina	Being Assessed
2010/1030	13/12/2010	Peter Turner & Associates	Erection of a two storey three bedroom dwelling as a replacement of an existing dwelling within an existing three dwelling residential flat development, No. 1/43 Stewart Street, Lennox Head	Being Assessed
2010/1045	10/12/2010	Ballina Shire Council	Subdivision for the purpose of creating a Road Reserve and Construct a Public Road, Unara Parkway and Pacific Highway, Cumbalum	Awaiting Additional Information
2010/1051	13/12/2010	CNW Pty Ltd	Change of Use of Unit 2 from Industrial Building to Warehouse, No. 46 De Havilland Drive, Ballina (Unit 2)	Being Assessed
2010/1053	14/12/2010	Etosha Homes	Erection of a	Awaiting

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
		P/L	Residential Flat Development comprising five x two bedroom units and a subsequent Strata Title Subdivision, No. 42 Barrett Drive, Lennox Head	Additional Information
2010/1054	14/12/2010	SNP Security	Change of Use from a Workshop to a Commercial Premises for the Purpose of operating a Security Business, No. 31 Owen Crescent, Alstonville.	Awaiting Additional Information
2010/1056	14/12/2010	The Corporate Trustees of the Diocese of Grafton C/- SJ Connelly CPP Pty Ltd	To construct a 3 x bedroom dwelling (ancillary to use of existing conference centre), Shelly Beach Road, East Ballina	Awaiting Additional Information
2010/1057	14/12/2010	Newton Denny Chapelle	Subdivision of three (3) existing rural lots to create four (4) lots comprising three (3) rural lots and one additional lot to facilitate the intended future development of sporting fields (subject to a future development application). Access to the proposed sports fields lot (Lot 2) is proposed from Ramses Street along the existing unformed road reserve between Cerreto Circuit and Hellyar Drive, Frank Street and No. 184 Rifle Range Road, Alstonville	On Exhibition and referred to Govt. Departments

<b>DA No.</b>	<b>Date Rec'd</b>	<b>Applicant</b>	<b>Proposal</b>	<b>Status</b>
2010/1058	14/12/2010	N Llewellyn C/- Landpartners Ltd	Boundary Adjustment Subdivision of three (3) existing lots to create 1 x 1803m <sup>2</sup> , 1 x 47.8ha and 1.65.77 ha allotments, No. 254 River Drive, East Wardell & Moylans Lane, Empire Vale	On Exhibition
2010/1061	16/12/2010	AE Colledge	Staged erection of a Residential Flat Development comprising four(4) x two storey three (3) bedroom dwellings & demolition of existing dwelling, No. 27 Ross Lane, Ballina	Awaiting Additional Information
2010/1067	17/12/2010	Geolink	6 x Lot Community Title Subdivision Ranging in size from 1200m to 1600m and associated Infrastructure, No. 56 Greenfield Road, Lennox Head	On Exhibition
2010/1074	23/12/2010	Enviro Link Consulting	4 x Lot Boundary Adjustment Subdivision and Consolidation to Create 2 x Lots, Teven Road, Teven	Referred to Govt Departments
2010/1076	24/12/2010	Newton Denny Chapelle	Strata Title Subdivision of an existing residential flat building into 11 Lots, No. 20 Byron Street, Lennox Head	Being Assessed



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

DA No.	Date Rec'd	Applicant	Proposal	Status
2010/683	18/06/2010	Ballina Shire Council	Southern Extension to Hutley Drive - Hutley Drive Unformed Road Reserve, Lennox Head; Unformed Road Reserve, Skennars Head; North Creek Road, No. 270 & 290 North Creek Road; Lennox Head	Applicant has withdrawn the Application.

**Major Development (Determined by Minister)**

Major Project No./DA No.	Date Rec'd	Applicant	Proposal	Status
2008/510	21/09/2010	Geolink (on behalf of Petrac Lennox Head Pty Ltd)	To amend lot layout for targeted lots, amend Staging and increase floor area within neighbourhood centre - Pacific Pines Estate, Lennox Head	Comments on Modification provided to DoP. Awaiting DoP determination
2004/1150	29/09/2010	North Angels Beach Development (Chris Condon)	Modification to North Angels Beach Subdivision Consent - To delete condition requiring payment of monetary contribution for Open Space & Reserves, Community Facilities and Shire Roads	Written response issued to DOP. Awaiting DoP's Determination .

**RECOMMENDATION**

That Council notes the contents of the report on the status of outstanding development applications for January 2011.

**Attachment(s)**

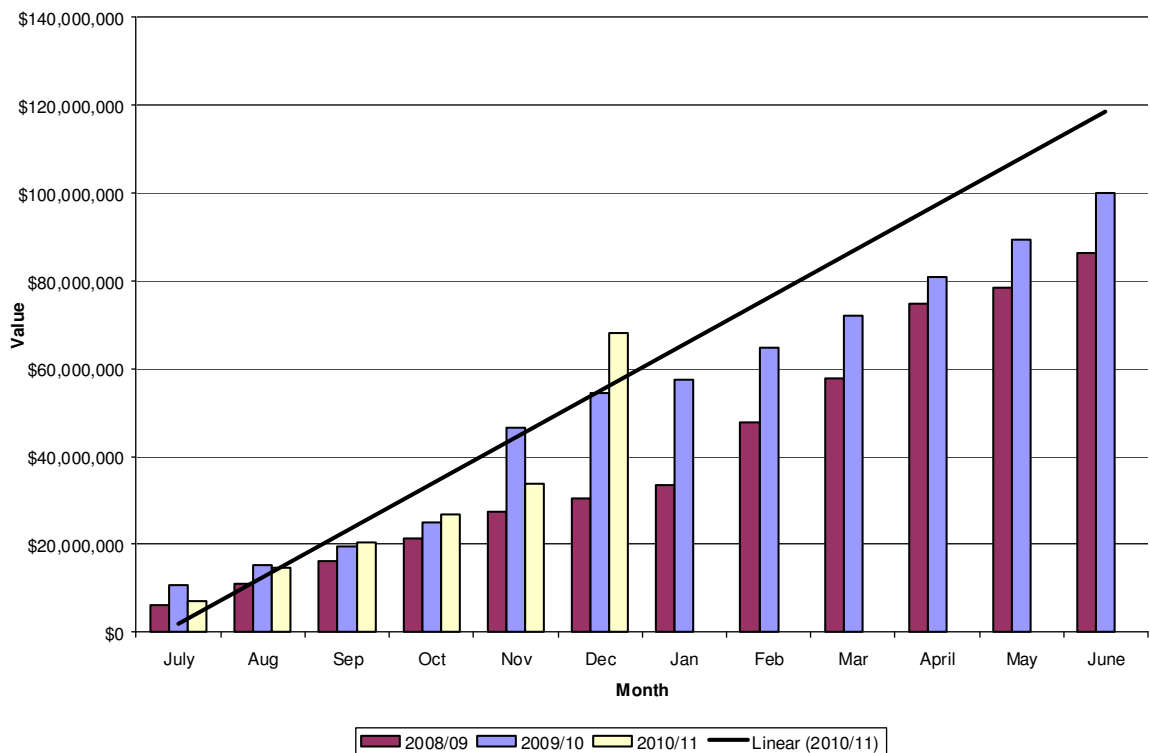
Nil

**8.4 DA Statistic Report - 1 December to 31 December 2010**

The Council is advised that during the period of 1 December 2010 to 31 December 2010 the Regulatory Services Group issued Development Consent comprising of:

<b>Number of Applications</b>	<b>Value of Work</b>
31 Other Building Related	\$ 26,275,000
23 Dwelling/Duplexes/Residential Flat Buildings	\$ 8,033,000
3 General Developments	\$ 0
<b>Total Value</b>	<b>\$ 34,308,000</b>

The following chart details the cumulative consent figures for 2010/11 as compared to 2008/09 and 2009/10. A trend line has also been provided for 2010/11 to assist in the comparison.



**RECOMMENDATION**

That Council notes the contents of the report on development consent statistics for 1 December 2010 to 31 December 2010.

**Attachment(s)**

Nil

## 9. Strategic & Community Services Group Reports

### 9.1 Policy (Review) - Vehicle Signs

<b>File Reference</b>	Council Policies
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To review the Vehicle Signs Policy.

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#### **Background**

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Vehicle Signs Policy.

#### **Key Issues**

- Whether the policy meets the requirements of Council and current legislation.

#### **Information**

Council adopted this policy in June 2005 and reviewed it in May 2006. The policy is designed to manage the placement of signage on vehicles, largely for advertising purposes.

This review of this policy identifies only minor changes as follows:

- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.

Otherwise the policy is still considered to be contemporary and reflects current legislation therefore no further changes are recommended. A copy of the amended policy is attached to the report.

#### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
This policy aims to regulate vehicle signs in a way that is consistent with statutory requirements and which does not compromise road safety.

- **Economic**  
Not Applicable

**Legal / Resource / Financial Implications**

Nil

**Consultation**

As the changes are only minor it is recommended that Council adopt the policy as presented, however the document will also be exhibited for public comment. If any submissions are received they can be reported back to Council however there will not be a need for any further report if there is no public comment.

**Options**

Council may accept or amend the proposed changes to the policy. The changes included are largely house keeping therefore it is recommended that the policy be adopted as presented.

It is also recommended that if no submissions are received from the exhibition process, the policy be adopted with no further actions required.

**RECOMMENDATIONS**

1. That Council adopt the amended Vehicle Signs Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

**Attachment(s)**

1. Review - Vehicle Signs Policy

**10. General Manager's Group Reports**

**10.1 Use of Council Seal**

**File Reference**                      Use of Seal

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**RECOMMENDATIONS**

That Council approves the attachment of the Common Seal to the following document(s).

US11/01	<p>Deed of Consent &amp; Assignment of Lease: Ballina Byron Gateway Airport, aircraft hangar lease site lot 8 DP 1059312 from Presime Pty Ltd as sole tenant, to Presime Pty Ltd and Timbavati Pty Ltd as joint tenants.</p> <p>Explanation: The Director of Presime Pty Ltd, Mr Raemon McEwen, is in the process of selling a part interest in the aircraft hangar to Timbavati Pty Ltd (Director: Johannes Joachim Alberts). The proposed sale of a part interest requires an amendment to the lease agreement by way of a Deed of Consent &amp; Assignment.</p>
US11/02	<p>Council to GS &amp; JL Charters Pty Ltd trading as Avis Northern Rivers, and Gary Alan Charters and Jennifer Leigh Charters - Licence Agreement to occupy Ballina Byron Gateway Airport Business Centre office spaces designated as 'Area 4A' &amp; 'Area 4B' and the 7 associated car parking spaces fronting the Ballina Byron Gateway Airport Business Centre.</p> <p>Explanation: The 4 year Licence Agreement to occupy Ballina Byron Gateway Airport Business Centre office spaces designated as 'Area 4A' &amp; 'Area 4B' expired on 31 December, 2010. The proposed new Licence Agreement is for the 4 year term 1 January 2011 to 31 December 2014. The new agreement will include a demolition or break clause and is based on a current market valuation.</p>
US11/03	<p>Council to Kingmill Pty Ltd trading as Thrifty Car Rentals - Licence Agreement to occupy Ballina Byron Gateway Airport Business Centre office space designated as 'Area 2' and the 3 associated car parking spaces fronting the Ballina Byron Gateway Airport Business Centre.</p> <p>Explanation: The 4 year Licence Agreement to occupy Ballina Byron Gateway Airport Business Centre office space designated as 'Area 2' expired on 31 December, 2010. The proposed new Licence Agreement is for the 4 year term 1 January 2011 to 31 December 2014. The new agreement will include a demolition or break clause and is based on a current market valuation. For further information, Kingmill Pty Ltd as 'head licensee' is in the process of 'sub-licencing' the licensed area to Jonday Pty Ltd for the continued conduct of the Thrifty car rental franchise at the Airport.</p>

US11/04	Deed of Release of Restriction - 10 Amy Place, Ballina.  Explanation: This property adjoins the "Big Prawn" site and at the time of subdivision, a restriction on use was placed on part of this property that no buildings or improvements shall be placed or erected on an area of the property, given its close proximity to an LPG tank located on the "Big Prawn" site. The LPG tank has now been removed therefore the restriction can be lifted.
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**Attachment(s)**

Nil

**10.2 Investments - December 2010**

<b>File Reference</b>	Investments / General Banking
<b>CSP Linkage</b>	Responsible and efficient use of resources
<b>Delivery Program</b>	Financial Management
<b>Objective</b>	To provide Council and the community with details of how Council's surplus funds are invested.

**Background**

In accordance with the Local Government Financial Regulations, the responsible accounting officer of a council must provide a monthly report (setting out all money Council has invested), to be presented at the ordinary meeting of Council, immediately following the end of the respective month.

This report has been prepared for the month of December 2010.

Council's investments are all in accordance with the Local Government Act, the Regulations and our investment policy.

The balance of investments as at 31 December 2010 was \$61,747,000. This represents a decrease from November of \$3,531,000.

The balance of the cheque account at the Commonwealth Bank, Ballina as at 31 December 2010, was \$1,030,375.

Council's investments as at 31 December are at an average (weighted) rate of 5.80%, which is 0.80% above the 90 Day Bank Bill Index of 5.00%.

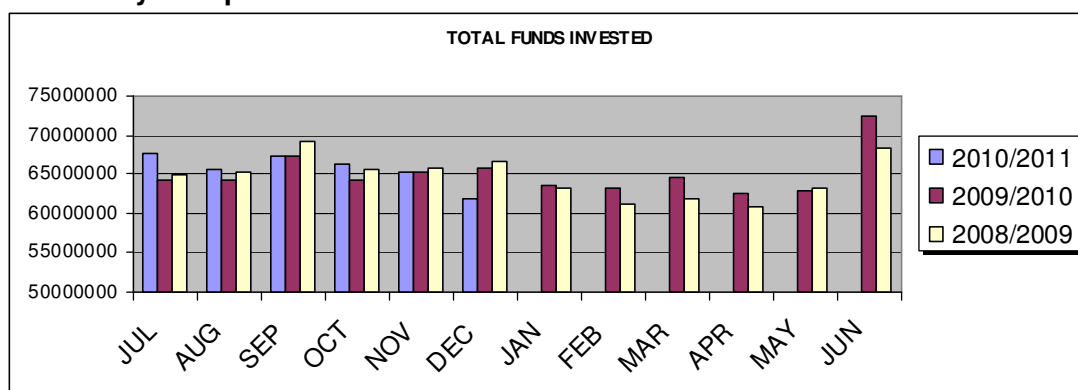
The majority of the approximately \$62 million of investments held by Council are restricted by legislation (external) and Council (internal) uses for the following purposes:

<b>Reserve Name</b>	<b>Internal/External Restriction</b>	<b>Approx % of Portfolio*</b>
Water Fund (incl. developer contributions)	External	14
Sewer Fund (incl. developer contributions)	External	25
Section 94 Developer Contributions	External	10
Bonds and Deposits	External	3
Domestic Waste Mgmt / Stormwater Charges	External	2
Other External Restrictions	External	6
Land Development	Internal	21
Employee Leave Entitlements	Internal	3
Carry Forward Works	Internal	10
Miscellaneous Internal Reserves	Internal	5
Unrestricted		1
<b>Total</b>		<b>100%</b>

\* Based on reserves held as at 30 June

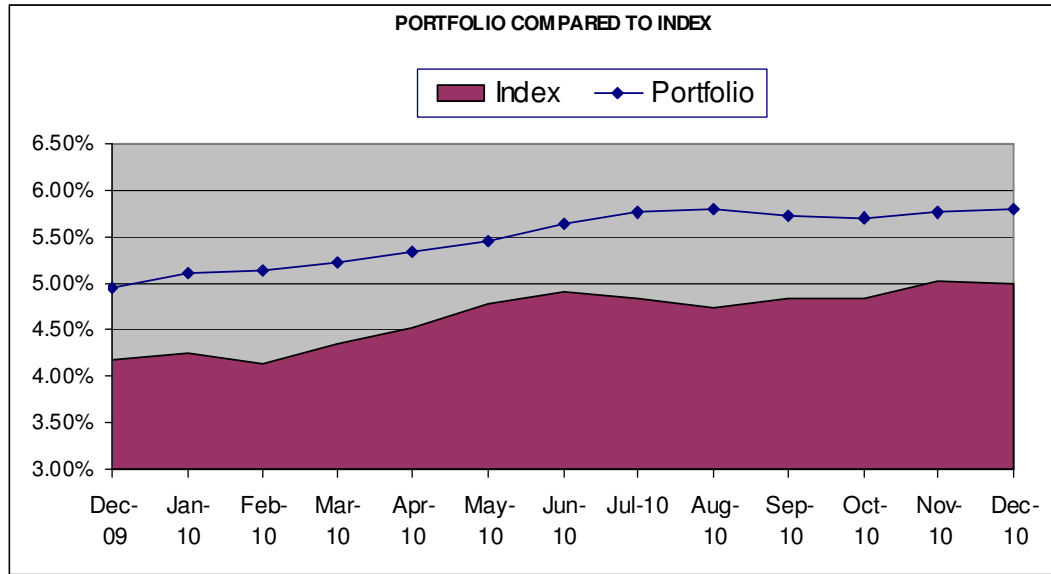
**Information****A. Summary of Investments by Institution**

Funds Invested With	ADI Rating	Gov G'tee	Previous Month (\$'000)	Current Month (\$'000)	% of	Total
<b>Grandfathered Investments</b>						
ANZ Bank	AA-	No	2,000	2,000	3.2	
Bank of Queensland	BBB	No	1,000	1,000	1.6	
Bendigo Bank Ltd	BBB	No	2,500	1,000	1.6	
Deutsche Bank	A+	No	4,000	4,000	6.5	
Goldman Sachs	AA-	No	1,000	1,000	1.6	
Heritage Building Society	BBB	No	3,000	3,000	4.9	
HSBC Australia	AA-	No	1,000	1,000	1.6	
Longreach Capital Markets 23	AA-	No	1,000	1,000	1.6	
Longreach Capital Markets 28	AA+	No	1,000	1,000	1.6	
Morgan Stanley	A	No	2,000	2,000	3.2	
National Australia Bank	AA	No	1,788	1,788	2.9	
National Wealth M'ment Holding	A	No	2,000	2,000	3.2	<b>34%</b>
<b>Rated Institutions</b>						
Bank of Queensland	BBB+	Y-\$1m	3,500	3,000	4.9	
Bank of Western Australia	AA	Y-\$m	2,639	2,677	4.3	
Commonwealth Bank of Australia	AA	Y-\$2m	6,464	5,071	8.2	
Credit Union Australia	BBB+	Yes	1,000	1,000	1.6	
Illawarra Mutual Bld Society	BBB	Y-\$1m	2,000	2,000	3.2	
Local Govt Fin Service	A	No	8,412	8,418	13.6	
National Australia Bank	AA	No	0	3,000	4.9	
Newcastle Permanent Bld Soc	BBB+	Y-\$1m	2,000	2,000	3.2	
Suncorp Metway Bank	A	Y-\$1m	5,485	5,485	8.9	
Westpac Banking Corp	AA	Y-\$1m	10,490	7,308	11.8	<b>65%</b>
<b>Unrated ADI's</b>						
Community CPS Credit Union		Yes	1,000	1,000	1.6	<b>1%</b>
<b>Total</b>			<b>65,278</b>	<b>61,747</b>	<b>100%</b>	

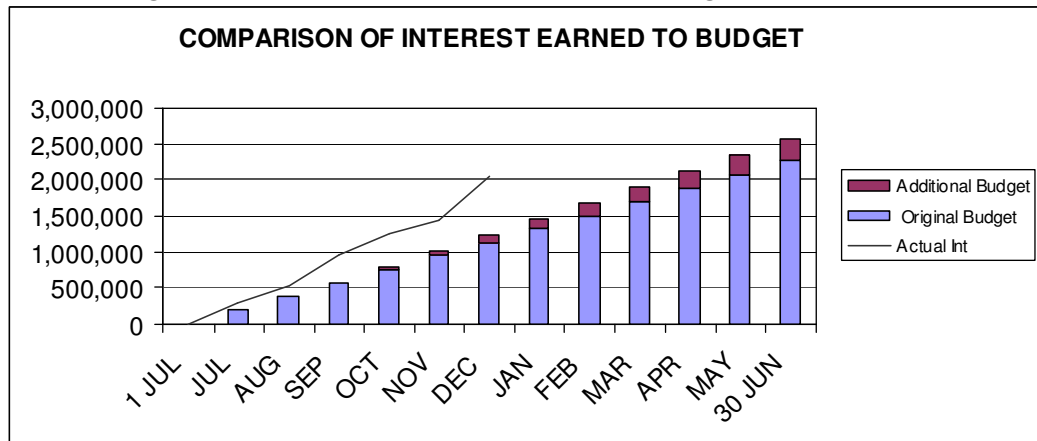
**B. Monthly Comparison of Total Funds Invested**



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



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



**Comment**

This month's comment is a commentary from the Treasury Department of Newcastle Permanent (with the usual disclaimers).

***Households are under pressure***

*Notwithstanding the Reserve Bank's obvious tightening bias regular readers know that for some time we have thought that the RBA had done its work too well and that households are under massive debt burden and feeling the pressure. Indeed we didn't think they should have hiked rates in November and still believe this is the case. Indeed we think the RBA would be surprised at just how much traction monetary policy has gained in an economy with an unemployment rate close to 5%, more people working than ever before and in the midst of the commodity boom. But it is interesting that analysis by Fitch Ratings is showing that home loan arrears are on the increase and in some cases materially so. How can this be in the aforementioned economy? We have to point to the fact that many Australians have simply got too much*

debt relative to circumstances and even with rates of 4.75% and the attendant home loan rate it goes with at the moment some households cannot make ends meet. Equally those that can are simply taking a balance sheet approach rather than an income approach to their spending. That is to say before the GFC households were content to spend from income and borrow against both expected increases in income and expected increases in asset positions such as houses that they could then withdraw equity from. It appears they felt 10 foot tall and bullet-proof. We simply think Households are paying more attention to the debt side of the balance sheet and the income required to pay it back. As such the savings ratio has increased because they are spending less of their income in order to reduce debt. Employment remains strong and income may again flow through the economy but for the moment households remain under pressure.

### E. Investments Held as at 31 December 2010

Purchase Date	Issuer	Type	Rate %	Call or Maturity Date	Purchase Value \$'000
23/04/04	Deutsche Bank	FRN	5.79	23/04/14	2,000
23/04/04	Deutsche Bank	FRN	5.79	23/04/14	2,000
20/09/04	National Australia Bank	FRN	6.30	Perpetual	1,788
08/08/05	Morgan Stanley	FRN	5.46	08/08/12	2,000
12/04/06	Goldman Sachs	FRN	5.31	12/04/16	1,000
16/06/06	National Wealth M'ment Holdings	FRN	5.65	16/06/16	2,000
15/09/06	Bank of Queensland	FRN	5.48	11/05/11	1,000
04/12/06	Heritage Building Society	FRN	5.54	04/12/11	2,000
28/02/07	Longreach Series 23	IRLN	8.71	10/02/12	1,000
25/01/07	Local Govt Fin Service	CRI	5.75	20/03/12	5,000
28/06/07	Longreach Series 28	ELN	0.00	27/06/14	1,000
15/08/07	Local Govt Fin Service	FND	5.11	At 3 Day Call	1,418
21/09/07	Bendigo Bank	FRN	6.18	21/09/12	1,000
18/10/07	Heritage Building Society	FRN	6.04	18/10/12	1,000
18/10/07	ANZ Bank	FRN	5.49	18/10/12	2,000
14/03/08	HSBC Australia Ltd	FRN	7.31	14/03/13	1,000
16/12/08	Commonwealth Bank of Australia	CRI	6.62	16/12/11	1,000
17/12/08	Commonwealth Bank of Australia	CRI	6.17	17/12/13	1,000
17/12/08	Commonwealth Bank of Australia	TD	5.93	17/12/13	995
04/03/09	Suncorp-Metway Bank	FRN	7.43	30/05/11	1,485
17/04/09	Commonwealth Bank of Australia	FRN	6.04	17/04/12	1,000
03/02/10	Commonwealth Bank of Australia	FND	4.70	At call	1,076
15/06/10	Bank of Queensland	TD	6.30	15/02/11	1,000
22/09/10	Local Govt Fin Service	TD	6.02	20/01/11	2,000
01/10/10	Bank of Queensland	TD	5.85	04/01/11	1,000
05/10/10	Suncorp-Metway Bank	TD	5.90	02/02/11	2,000
06/10/10	Newcastle Permanent Bld Society	TD	5.73	12/01/11	1,000
25/10/10	Suncorp-Metway Bank	TD	5.80	25/01/11	2,000
29/10/10	Credit Union Australia	TD	5.92	28/01/11	1,000
29/11/10	Illawarra Mutual Bld Society	TD	6.10	29/03/11	1,000
29/11/10	Community CPS Credit Union	TD	6.20	28/02/11	1,000
01/12/10	National Australia Bank	TD	6.20	31/03/11	2,000
06/12/10	Bank of Queensland	TD	6.00	05/04/11	1,000
13/12/10	Illawarra Mutual Bld Society	TD	6.10	14/03/11	1,000
15/12/10	National Australia Bank	TD	6.18	14/04/11	1,000
20/12/10	Newcastle Permanent Bld Society	TD	6.00	21/03/11	1,000
20/12/10	Westpac Bank	TD	5.80	21/03/11	7,308
20/12/10	BankWest	TD	5.90	21/03/11	2,677
<b>Total:</b>					<b>61,747</b>
TD=Term Deposit		FRN=Floating Rate Note		FND=Managed Fund	
IRLN=Interest Rate Linked Note		CRI=Committed Rolling Investment		ELN=Equity Linked Note	

**RECOMMENDATIONS**

That Council notes the record of banking and investments for December 2010.

**Attachment(s)**

Nil

**10.3 Policy (Draft) - Tender and Quotation Evaluations**

<b>File Reference</b>	Council Policies
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To consider the formulation of a policy to assist with the evaluation of tender and quotations.

---

**Background**

As a statutory authority Council is regularly required to call quotations (typically for works valued under \$150,000) and tenders (works valued over \$150,000) for the purchase of goods and services. When more than one quotation / tender is received it is necessary to compare the suppliers on a fair and equitable basis.

The process currently followed by Council staff is to ensure that the specification for the work details the selection criteria and in the majority of cases the weighting for each of the criteria is also supplied up front. The respondents must then address all the criteria to allow a reasonable comparison to be made.

Councillors have, at times, questioned the criteria applied in certain tender processes and one suggestion was for the elected Council to develop a formal tender evaluation policy that might assist with this process.

Based on this feedback a draft policy has been prepared and the purpose of this report is to examine the merits of that policy.

**Key Issues**

- Contents of policy
- Whether it is practical to adopt a policy of this nature

**Information**

One of the major issues in preparing a policy of this nature is that Council calls for quotations and tenders for a vast range of services. Therefore the difficulty is to ensure that all possible situations are covered in the policy.

The draft policy prepared, as included as an attachment, outlines the major criteria that are typically used in evaluation processes, and then applies the criteria against the standard type of quotations and tenders called by Council. A range of recommended weightings are also provided.

The criteria outlined are relatively self explanatory and items of specific interest include:

- **Sustainability** - this criterion is recommended for inclusion in all contract types. The Local Government Act places a strong focus on environmentally sustainable practices and it is reasonable for this to be a mandatory criterion.
- **Social and Community** - this is an area which is often one of the most debated topics for local authorities who normally wish to support the local supplier. The criterion, as outlined in the policy, places a strong emphasis on factors such as knowledge of local conditions and impact on the local economy. Legislation, such as the Trade Practices Act, limits the opportunity for additional weightings to be provided to local operators, however these factors do have merit and this criterion has been listed in a number of the standard contract types (as per the matrix within the policy).

### **Sustainability Considerations**

- **Environment**  
All three sustainability factors are included the tender criteria.
- **Social**  
As above
- **Economic**  
As above

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

Council has a number of legal responsibilities in respect to our procurement processes and even though they do not form part of this policy, they are covered by other operational documents.

### **Consultation**

As this is a new policy it is recommended for public exhibition. This exhibition period also provides Councillors with further time to consider the merits of the policy.

### **Options**

The options are to accept or amend the policy, or not support the creation of such a policy.

In respect to amendments there may be items that Councillors wish to see listed in the criteria, or there may be concerns over some of the proposed weightings. The percentages for the weightings listed in the policy often cover a wide range as it is important that a policy of this nature is broad enough to cover all situations.

This last point is important in that there could also be the argument that the policy is so broad that it provides very little policy direction to Council staff.

At this point in time, the policy is considered to have some merit therefore the recommendation is to exhibit the document for public comment. This exhibition also allows Councillors and staff further time to review the contents of the document.

#### **RECOMMENDATIONS**

1. That Council approves the exhibition of the draft policy, Tender and Quotation Evaluations, as attached to this report.

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

1. Draft Policy - Tender and Quotation Evaluations

**10.4 Policy (Review) - Child Protection**

<b>File Reference</b>	Council Policies
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To review the Child Protection Policy.

---

**Background**

All of Council's existing policies are progressively being reviewed to ensure they reflect contemporary practices and legislative requirements. The purpose of this report is to review the Child Protection Policy.

**Key Issues**

- Whether the policy meets the requirements of Council and current legislation.

**Information**

Council adopted this policy in November 2001, and made amendments in July 2006.

Child protection is an extremely important matter for Council and the community and the policy is still considered to be relevant.

This review of the policy identifies only minor changes as follows:

- Inclusion of current terminology by the Human Resources and Risk Section and
- The template for Council policies has changed since this policy was adopted and the new template includes information on definitions, policy history etc.

**Sustainability Considerations**

- **Environment**  
Not applicable

- **Social**

This policy aims to ensure the protection of children against abuse and to advise procedures for investigating and reporting allegations/convictions of child abuse against people employed or engaged by Council that arise in the course of the work of Council.

- **Economic**

Not applicable

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

Child protection strategies is a legal requirement for Council.

### **Consultation**

As the changes are only minor it is recommended that Council adopt the policy as presented, however the document will also be exhibited for public comment. If any submissions are received they can be reported back to Council however there will not be a need for any further report if there is no public comment.

### **Options**

Council may accept or amend the proposed changes to the policy. The changes included are largely house keeping therefore it is recommended that the policy be adopted as presented.

It is also recommended that if no submissions are received from the exhibition process, the policy be adopted with no further actions required.

### **RECOMMENDATIONS**

1. That Council adopt the amended Child Protection Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

### **Attachment(s)**

1. Review - Child Protection Policy



**10.5 Policy (Review) - Donations - Rates and Charges**

<b>File Reference</b>	Donations - Rates
<b>Sustainability Plan</b>	Transparent and accountable governance
<b>Management Plan</b>	Administration
<b>Objective</b>	To review Council's "Donations – Rates and Charges" policy and consider applications from two new organisations.

---

**Background**

Council's "Donations – Rates and Charges" policy (copy attached) was adopted to provide clear guidelines for the management of rates and charges donations to community based organisations that do not qualify for rating exemptions automatically under the Local Government Act 1993 (LGA).

Most of these organisations do not qualify for exemptions as they do not own the land on which the functions of their organisation are carried out. The majority operate from crown land or Council owned land.

This policy was last reviewed by Council on 27 March 2008. Council requested that a review of the current policy (including churches) be undertaken in its meeting of 27 August 2009. Churches have been excluded from the review process as they are automatically exempt from rating pursuant to section 555 (1e) of the LGA (excludes charges for actual services utilised).

Even though a policy is in place, it serves as a guide only, and Council must still make a resolution annually to donate specific rates and charges in accordance with section 356 of the LGA.

A number of community based organisations also own the land on which they operate and are automatically exempt from rating pursuant to sections 555 and/or 556 of the LGA.

Examples of properties automatically exempt under sections 555 and 556 include government schools, hospitals, churches, certain crown lands, public space, public charities, vacant Aboriginal land, cemeteries and hospitals. These properties are still required to pay for services that are actually utilised, for example, water consumption, sewer output, waste and recycling collection services.

The exemption generally relates to ordinary land rates and any other fixed charges not directly related to a measurable "user pays" charge (e.g. stormwater management charge).

Council has been providing donations towards rates and charges for community based organisations for many years, with the earliest available records dating back to the early 1980s.

Historically most recipients of rates and charges donations are organisations that are not for profit and provide a community service. They are usually located on crown or Council owned land. It could be argued that if the organisation didn't provide services within the community, Council may well be required to provide the services. A donation goes some way to acknowledge the benefits the service provides to the community.

### Key Issues

- Equity of donations

### Information

The next table provides a summary of the organisations that receive a donation under the existing policy and the level of the donation provided.

**Table One - Donation Summary**

Category/ Organisation	Rates	Water		Sewer		Waste	Storm water	On Site Septic	Total 2010/11 (\$)
		Access	Consumed	Access	Usage				
Pre-schools/ Playgroups (1)	Nil	100%	Nil	100%	Nil	Nil	100%	100%	4,481
Public Halls (2)	100%	100%	Nil	100%	Nil	Nil	100%	100%	14,080
RSL Sub Branch	100%	100%	Nil	100%	Nil	Nil	100%	N/A	1,637
Alstonville Ag Society	100%	Nil	Nil	100%	Nil	Nil	100%	N/A	4,843
Scouts (3)	Nil	100%	Nil	100%	Nil	Nil	100%	100%	1,137
Surf Life Saving Clubs (4)	N/A	100%	100%	100%	100%	100%	N/A	N/A	11,252
Biala Support Services	75%	100%	Nil	100%	Nil	Nil	100%	N/A	1,265
Riding for the Disabled	Nil	Nil	Nil	Nil	Nil	100%	N/A	Nil	306
RSL Youth Club	100%	Nil	Nil	Nil	Nil	Nil	Nil	N/A	2,734
S.E.S.	N/A	100%	100%	100%	100%	100%	N/A	N/A	812
Ballina Naval Museum	Nil	100%	Nil	100%	Nil	Nil	N/A	N/A	557
CWA Halls (5)	100%	100%	100%	100%	100%	100%	100%	N/A	1,624
Backlog Sewer (6)	Nil	Nil	Nil	100%	100%	Nil	N/A	N/A	6,052

(1) Biala Special School, Fox Street Pre-school, Ballina Playgroup, River Street Pre-school, Lennox Head Pre-school, Jumbunna Pre-school Wardell, Wollongbar Pre-school, Rainbow Early Intervention.

(2) Meerschaum Vale, McLeans Ridges, Newrybar, Northlakes Ballina, Pearces Creek, Pimlico, Rous Mill, Tintenbar Arts, Wardell, West End Ballina, Wigmore Ballina, RSL sub-branch Alstonville.

(3) Lennox, Alstonville, Ballina

(4) Ballina/Lismore, Ballina/Lismore Jnr, Lennox Head.

(5) Ballina, Lennox Head

(6) Ballina Sea Bird Rescue, Richmond Christian College, Jehovah Witness Ballina - Donation expires when total backlog sewer capital works contribution is exhausted.

Brief comments on each of these categories are as follows.

### ***Pre-schools or Playgroups***

*(Biala Special School, Fox Street Pre-School, Ballina Playgroup, River Street Pre-School, Lennox Head Pre-School, Jumbunna Community Pre-School, Wollongbar Pre-School, Rainbow/Early intervention)*

Donations have applied to community based pre-schools and playgroups since at least the early 1980s. The organisations pay all the rates, plus all charges based on usage, with Council donating the fixed and annual charges (i.e. water connection, sewer access and stormwater).

The majority of the organisations are exempt from rates, however Jumbunna Community Pre-School and Rainbow/Early Intervention currently pay rates (total rates for 2010/11 - \$4,482.98) as the Valuer General provides individual property valuations to Council for these properties.

The Valuer General is gradually reviewing a number of community based properties that are on Council or crown land to determine whether there are leases in place that should result in the properties being valued.

As that work continues, and if separate land values are provided, the remaining properties may well become rated over time.

A summary of the actual rates and charges levied and the amount donated for 2010/11 for the pre-schools and playgrounds is as follows:

**Table Two - Pre-school and Playgroup Donations - 2010/11**

<b>Description</b>	<b>Rates</b>	<b>Water Access</b>	<b>Water Consumption</b>	<b>Sewer Access</b>	<b>Sewer Usage</b>	<b>Storm water</b>	<b>OSSM</b>	<b>Waste</b>
<b>Amount Levied</b>	4,482.98	1,136.00	Varies	3,320.00	Varies	25.00	Not charged	4,956.00
<b>Amount Donated</b>	0.00	1,136.00	0.00	3,320.00	0.00	25.00	N/A	0.00

### ***Public Halls***

*(Meerschaum Vale Hall, McLeans Ridges Hall, Newrybar Hall, Northlakes Community Centre, Pearces Creek Hall, Pimlico Hall, Rous Mill Hall, Tintenbar School of Arts, Wardell War Memorial Hall, West End Hall, Wigmore Hall)*

Donations have applied to community/public halls since at least the early 1980s. The donation acknowledges the community based service provided by hall committees to ratepayers. The halls are on Council owned or controlled land.

All charges based on usage are paid for by the Hall Committees with Council donating the rates and fixed / annual charges (i.e. rates, water connection, sewer access and stormwater). This is the same practice as for the pre-schools / playgroups.

**Table Three - Public Halls Donations - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	11,524.36	710.00	Varies	1,660.00	Varies	25.00	161.00	510.00
<b>Amount Donated</b>	11524.36	710.00	0.00	1,660.00	0.00	25.00	161.00	0.00

***RSL Sub-Branch***

This donation relates to a small building owned by the RSL Sub-branch at 13 Budgen Avenue, Alstonville. This building is used as a public meeting room and Council has, for many years, donated the rates and access charges.

**Table Four - RSL Sub-Branch Donation - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	1,055.88	142.00	Varies	415.00	Varies	25.00	Not charged	281.00
<b>Amount Donated</b>	1,055.88	142.00	0.00	415.00	0.00	25.00	N/A	0.00

***Alstonville Agricultural Society***

The Alstonville Agricultural Society is a not for profit organisation. Council has supported the organisation for many years by providing donations which acknowledge the services the Society provides to the community (i.e. markets, shows, events etc).

The Agricultural Society is responsible for the payment of the water access charge and all consumption charges. It is uncertain why Council donates the sewer access charge but not the water access charge.

**Table Five - Alstonville Agricultural Society Donations - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	3,175.75	586.00	Varies	1,642.40	Varies	25.00	Not charged	Not charged
<b>Amount Donated</b>	3175.75	0.00	0.00	1,642.40	0.00	25.00	N/A	N/A

***Scouts and Girl Guides***

*(Lennox Scouts, Alstonville Scouts, Ballina Scouts)*

Rates and charges donations towards Scout and / or Girl Guide halls date back to at least the early 1980s.

The Ballina Girl Guides are not listed in the donation policy as they occupy part of the Wigmore Hall complex, which receives a donation towards its rates and charges as part of the Public Halls donations outlined earlier.

None of the three listed groups have rates levied on the properties on which they reside and Council donates all the fixed / access charges, excluding waste.

**Table Six - Scouts and Girl Guides Donations - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	Not levied	284.00	Varies	830.00	Varies	Not charged	23.00	510.00
<b>Amount Donated</b>	N/A	284.00	0.00	830.00	0.00	N/A	23.00	0.00

*Surf Life Saving clubs (SLSCs)*

Donations have applied to SLSCs since at least the early 1980s. The donation acknowledges the life saving services provided.

The surf clubs are not rated and Council pays for all charges incurred, including water consumption and sewer usage.

The reason the consumption charges are included is because there is a strong community use of water, which is beyond the control of the surf clubs (public showers, public toilets etc) and it is impossible to differentiate between public and club use.

**Table Seven - Surf Life Savings Clubs Donations - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	Not levied	1,153.00	Varies	2,153.20	Varies	Not charged	Not charged	1,275.00
<b>Amount Donated</b>	N/A	1,153.00	Donated	2,153.20	Donated	N/A	N/A	1,275.00

*Biala Respite Support Services (Melaleuca House)*

Biala is a public benevolent institution and provide respite support at Melaleuca House. Council has supported Biala by donating most of the rates and charges levied annually on this property. The donation has been previously reviewed and reaffirmed in 1998.

Council may consider increasing the ordinary rate percentage from 75% to 100% as it is the only ordinary rate donation not set at 100%, within the current policy.

The reason for originally setting a rate of 75% is unknown as all available historical records are silent on the matter.

**Table Eight - Biala Donation - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	731.29	142.00	Varies	550.00	Varies	25.00	Not charged	612.00
<b>Amount Donated</b>	548.46	142.00	0.00	550.00	0.00	25.00	N/A	0.00

*Riding for the Disabled*

Riding for the Disabled Inc lease a portion of private land at North Teven Road. In 1999, Council supported a request to donate the second waste/recycling collection charge levied on the property that was utilised exclusively by the Riding for the Disabled group. Council has supported this donation annually since that date.

**Table Nine - Riding for the Disabled Donation - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	1,037.57	Not charged	Not charged	Not charged	Not charged	Not charged	23.00	612.00
<b>Amount Donated</b>	0.00	N/A	N/A	N/A	N/A	N/A	0.00	306.00

*RSL Youth Club*

This property is owned by three Ballina RSL sub-branch directors and used as a youth club. On 24 February 2000, Council resolved to donate the ordinary rate, whilst the property was used as a youth club.

**Table Ten - RSL Youth Club Donation - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	2,734.70	362.00	Varies	1,006.30	Varies	25.00	Not charged	510.00
<b>Amount Donated</b>	2,734.70	0.00	0.00	0.00	0.00	0.00	N/A	0.00

*SES (State Emergency Service)*

Section 17, clause 5, of the State Emergency Service Act (1989) states as follows: *The council of a local government area must, within 3 months of the appointment of a local controller for the area, provide (free of charge) suitable training facilities and storage and office accommodation to enable the local controller to exercise his or her functions.*

In accordance with this clause Ballina Council leases land, adjacent to Angels Beach Drive, to the SES with Council paying all the utility charges, both access and consumption. The land is currently exempt from rating.

**Table 11 - SES Donations - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	Not charged	142.00	Varies	415.00	Varies	Not charged	Not charged	255.00
<b>Amount Donated</b>	N/A	142.00	Donated	415.00	Donated	N/A	N/A	255.00

*Ballina Naval and Maritime Museum*

Council lease the subject land in Regatta Avenue Ballina to the Naval Museum. Council has donated access charges since 2005/06.

Public toilets are attached to the building and in 2001 Council decided to only meter the toilets and not have a separate meter for the Museum, as it was considered that the Museum utilised minimal water and therefore the benefit did not justify the expense of separate metering. This means that Council, through our public toilets' budget, then pays for any water and sewer usage charges.

**Table 12 - Ballina Naval and Maritime Museum Donations - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	Not levied	142.00	Not charged	415.00	Not charged	Not charged	Not charged	255.00
<b>Amount Donated</b>	N/A	142.00	N/A	415.00	N/A	N/A	N/A	0.00

*CWA Halls (Country Women's Association)*

Ballina CWA Hall is located in Captain Cook Park. During Council's redevelopment of the park some years ago, in order to relocate the Hall from its River Street frontage to a position further into the park, Council entered into a 99 year lease with the CWA. The lease requires Council to pay all rates and charges levied on the CWA Hall site.

Even though there is no such lease covering the land occupied by the Lennox Head CWA Hall, Council extends the same level of donation to the Lennox Head CWA, as it does to the Ballina CWA.

**Table 13 - CWA Halls Donations - 2010/11**

Description	Rates	Water Access	Water Consumption	Sewer Access	Sewer Usage	Storm water	OSSM	Waste
<b>Amount Levied</b>	Not levied	284.00	Varies	830.00	Varies	Not charged	Not charged	510.00
<b>Amount Donated</b>	N/A	284.00	Donated	830.00	Donated	N/A	N/A	510.00

*Backlog Sewer Program*

On 24 January 2008, Council adopted a backlog sewer program that aimed to provide sewer services to some environmentally sensitive properties on the urban fringes.

As part of this program Council resolved to provide an 80% subsidy of the cost to residential properties and no subsidy for business properties. However, following approaches by the following three properties, who argued that they were not businesses as such, Council resolved to donate the annual sewer backlog charge until the original capital backlog sewer contribution was offset

- Australian Seabird rescue
- Ballina Christian Education Association
- Ballina congregation of Jehovah's Witness

As these donations form part of the Backlog Sewer Policy, Council would need to review that policy to alter the donations provided rather than the "Donations – Rates and Charges" policy. No change is recommended to the backlog program as part of this review.

**New applications for consideration***Ballina Jet Boat Rescue*

Ballina Jet Boat Rescue is operated by the Ballina/Lismore Surf life Saving Club and has been located at the Ballina Regatta Avenue boat harbour for many years.

The boat harbour was never previously rated as it was controlled by the State Government NSW Maritime Service. In 2009, the Land and Property Management Authority resumed control of the parcel of crown land and formerly negotiated lease agreements with several organisations that had used the boat harbour for many years.

The new leases triggered the Valuer General's Office to provide Council with land values for each of the separately leased areas. In accordance with the Local Government Act, Council is required to levy ordinary rates on crown land under a private lease, which now includes the Ballina Jet Boat Rescue area.

The organisation has also recently installed a water service which means that water access charges and water consumption charges will now apply.



As Ballina Jet Boat Rescue is operated by the Ballina/Lismore SLSC, which already receives an annual rates and charges donation from Council, Council may well wish to provide the same percentage donations for specific rates and charges as other SLSC's within that category (as per earlier table within this report).

Council may also wish to consider a donation for the current 2010/11 rating year even though the donation has not been accounted for in the budget. This would result in a total estimated 2010/11 donation of \$688, being \$519 ordinary rates, \$142 water access charges and approximately \$27 for water consumption charges.

*The Spastic Centre of NSW (Cerebral palsy)*

The Spastic Centre entered into a temporary lease with Council on 5 February 2009 to utilise 2B High Street Alstonville for the purposes of their organisation. The lease outgoings agreed to include payment of rates and charges.

Even though the organisation is a public benevolent institution, it does not own the leased property and is therefore not exempt from rates under section 556 (1h) of the LGA.

As the Spastic Centre doesn't qualify for rating exemptions, they have requested a donation of rates and charges for the 2010/11 rating year.

The organisation has recently purchased land at 96 Main Street, Alstonville and should be in a position to move into their new premises mid 2011. They qualify for rating exemptions at that property pursuant to section 556 (1h) of the Local Government Act as they own the land (NB: they are still required to pay for any services actually utilised such as water, waste/recycling collection etc).

Council could either approve the donation request for the rates and charges for the 2010/11 rating year or refuse it on the basis that the rates and charges were agreed to be paid when the lease was signed. The total amount of rates and charges estimated to be levied on the subject property during 2010/11 is \$2,750.

A 2008 refusal precedent exists for a similar situation involving Ballina-Byron Family Centre. Council decided to refuse their rates and charges donation request as they had signed a lease that included payment of rates and charges and they receive other Government funding.

Furthermore, Council acknowledged that it may set a precedent for many other similar organisations and that donations reduce Council's general fund income. Council also noted that the organisation provides an important community based service.

**Sustainability Considerations**

- **Environment**  
Not Applicable

- **Social**  
Provide support to community based organisations to enable them to deliver services for the benefit of the local community.
- **Economic**  
Provide financial assistance to community organisations, allowing them to spend more money on providing their specific service to the local community.

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

Only 2010/11 Rates and charges levied on organisations listed in the “Donations – Rates and Charges” policy have been budgeted for in the 2010/11 Delivery Program.

### **Consultation**

Opportunities for financial assistance pursuant to section 356 of the Local Government Act are advertised during the annual draft Delivery Program exhibition process.

### **Options**

Council has a range of options available, including removing or adding organisations to the policy, retaining the status quo, or attempting to obtain more consistency and equity in the donations provided.

The overall purpose of this policy should be to identify categories of organisations that Council believes are justified to receive recurrent assistance with their rates and charges due to the nature of the work they provide.

This policy should also be considered in conjunction with Council's “Donations - Financial Assistance” policy, which allows Council to allocate donations for a wide range of worthy applicants on an annual basis.

In reviewing the rates and charges donations policy the organisations that stand out as being major categories of service providers are the Pre-schools / Playgroups, Public Halls, Scouts, Surf Life Saving Clubs, with the CWA Halls and SES facilities subject to leases with Council.

The policy is being applied to all of the organisations that fall under each of these categories across the shire.

However the level of donation varies across the categories as shown in the following table:

**Table 14 - Donation Comparison for Major Categories**

Category/ Organisation	Rates	Water		Sewer		Waste	Storm water	On Site Septic
		Access	Consumed	Access	Usage			
Surf Life Saving Clubs	Not rated	100%	100%	100%	100%	100%	Not charged	Not charged
CWA Halls	100%	100%	100%	100%	100%	100%	100%	Not charged
Community based Pre- schools and Playgroups	Nil - with only two rated	100%	Nil	100%	nil	nil	100%	100%
Public Halls	100%	100%	nil	100%	nil	nil	100%	100%
Scouts	Not rated	100%	nil	100%	nil	nil	100%	100%
SES	N/A	100%	100%	100%	100%	100%	N/A	N/A

The next table provides an option that attempts to provide a greater level of consistency and equity across the major categories.

**Table 15 - Alternative Donation Proposal for Major Categories**

Category/ Organisation	Rates	Water		Sewer		Waste	Storm water	On Site Septic
		Access	Consumed	Access	Usage			
<b>Category A</b>								
Surf Life Saving Clubs	100%	100%	100%	100%	100%	100%	100%	100%
CWA Halls	100%	100%	100%	100%	100%	100%	100%	100%
SES	100%	100%	100%	100%	100%	100%	100%	100%
<b>Category B</b>								
Pre-schools Playgroups	100%	100%	Nil	100%	Nil	Nil	100%	100%
Public Halls	100%	100%	Nil	100%	Nil	Nil	100%	100%
Scouts	100%	100%	Nil	100%	Nil	Nil	100%	100%

**Category A - 100% of rates and all charges****Criteria**

- Major community service provider, located on Council owned or controlled land, that is **not** in a position to manage utility (water, sewer, waste) usage due to **unrestricted** public access **or**
- Eligible through Council lease / licence agreement and comparative provider and legislative responsibilities

**Beneficiaries**

Surf Clubs, CWA Halls, SES

**Category B - 100% of rates, water and sewer access charges and stormwater (i.e. all fixed charges, excluding waste)**

### **Criteria**

Major community service provider and in a position to manage utility (water and sewer) usage due to **restricted** public access and therefore entitled to a donation for ordinary land rates and any other fixed charges not directly related to a measurable "user pays" charge (similar to sections 555 and 556 of the Local Government Act).

### **Beneficiaries**

Public Halls, Community Based Pre-schools / Playgroups, Scouts and Girl Guides

Category A covers groups with limited or no control over consumption / usage charges therefore all rates and charges are donated, along with specific lease or legislative responsibilities, whereas Category B have some control and therefore only the fixed charges are donated.

The impact on the budget of this change would be that Council would now be responsible for the rates on two pre-school / playgroup properties, which for 2010/11 were \$4,482.98.

This figure could grow over the next few years as the Valuer General provides valuations for the first time for existing pre-schools and playgroups.

In respect to the remaining organisations currently listed in the policy they are typically individual entities that receive various levels of benefit. If Council wishes to standardise the approach possible options are as follows.

#### *RSL Sub-Branch*

Council currently donates rates and fixed / access charges which is the same as the Category B properties outlined earlier. As the building is used in a similar fashion to public halls Council could include this facility in that category.

#### *Alstonville Agricultural Society*

Council currently donates rates, the sewer access charge and the stormwater charge. To make this donation more consistent with the others the Agricultural Society could be classified as a Category B donation and have all the rates and fixed / annual charges donated.

This means the water access charge (\$586 for 2010/11) would be the additional donation provided.

Essentially the Agricultural Society is a major community service provider, through the Alstonville Showground, and is in a position to manage its water, sewer and waste charges.

Council could include Agricultural Societies as a general category for inclusion in the policy as Alstonville is the only known Agricultural Society in the shire.

*Biala Support Services*

There are two options available with Biala;

- a) exclude Biala from the recurring rates and charges donations policy and ask that they make an application each year through Council's community donations policy. Biala provides an excellent service, however so do many other community groups in the shire ,and a number of these apply for assistance through the annual community donations program; or
- b) Alternatively Council could increase the rates donation to 100%, which would then align Biala with all the Category B donations (i.e. rates and fixed / access charges).

As a general principle for this policy, a preferred approach could be for the rates and charges donations policy to focus on major categories of service providers and other more specific community service providers could then be assessed against each other as part of the annual community donations program.

This should then result in a fairer assessment process being undertaken as Council is then able to compare the range of donations requested. If this approach is endorsed then option a) is preferred.

*Riding for the Disabled*

As per Biala, this donation could be determined applied through an annual process, rather than as a specific item in this policy.

*RSL Youth Club*

As per Riding for the Disabled.

*Ballina Naval Museum*

The Museum effectively pays no rates or charges as they are only billed for water and sewer access charges and Council donates both these items.

This means they are very similar to a Category A Group, however it is difficult to place the Museum under any broad property category, without running the risk of other facilities falling under that category.

Therefore the options are to include the Museum as a stand along property in the policy or ask that they request a donation annually through the community donations process.

*Backlog Sewer*

A Council policy supports this donation and no changes are recommended.

*Ballina Jet Boat Rescue*

It is considered that this service is more of a Category B in that there is the ability for the service to manage their water consumption. Therefore the preferred approach is to include this item under Category B.

*The Spastic Centre of NSW (Cerebral palsy)*

As a lease is in place the preference is not to approve this request as outlined earlier.

**Conclusion**

In summary there are two broad options that Council can follow.

The first option is to only include the major categories of properties in the policy, standardise the donations, and ask that the remaining groups apply to Council on an annual basis.

The second option is to retain all the existing groups in the policy and standardise the donations.

The preferred wording for a recommendation for both options is as follows:

**Option One - Revise policy to include only major categories**

1. That Council amend the existing Donations - Rates and Charges policy to allow the policy to focus only on broad categories of properties that are used to provide a community service and to ensure that the donations provided are equitable and consistent across those categories.
2. The categories of organisations and donations based on point one are as per the following table:

Category/ Organisation	Rates	Water		Sewer		Waste	Storm water	On Site Septic	
		Access	Consumed	Access	Usage				
<b>Category A (donation of all rates and charges)</b>									
Surf Life Saving Clubs	100%	100%	100%	100%	100%	100%	100%	100%	
CWA Halls	100%	100%	100%	100%	100%	100%	100%	100%	
SES	100%	100%	100%	100%	100%	100%	100%	100%	
<b>Category B (donation of rates and any other fixed charges not directly related to a measurable "user pays" charge)</b>									
Pre-schools Playgroups	100%	100%	Nil	100%	Nil	Nil	100%	100%	
Public Halls	100%	100%	Nil	100%	Nil	Nil	100%	100%	
Scouts and Girl Guides	100%	100%	Nil	100%	Nil	Nil	100%	100%	
Agricultural Societies	100%	100%	Nil	100%	Nil	Nil	100%	100%	
Surf Life Saving Clubs - Jet Boat Rescue	100%	100%	Nil	100%	Nil	Nil	100%	100%	

<b>Category C (as per other Council policies)</b>								
Backlog Sewer	Nil	Nil	Nil	100%	100%	Nil	N/A	N/A

3. That Council include the RSL Sub-Branch building at 13 Budgen Avenue, Alstonville in the same category as public halls due to the building having the same use.
4. The groups now excluded from the policy will, from 2011/12 onwards, need to apply for financial support through Council's annual community donations program.
5. That Council exhibit the amended policy for public comment with a report to be submitted back to Council following that exhibition period.
6. That Council, as part of the exhibition process, write to all the organisations impacted by any proposed changes in the policy, to inform them of those changes.
7. That Council confirms that these changes are to commence from the 2011/12 financial year, subject to the amended policy being adopted following the exhibition period.

**Option Two - Retain all existing organisations in the policy**

1. That Council retain all the existing organisations in the Donations - Rates and Charges Policy and that the donations provided be amended as follows:

Category/ Organisation	Rates	Water		Sewer		Waste	Storm water	On Site Septic
		Access	Consumed	Access	Usage			
<b>Category A (donation of all rates and charges)</b>								
Surf Life Saving Clubs	100%	100%	100%	100%	100%	100%	100%	100%
CWA Halls	100%	100%	100%	100%	100%	100%	100%	100%
SES	100%	100%	100%	100%	100%	100%	100%	100%
<b>Category B (donation of rates and any other fixed charges not directly related to a measurable "user pays" charge)</b>								
Pre-schools Playgroups	100%	100%	Nil	100%	Nil	Nil	100%	100%
Public Halls	100%	100%	Nil	100%	Nil	Nil	100%	100%
Scouts and Girl Guides	100%	100%	Nil	100%	Nil	Nil	100%	100%
Agricultural Societies	100%	100%	Nil	100%	Nil	Nil	100%	100%
Surf Life Saving Clubs - Jet Boat Rescue	100%	100%	Nil	100%	Nil	Nil	100%	100%
<b>Category C (as per other Council policies)</b>								
Backlog Sewer	Nil	Nil	Nil	100%	100%	Nil	N/A	N/A

<b>Category D (specific donations based on an individual's organisation's circumstances)</b>								
Biala Support Services	100%	100%	Nil	100%	Nil	Nil	100%	100%
Riding for the Disabled	Nil	Nil	Nil	Nil	Nil	Second service	Nil	Nil
RSL Youth Club	100%	100%	Nil	100%	Nil	Nil	100%	Nil
Ballina Naval Museum	100%	100%	Nil	100%	Nil	Nil	100%	Nil

2. That Council include the RSL Sub-Branch building at 13 Budgen Avenue, Alstonville in the same category as public halls due to the building having the same use.
3. That Council exhibit the amended policy for public comment with a report to be submitted back to Council following that exhibition period.
4. That Council, as part of the exhibition process, write to all the organisations impacted by any proposed changes in the policy, to inform them of those changes.
5. That Council confirms that these changes are to commence from the 2011/12 financial year, subject to the amended policy being adopted following the exhibition period.

Option one provides an increased commitment for Council through the paying of all rates for Pre-schools / Playgroups (\$4,482.98) and the water access charge for the Agricultural Society (\$586.00).

It would then be a matter for Council to determine on an annual basis how much is donated for the properties excluded from the policy.

Option two standardises the donations provided resulting in the following increases to existing donations:

- Pre-schools / Playgroups (rates - \$,482.98)
- Agricultural Society (water access charge - \$586.00)
- Biala (100% of ordinary rate - increase from 75% - \$182.83)
- RSL Youth Club (water and sewer access - \$1,368.30)

From a finance staff perspective, option two is preferred, as it assists with administration and reporting purposes in that all the organisations are listed in the policy and a number of groups do not need to make annual applications, which can cause uncertainty in their budgeting processes.

From a governance perspective, option one is preferred, as it is quite clear as to which categories of organisations are provided recurrent rates and charges donations, whereas more specific services / organisations that request donations are then balanced against all the various other community donations requests that Council receives.

Overall it is considered that governance should carry more weight in this debate, therefore the recommendation that follows is for option one.



## RECOMMENDATIONS

1. That Council amend the existing Donations - Rates and Charges policy to allow the policy to focus only on broad categories of properties that are used to provide a community service and to ensure that the donations provided are equitable and consistent across those categories.
2. The categories of organisations and donations based on point one are as per the following table:

Category/ Organisation	Rates	Water		Sewer		Waste	Storm water	On Site Septic
		Access	Consumed	Access	Usage			
<b>Category A (donation of all rates and charges)</b>								
Surf Life Saving Clubs	100%	100%	100%	100%	100%	100%	100%	100%
CWA Halls	100%	100%	100%	100%	100%	100%	100%	100%
SES	100%	100%	100%	100%	100%	100%	100%	100%
<b>Category B (donation of rates and any other fixed charges not directly related to a measurable "user pays" charge)</b>								
Pre-schools Playgroups	100%	100%	Nil	100%	Nil	Nil	100%	100%
Public Halls	100%	100%	Nil	100%	Nil	Nil	100%	100%
Scouts and Girl Guides	100%	100%	Nil	100%	Nil	Nil	100%	100%
Agricultural Societies	100%	100%	Nil	100%	Nil	Nil	100%	100%
Surf Life Saving Clubs - Jet Boat Rescue Service	100%	100%	Nil	100%	Nil	Nil	100%	100%
<b>Category C (as per other Council policies)</b>								
Backlog Sewer	Nil	Nil	Nil	100%	100%	Nil	N/A	N/A

3. That Council include the RSL Sub-Branch building at 13 Budgen Avenue, Alstonville in the same category as public halls due to the building having the same use.
4. The groups now excluded from the policy will, from 2011/12 onwards, need to apply for financial support through Council's annual community donations program.
5. That Council exhibit the amended policy for public comment with a report to be submitted back to Council following that exhibition period.
6. That Council, as part of the exhibition process, write to all the organisations impacted by any proposed changes in the policy, to inform them of those changes.
7. That Council confirms that these changes are to commence from the 2011/12 financial year, subject to the amended policy being adopted following the exhibition period.

8. That Council advise the Spastic Centre that whilst acknowledging the beneficial services provided by the organisation to the community it is only appropriate that Council decline the request for a donation of rates and charges at 2B High Street Alstonville for the 2010/11 rating year as this commitment was included in lease signed by the Spastic Centre.
9. That Council approves the donation of 2010/11 rates and fixed and service charges levied on the Ballina Jet Boat Rescue leased land at Regatta Avenue Ballina, estimated to total \$688.00, with the service to be responsible for on-going charges based on usage levels (i.e. water consumption and waste).

**Attachment(s)**

1. Existing Donations – Rates and Charges Policy D03

**10.6 Legal Cases - Status**

<b>File Reference</b>	Legal Action
<b>Sustainability Plan</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To provide an update on legal cases involving Council.

**Background**

As a public authority Council is regularly involved in legal matters. This report provides an update on matters that have been subject to court action or may result in court action.

**Key Issues**

- Type and cost of litigation

**Information**

This report provides an opportunity to examine legal matters in which the Council is, or has been, involved.

The report has been provided in open Council to ensure the information is available to the public.

If Councillors wish to discuss matters in detail it may be necessary to resolve into confidential session to ensure the discussion does not prejudice any on-going legal action.

Brief details on all current legal cases involving Council are as follows.

<b>Solicitor</b>	<b>Parties</b>	<b>Description</b>	<b>Original Estimate</b>	<b>Costs Paid To Date</b>
WJ Grace	Ballina Shire Council v Stubberfield & Anor	Land & Environment Court - ref. no. 2005/41284 - Requiring defendant to connect to Council sewer at Hogan Street, Ballina - Class Four	\$55,000	\$29,000
<b>Comments</b>				
Judgment handed down in favour of Council in September 2006. Council awarded costs. Council's solicitor has been pursuing costs for the past four years. Matter was submitted to Supreme Court for costs determination. The costs assessor appointed by the Supreme Court assessed the Council's fair and reasonable legal costs at approximately \$33,000 which includes a higher allowance for Council's solicitor.				
The collection of these monies is proving to be an exhaustive process and Council's solicitor is continuing to pursue all legal avenues available to have the funds collected.				

Solicitor	Parties	Description	Original Estimate	Costs Paid To Date
Allens Arthur Robinson	Diocese of Grafton v Ballina Shire Council and Ballina Coastal Reserve	Supreme Court - ref. no. 2514/08 - Access to Gunundi Conference Centre - Section 88K application	\$150,000	\$165,000
<b>Comments</b>				
The Land and Property Management Authority ultimately agreed to provide access through the existing track and court proceedings terminated. The Anglican Diocese of Grafton (ADOG) initially offered \$15,000 in costs. The Court Assessor then determined that the ADOG was to pay Council approximately \$70,000. These funds have now been received by Council and the matter is finalized. The property has also recently been sold.				
Allens Arthur Robinson	Homeworld Ballina Pty Ltd v Ballina Shire Council & Anor	Land & Environment Court - ref. no. 2009/40098 - Challenging validity of rezoning - Class Four	\$150,000	\$163,000
<b>Comments</b>				
Judgment handed down 8 October 2009. The case was dismissed and the LEP amendment was upheld. Council was awarded costs. Homeworld then lodged an appeal as per the following item.				
Allens Arthur Robinson	Homeworld Ballina Pty Ltd v Ballina Shire Council & Anor	Court of Appeal - ref. no. CA2010/65 - Appeal of Class Four proceedings and High Court Special Leave Application	\$75,000 (Class 4) \$25,000 (High Court)	\$114,000
<b>Comments</b>				
Council successfully defended the appeal and was again awarded costs. Following negotiations with Council solicitors it was agreed to accept a cost settlement of \$190,000 for all matters. These funds have now been received by Council and both matters are now finalized.				
Clarissa Huegill & Associates	SJ Connelly v Ballina Shire Council	Land & Environment Court - ref. no. 2008/10555 - Greenwood Grove, Lennox Head - Appeal refusal of development application - Class One	\$100,000	\$53,000
<b>Comments</b>				
Plaintiff withdrew from court action whilst case being heard - matter reported to December 2008 Ordinary Meeting. Applicant had been advising Council that further action would be commenced. That action then commenced as per the following two items.				
Clarissa Huegill & Associates	SJ Connelly v Ballina Shire Council	Land & Environmental Court - ref. no. 2009/10261 - Greenwood Grove, Lennox Head - Appeal of refusal of development application 2007/687 - Class One	\$50,000	\$51,000 (costs shared with following case)
<b>Comments</b>				
As the Plaintiff withdrew from the court action in the first case (as above) this meant there was no decision from the Court. The Plaintiff then commenced Class One proceedings (as per this item) and Class Four proceedings as per the following item. The Class One proceedings were largely the same as the previous case. The Class One matter was then held in abeyance pending the outcome of the Class Four proceedings. The Class Four proceedings were then dismissed by the Court, which resulted in the Plaintiff withdrawing from the Class One proceedings.				

Solicitor	Parties	Description	Original Estimate	Costs Paid To Date
Clarissa Huegill & Associates	SJ Connelly v Ballina Shire Council	Land & Environment Court - ref. no. 2009/10329 - Greenwood Grove, Lennox Head - Interpretation of development application 2004/605 - Class Four	\$100,000	As per previous matter
<b>Comments</b> Related to the previous item in that the applicant was challenging the interpretation of development consent 2004/605 in order to increase a lot yield. Judgment was then awarded in favour of Council in September 2010 with Council also awarded costs. Council was ultimately only available to recoup \$15,000 in costs and these funds have now been received. Therefore all three Greenwood Grove cases are now finalized.				
Clarissa Huegill & Associates	Rich and Rich v Lennox Palms Estate and Ballina Shire Council	Land & Environment court - ref. no. 2009/40275 - Kellie Ann Crescent, Lennox Head - Interpretation of development consent - Class Four	\$40,000	\$17,000
<b>Comments</b> Plaintiff attempting to ensure access road from Lennox Palms Estate is complete to allow subdivision of Plaintiff's property. This was largely a matter between two separate property owners. Council was joined as the second respondent and entered a submitting appearance. Matter then determined with Plaintiff's case being dismissed. This matter was then appealed by the Plaintiff as per the next item.				
Clarissa Huegill & Associates	Rich and Rich v Lennox Palms Estate and Ballina Shire Council	Court of Appeal - ref. no. CA 2010/242	\$5,000	\$0
<b>Comments</b> The Court of Appeal judgment was delivered on 22 September 2010 with the Plaintiff's claim being dismissed and Council awarded costs. These costs are now being pursued by Council's solicitors.				
Maddocks Solicitors	SJ Connelly v Ballina Shire Council	Land & Environment Court - ref. no. 2010/40457 - Temporary stockpile interpretation - Class Four	\$50,000	\$66,000
<b>Comments</b> Differing interpretation as to whether development for temporary stockpile was Designated Development. Matter heard and case awarded against Council with Council responsible for the Plaintiff's costs. A cost reimbursement of \$40,000 has now been paid to the Plaintiff.  The Local Government and Shires Association have approved a request by Council to seek reimbursement of costs from other councils, due to the legal precedent set by this case. Under the LGSA policy Council pays the first \$20,000 and it is hoped that the balance will be recouped from contributions from other councils.				
Allens Arthur Robinson	S J Connelly v Ballina Shire Council	Land & Environment Court - ref. no. 2010/10274 - Appeal of refusal of development application 2009/689 (Ramada) - Class One	\$250,000	\$357,000
<b>Comments</b> Initial proceedings heard at Ballina during September. Closing submissions heard in Sydney during November. Judgement expected early in 2011.				

Solicitor	Parties	Description	Original Estimate	Costs Paid To Date
Allens Arthur Robinson	S J Connelly v Ballina Shire Council	Land & Environment Court - ref. no. 2010/10274 - Related to previous matter - Notice of Motion seeking costs for considering material no longer part of application or appeal - Class One	Costs included in previous item	Costs Awarded \$5,000 plus legal costs
<b>Comments</b> This was a matter directly related to the Ramada case regarding costs incurred by Council due to late amendments to the development application. The Council was successful in this matter with the Court awarding Council costs of \$5,000 plus legal expenses. These costs are being pursued by Council's solicitors and a reimbursement of \$8,000 is expected.				
Blake Dawson	Oshlack v Ballina Shire Council & Ors	Land & Environment Court - ref. no. 2010/40570 - Challenge to approval of Marom Creek fluoridation plant - Rous Council and Lismore also joined in this case - Class Four	\$50,000	\$40,000
<b>Comments</b> Mr Oshlack is challenging the process followed by Rous, Lismore and Ballina councils in approving fluoridation. Rous Council engaged Blake Dawson Solicitors and Ballina staff have agreed for that firm to also represent Ballina Council with costs to be shared, as this should result in cost savings. The actual details of the arrangements for sharing are still to be finalized.  Lismore Council has engaged a separate firm to act as their solicitors. The costs for this legal action will be financed from Council's water budget.				

**Legal / Resource / Financial Implications**

This next section of this report provides an update on legal costs for this year, along with a comparison to the previous two financial years.

Description	2008/09 Paid	2009/10 Paid	Adopted 2010/11 Budget	2010/11 Paid
<b>Planning Legals</b>				
Affordable Housing DA	0	0	400,000	6,000
Avalon	86,000	0		0
Bryson and Blake	33,000	57,000		0
Dojoo	0	11,000		0
Greenwood Grove	53,000	44,000		7,000
Hutley Drive DA	0	0		5,000
Lennox Head Apartments	0	26,000		0
Quick - Insurance Matter	0	0		7,000
Ramada	0	51,000		357,000
Rich and Rich	0	16,000		1,000
Simpson	125,000	0		0
Stockpile - Temporary	0	0		66,000
Advice - Riverside Suites	95,000	35,000		0
Advice - North Angels	0	7,000		4,000
Advice - Service Centre	0	0		30,000
Advice - Miscellaneous	44,000	32,000		13,000

Description	2008/09 Paid	2009/10 Paid	Adopted 2010/11 Budget	2010/11 Paid
<b>Sub Total</b>	<b>436,000</b>	<b>279,000</b>	<b>400,000</b>	<b>496,000</b>
<b>Property Legals</b>				
Gunundi	139,000	23,000	0	3,000
Homeworld - Sec 96	52,000	0	0	0
Homeworld - BLEP	163,000	110,000	0	4,000
<b>Sub Total</b>	<b>354,000</b>	<b>133,000</b>	<b>0</b>	<b>7,000</b>
<b>Totals</b>	<b>790,000</b>	<b>412,000</b>	<b>400,000</b>	<b>503,000</b>
<b>Costs Recouped</b>				
Freedden	52,000	0	Property (270,000) Planning (10,000)	0
Jacobson / McMillan	103,000	0		0
Simpson	6,000	0		0
Gunundi	0	0		71,000
Homeworld	0	0		190,000
Ramada (1)	0	0		0
Greenwood Grove	0	0		15,000
Stockpile Temporary (2)	0	0		0
Miscellaneous	0	0		3,500
<b>Sub Total</b>	<b>161,000</b>	<b>0</b>		<b>270,000</b>
<b>Net Cost</b>	<b>629,000</b>	<b>412,000</b>	<b>130,000</b>	<b>242,000</b>

- (1) Council was awarded a small cost contribution as per the earlier information in this report., with a payment of \$8,000 anticipated.
- (2) As outlined earlier the LGSA has approved Council's application for a reimbursement of costs from other councils. It is uncertain when this reimbursement will be received.

The comparison for the 2010/11 budget to actuals, highlights that the net cost figure is already over budget by \$112,000 (\$242,000 less \$130,000), with six months of the financial year remaining. The major reason for this is the Ramada case, with Council's costs increasing substantially due to the plaintiff's consistently amending their proposal. This has resulted in Council's expert witnesses having to rework their submissions on numerous occasions.

Council has already been awarded a small costs reimbursement for on-going amendments to their application by the plaintiff, and even though this is a class one matter, where costs are not usually awarded, dependent on the outcome, Council may well be in a position to pursue costs for the additional expenses incurred, due to the high level of amendments that have taken place, from what was originally presented to the Court.

In regard to the total budget, on the positive side, Council is currently not involved in any on-going litigation with the only outstanding matter being the afore mentioned Ramada case, where Council has made all its submissions and is now awaiting judgment. Also legal reimbursements are still to be received for Stubberfield (uncertain), Ramada (\$8,000) and the stockpile case (possibly \$40,000).

The water fund legal costs have also been excluded from this table as they have a direct funding source through the water fund reserves.

### **Options**

This report is provided largely for information and to review the legal budgets. In respect to the legal budget the net figure will need to be increased by around \$200,000 to allow for on-going legal expenditure for the remainder of the financial year.

Council will need to examine funding sources for this additional \$200,000 as the 2010/11 budget already has a working capital deficit of approximately \$160,000. The December quarterly budget review will be submitted to the February 2011 Ordinary meeting, therefore the recommendations approve the budget increase of \$200,000 with funding sources to be identified as part of that quarterly review.

### **RECOMMENDATIONS**

1. That Council notes the contents of the legal status report.
2. That Council approves an increase in the planning legal expenses budget from \$400,000 to \$600,000 with the funding for this increase to be considered as part of the December 2010 Quarterly Financial Review which is scheduled to be submitted to the February 2011 Ordinary Meeting.

### **Attachment(s)**

Nil



**10.7 Joint Regional Planning Panel - Delegation of Functions**

<b>File Reference</b>	NSW Planning Reforms
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	To inform the Council that some of the functions of the Northern Joint Regional Planning Panel are to be delegated back to Council and to ask Council to resolve to delegate this function to the General Manager.

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**Background**

Council would be aware that all development that qualifies as 'regionally significant development' under State Environmental Planning Policy (Major Development) 2005 is reported to and determined by the Northern Joint Regional Planning Panel (NJRPP). In December last year, Council was notified that the Minister for Planning and the chair of the NRJRP agreed that subject to certain limitations, the determination of the following types of development applications could be delegated to Ballina Council:

- 'straightforward' applications, where no objections have been received and Council's assessment report recommends approval; and
- Designated development with a capital investment value under \$5M.

Designated development typically refers to matters such as extractive industries, marinas, clearing, filling works within SEPP 14 wetland areas etc.

The NSW Department of Planning has advised that in order to effectively use the delegation it is important that the functions be delegated to the General Manager as the aim of the JRPP is to 'depoliticise' planning decisions

It is envisaged that the General Manager would further delegate this function to the Group Manager of Regulatory Services. Council has previously conveyed to the Department of Planning that should this function be delegated to the Council, further delegation of this function to an appropriate officer level would be supported.

**Key Issues**

- Whether the elected Council wishes to support the delegation of decisions that currently would fall under the auspices of the NJRPP.

### **Information**

Attached to this report is a copy of the letter from the Department of Planning to Council, Guidelines on the Assessment and Determination of Development Applications under Delegation, the Instrument of Delegation and the Schedule outlining the limitations on the exercise of the delegated functions.

The information is largely self-explanatory and in effect the types of decision being delegated are those that, prior to the NJRPP, would have been determined at a staff level.

### **Sustainability Considerations**

- **Environment**

Under this delegation, certain development applications return back to Council for determination, albeit at an officer level. No other change is made to the statutory or environmental framework for the assessment of these applications.

- **Social**

As above

- **Economic**

As above

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

The delegation to Council to determine certain development applications, that would otherwise have had to be reported to the NJRPP for determination, will not present any additional legal, financial or resource implications for Council.

It will effectively streamline the current process in that there will not be a need for the matters listed to be reported to the NJRPP.

### **Consultation**

Applications would still be subject to the same consultation processes.

### **Options**

The options are to accept or reject the proposal from NSW Planning.

It is recommended that Council approve this delegation as it is consistent with Council's current delegations and enables efficient processing of straight forward applications. This is considered to be a common sense approach to the processing of applications.

It is also important to recognise that even if the delegation is provided to staff, staff will continue to use their own experience and expertise to determine which matters should be approved by delegated authority and which matters should be referred back to the NJRPP. This is the same process followed with development applications submitted to Council. Staff have total delegation for planning matters, however the more controversial, or difficult, applications are referred to Council for determination.

### **RECOMMENDATIONS**

That Council approves the delegation of the functions outlined in the Minister for Planning's Instrument of Delegation dated 3 December 2010 to the General Manager, as attached to this report.

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

1. Letter from Department of Planning to Council dated 3 December 2010.
2. Assessment of Development Applications under Delegation
3. Instrument of Delegation dated and signed 3 December 2010

**10.8 Flat Rock Tent Park - Adoption of Fees and Charges 2011/12**

<b>File Reference</b>	Asset Management/Flat Rock Tent Park
<b>Sustainability Plan</b>	Transparent and accountable governance
<b>Management Plan</b>	Commercial Services
<b>Objective</b>	Setting of fees and charges for Flat Rock Tent Park for 1 April 2011 to 31 March 2012

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**Background**

Council resolved to advertise a set of draft Flat Rock Tent Park fees and charges, and associated notes, for 2011/12 for public comment at the 16 December 2010 meeting. The purpose of this report is to comment on any submissions received.

**Key Issues**

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

**Information**

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

**Sustainability Considerations**

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

**Legal / Resource / Financial Implications**

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

**Consultation**

The documents were subsequently placed on public exhibition from 18 December 2010 to 20 January 2011.

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

**Options**

Council can adopt or not adopt the fees and charges as exhibited (complete copies of the fees and charges and associated notes were included in the December 2010 business paper). The recommendation is to adopt the fees as exhibited.

**RECOMMENDATIONS**

That Council adopts the draft Flat Rock Tent Park fees and associated notes, as presented to the December 2010 meeting and subsequently exhibited for 2011/12.

**Attachment(s)**

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**10.9 Borrowing Requirements - 2010/2011**

<b>File Reference</b>	Banking - General Correspondence
<b>Sustainability Plan</b>	Transparent and accountable governance
<b>Management Plan</b>	Financial Management
<b>Objective</b>	To seek Council approval to take out external borrowings relating to the 2010/2011 financial year.

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**Background**

Council approval must be obtained prior to entering into a loan agreement. Financial institutions require a specific resolution and minute number to include as part of the loan agreement.

This report addresses this issue.

**Key Issues**

- Obtaining approval for external borrowings

**Information**

The 2010/2011 Operational Plan includes General Fund borrowings of \$4,800,000. The loans are for:

- Airport - \$800,000
- Cumbalum Way - \$1,200,000
- Wollongbar Link Road - \$2,800,000

The Airport and Cumbalum Way capital projects appear to be proceeding, however based on current cash flows the borrowings will not be required until at least May/June and will be subject to a further report later in the financial year.

The Wollongbar Link Road Loan has been funded by an interest free loan over 10 years from the State Government.

The **2009/10** budget included \$2.565 million in loan funds for the Teven Bridges. This funding proposal has been carried forward from 2009/10 to **2010/11** as the majority of the works are now being completed during the current financial year.

The Teven Bridges project is being funded by a mixture of grants, loans and section 94 contributions. Due to the delay in taking up this loan Council has collected additional Section 94 heavy vehicle levies for the two Teven quarries and based on current cash holdings it is proposed to limit the loan borrowing to \$2.5m.

**Legal/Resource/Financial implications**

These works and loan funds are allocated in the current budget.

**Consultation**

The inclusion of the Teven Bridges project in the 2009/10 budget was subject to community consultation.

**Options**

The only real option available is to approve this loan borrowing. The Teven Bridges project is now well advanced and the loan funds will be needed prior to the end of the financial year.

Council may choose to approve the raising of an external loan to \$2.5 m or not. If the borrowing does not take place it will be necessary to locate an alternative funding source.

**RECOMMENDATIONS**

1. The General Manager is authorised to select the best rate quoted for a borrowing of \$2.5 million for the Teven Bridges.
2. The use of the Council seal is authorised on all loan documentation associated with this report.

**Attachment(s)**

Nil

**10.10 Tender - Lease of Car Rental Concession Desks**

<b>File Reference</b>	Tender – Lease of Car Rental Concession Desks Ballina Byron Gateway Airport
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Airport
<b>Objective</b>	To obtain Council approval to award leases to operate car rental concession desks at the Ballina Byron Gateway Airport for a five year period commencing 1 February 2011.

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**Background**

Council has been providing car rental concession desks at the Ballina Byron Gateway Airport (“the Airport”) for several years. Currently there are seven concession desks which are leased to operators on a month by month basis. Lessees are currently charged \$3,345.46 (excl GST) per annum, which entitles them to the desk space and three car parking spaces.

Additional car parking spaces are charged at \$353.55 (excl GST) per annum.

A review of rentals being paid for car rental concession desks at airports around Australia, along with an independent valuation, identified that the current rental amounts paid at the Airport are substantially less than those being paid at similar sized airports.

This review also confirmed that a number of airports have been structuring their lease agreements based on a minimum base rental, or percentage of their gross revenue, whichever is the greater, i.e. a turnover rental structure.

As a result of this review it was determined that the most appropriate rental structure is one based upon turnover. This review also identified that the market value of additional car spaces should be set at \$1,200 (excl. GST) and not \$353.55 per annum as is currently the case.

To achieve the new turnover structure tender specifications were prepared based on a minimum annual rental for a concession desk of \$15,000 (excl GST) per annum or 8.5% of gross revenue.

Tenders were then advertised during November / December 2010.

To ensure all operators were fully informed of the proposed changes, current concession operators were advised in writing that tenders for the car rental desk were being advertised and a non-compulsory pre-tender meeting was held 3 December 2010.

This allowed Council to advise all interested parties of the proposed changes to the leasing arrangements for the car rental desks.



This meeting and the specification identified that Council would allow a maximum of seven hire car companies the rights to operate in the terminal building with associated facilities such as car parking, car rental desks and storage space in the arrivals lounge area.

The report that now follows outlines the outcome from the tender process and evaluation.

### Key Issues

- Award the leases in accordance with the Local Government (General) Regulations 2005.
- Engage suitably qualified and experienced Contractors that having regard to all the circumstances provides the most advantageous tender.

### Information

The following tender submissions were received.

Number	Tenderer	Tendered Amount (for Year one)
1	AVIS	\$ 61,965
2	HERTZ	\$ 34,000
3	EUROPCAR	\$ 26,775
4	BUDGET	\$ 20,000
5	BALLINA BYRON	\$ 9,000
6	THRIFTY	\$ 26,020
	<b>TOTAL</b>	<b>\$177,760</b>

#### Notes:

1. The specification noted that there is a total of 50 car parking spaces available as part of this tender process to be allocated to each tenderer on a pro-rata basis. This means that tenderer is allocated a portion of the 50 car parks based on their tendered amount, as a percentage of the total income received (i.e. if tendered amount is 10% of the total tendered income, the tenderer is entitled to five (10% of 50) car parking spaces.
2. The amounts tendered did not include any income for additional car parking spaces which may add a further \$40,000 per annum, based upon a rental rate of \$1,200 (excl. GST) per space per annum.
2. The Pre-Tender estimate of income was \$170,000 per annum (excl. GST).
3. The offer from Ballina Byron Rental Cars is below the minimum reserve price of \$15,000 and is therefore a non-conforming tender and was not considered further in the evaluation.
4. The current total income from the car rental concession (including additional car parking spaces) is approximately \$64,000 per annum (excl. GST).
5. The minimum base rental is subject to annual increases. Where lease fees are based on 8.5% of turnover, with the projected increase in passenger numbers, these lease amounts will increase accordingly.

6. *The only existing concession holder who did not submit a tender was "Central Ballina Car Rentals".*

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

- The base and percentage of gross revenue rental offered.
- Experience in car rental services on and off airport and demonstrated Australia wide network capability.
- The Tenderer's ability and commitment to meet all requirements of the applicable laws and regulations and lease agreement relevant to the operation of this concession.
- The standard of service and the quality and range of product provided to airport patrons including the number, age and range of hire vehicles.

Through the tender process Council received five tenders that meet all requirements of the RFT documentation and one non-conforming tender. All five conforming tenderers have considerable experience in car rental services on and off the airport / with demonstrated Australia wide network capability.

The five conforming tenderers have demonstrated that they are capable of meeting all requirements of the applicable laws, regulations and lease agreements relevant to the operation of the concession.

All the conforming tenderers have the required standard of service and the quality and range of product to meet the needs of airport patrons.

	AVIS	HERTZ	BUDGET	EUROPCAR	THRIFTY
Weighted total non-price score	40.5	40.5	33	36	34.5
Normalised non-price score (Non price weighted 45%)	45	45	36.7	40	38.3
Tender amount	\$61,965	\$34,000	\$20,000	\$26,775	\$26,020
Weighted price score (55%)	55	30.2	17.8	23.8	13.3
Total Score	100	75.2	54.5	63.8	61.4
<b>Ranking</b>	<b>1</b>	<b>2</b>	<b>5</b>	<b>3</b>	<b>4</b>

In addition to this, as outlined earlier, Council has previously provided seven concession desks. From Council's Airport Manager's perspective it is considered unusual to have seven competing car rental concessions in a regional airport the size of the Ballina Byron Gateway Airport. Typically five, or at the most six, car rental concessions is considered the maximum number acceptable as this provides more than enough competition and range of choice.

Therefore it is considered reasonable to take this opportunity to reduce the number of car rental concessions to six and allow the operators who tendered the chance to grow, profit and provide a sustainable operation. This also provides the opportunity for Council to allocate one additional concession desk, subject to there being an interested operator available.

### **Sustainability Considerations**

- **Environment**  
Not Applicable
- **Social**  
Not Applicable
- **Economic**  
There will be economic benefits by ensuring that the concession operators are paying a fair and equitable annual rental.

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

This report is provided to assist Council meet its statutory requirements in regard to tendering and procurement.

### **Consultation**

All current operators were consulted as part of the tender process.

### **Options**

Under the Local Government (General) Regulations 2005 Council must either accept the tenders that “appear to be the most advantageous” or decline to accept any of the tenders.

Points that Council can consider include:

1. Council may determine not to accept any of the tenders received and invite fresh tenders.
2. Council may award the leases to the five conforming tenderers being AVIS Northern Rivers, Hertz Rent a Car Lismore, Budget Car and Truck Rental, Europcar Australia and Thrifty Car Rentals for a five year period.
3. Council can reduce the number of car rental concessions to a maximum of six desks.
4. Council can advise any other interested parties that the one remaining concession is available for lease with a minimum base rental of \$15,000 per annum or 8.5% of gross turnover, whichever is the greatest amount and that four car parking spaces will be provided free of charge. Four spaces is considered a reasonable starting point and if additional spaces are required they will be subject to the \$1,200 per annum charge. The four spaces will not form part of the 50 spaces that was outlined in the original specification.

Point one is not recommended as Council has undertaken the tender process in accordance with the Local Government (General) Regulations 2005.

Point two is the preferred option for awarding the car rental concession leases as the tender assessment indicates that a reliable market has been established and the assessment by the evaluation panel has determined the preferred tenderers.

Point three is recommended as the maximum number of car rental concession desks to be made available based on advice from Council's Airport Manager.

Point four is recommended as the Airport Manager is aware of two other operators who did not tender as part of this process. The opportunity is also there for the one non-conforming tenderer to submit an upgraded offer.

### **RECOMMENDATIONS**

1. That Council accepts the tenders from:

- a) AVIS Northern Rivers
- b) Hertz Rent a Car Lismore
- c) Budget Car and Truck Rental
- d) Europcar Australia
- e) Thrifty Car Rentals

at the tendered rates for a five year period for the Airport Car Rental Concession Desks.

- 2. That Council authorises the Council seal to be attached to the lease documents.
- 3. That Council confirms that the number of car rental concession desks at the Ballina Byron Gateway Airport is to be a maximum of six.
- 4. That Council authorises the General Manager to write and negotiate with other potential lessees for the lease of the remaining car rental concession desk, with the outcomes from these negotiations to be submitted to Council for determination.

### **Attachment(s)**

Nil

### **10.11 Tender - Flat Rock Tent Park Management**

<b>File Reference</b>	Tender – Management of Flat Rock Tent Park for a 3 year period
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Commercial Services
<b>Objective</b>	To obtain Council approval to award the contract for the management of the Flat Rock Tent Park for a three year period.

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#### **Background**

In July 2007, Council awarded a contract for the management of the three caravan parks and the Flat Rock tent park. Council handed back the management of the caravan parks to the Department of Lands in April 2010.

The current management agreement for Flat Rock tent park expires 31 March 2011. Tenders were advertised 23 October 2010, with tenders closing 23 November 2010. Part of the tender process included a non-compulsory pre-tender briefing session for parties interested in tendering for the management of the park. The tender specification was based on an annual management fee plus 15% of operating income, which is the same as the current arrangements.

Submissions were received from three companies. The current management company (Anvera Pty Ltd) did not submit a tender, although the people currently employed by Anvera to manage the Flat Rock tent park submitted a tender of their own.

This report outlines the outcome from the tender process.

#### **Key Issues**

- Award the tender in accordance with the Local Government (General) Regulations 2005.
- Engage a suitably qualified and experienced Contractor that having regard to all the circumstances provides the most advantageous tender.

#### **Information**

The following tender submissions were received.

- DK Hally Corporations Pty Ltd - \$84,000
- Hapius Pty Ltd - \$90,000
- Peter Nipperess - \$211,734

The current managers of the park submitted a tender in the name of Hapius Pty Ltd. The current management fee payable for the Flat Rock tent park is \$85,000 per annum.

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

- Total Price 40%
- Relevant Experience 25%
- Management & Financial Practices 15%
- Customer Relations/Marketing 10%
- Computer Literacy 10%

The tender evaluation panel then assessed each of the tenders against the above criteria and a summary of the rankings follows.

<b>Evaluation Criteria</b>	<b>DK Hally</b>	<b>Hapius Pty Ltd</b>	<b>Peter Nipperess</b>
Total Price	36.0%	34.6%	12.0%
Relevant Experience Operation of a Tourist Accommodation Facility/Small Business	19.3%	13.6%	17.0%
Management & Financial Practices	12.5%	6.5%	7.0%
Customer Relations/Marketing	7.3%	4.0%	3.5%
Computer Literacy	7.3%	5.8%	5.7%
<b>Total</b>	<b>82.5%</b>	<b>64.5%</b>	<b>45.1%</b>

Based on the tender submissions DK Hally Corporations Pty Ltd has ranked highest in the tender evaluation and is the lowest priced tender.

DK Hally Corporations Pty Ltd is a local husband and wife and although not experienced in the running of an accommodation facility, they have successfully owned and operated several businesses in the Ballina Shire for the past 17 years. Their submission was of a very high standard.

### **Sustainability Considerations**

- **Environment**  
Managers will be made aware of the need to manage the park to minimise any impact on the local environment.
- **Social**  
The Flat Rock tent park is an important facility provided with in the Ballina Shire.
- **Economic**  
Council must ensure that overall operating costs are minimised where possible, while looking to maximise occupancy rates at the park.

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

This report is provided to assist Council meet its statutory requirements in regard to tendering and procurement.

The management fee tendered is within the current budget.

### **Consultation**

Public tender process conducted.

### **Options**

Under the Local Government (General) Regulations 2005 Council must either accept the tender that “appears to be the most advantageous” or decline to accept any of the tenders.

1. Council may determine not to accept any of the tenders received and invite fresh tenders.
2. Council may award the contract to DK Hally Corporations Pty Ltd to undertake the management of the Flat Rock tent park for a three year period.

Option one is not recommended as Council has undertaken the tender process in accordance with the Local Government (General) Regulations 2005.

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

The tender submission addressed all aspects of the evaluation criteria and has shown a clear commitment to improve many aspects of the tent park. DK Hally Corporations Pty Ltd has scored highest in the tender evaluation and submitted the lowest priced tender to complete the works.

### **RECOMMENDATIONS**

1. That Council accepts the tender for the Management of the Flat Rock Tent Park from DK Hally Corporations Pty Ltd for the amount of \$84,000 + GST per annum plus 15% of operating income.
2. That Council authorises the Council seal to be attached to the contract documents.

### **Attachment(s)**

Nil

**10.12 Delivery Program and Operational Plan - Timeline 2011/2012**

<b>File Reference</b>	Integrated Planning and Reporting 2011/2012
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Administration
<b>Objective</b>	To adopt a timeline for the preparation of the 2011/12 Delivery Program and Operational Plan.

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**Background**

The NSW Local Government Act requires all councils to adopt a Delivery Program (four year time frame) and Operational Plan (one year). These two documents provide an overview of a council's key activities for each year along with details of the budget and fees and charges, with both documents needing to be adopted by 30 June each year.

The purpose of this report is to adopt a preferred timeline for the development of the 2011/12 documents.

**Key Issues**

- Required meetings
- Level of community consultation

**Information**

Section 404 of the NSW Local Government Act requires councils to adopt a ***Delivery Program*** after each ordinary election of councillors to cover the four year period commencing 1 July following the election.

Essential elements of the Delivery Program include the objectives and strategies of the Council's Community Strategic Plan and the principal activities that Council will undertake to achieve those objectives and strategies. The Delivery Program must address the full range of Council operations, allocate high level responsibilities for each action and provide financial estimates for each of the four years.

The Integrated Planning and Reporting guides from the NSW Division of Local Government (DLG) state that a council may choose to roll the Delivery Program forward beyond its elected term or it may choose not to expand on the forward plan.

What this means is that the adopted Delivery Program can stay the same for the four year term of the council, and not be reviewed each year, or alternatively a council can review it as required, which results in the Delivery Program extending beyond the term of the current council.



From a management and financial planning perspective it is far more beneficial to have a document that provides regularly updated forward forecasts as it assists both the councillors and the community with their understanding of where the organisation and council are heading.

Based on this it is proposed that the current Council continues to operate on the basis that the Delivery Program will always be forecasting a four year period and therefore will be reviewed each year. To amend the Delivery Program, except for minor alterations, it is necessary to re-exhibit the revised document for 28 days and consider submissions prior to adopting the new plan. This is the same process that was previously followed with the now superseded Management Plan.

Section 405 of the NSW Local Government Act requires councils to annually adopt an **Operational Plan** before the beginning of each financial year. The Operational Plan must be publically advertised for at least 28 days and Council must consider all submissions prior to adoption.

Essential elements of the Operational Plan include projects/programs/activities that Council will undertake to address the actions in the Delivery Program. The plan must allocate responsibilities and provide a detailed budget for each project, program or activity.

The Delivery Program and Operational Plans are the primary Council documents that inform the community as to what actions are planned each financial year, along with providing guidance on priorities for future years. Therefore it is important that Council carefully considers the contents of those documents.

In recent years Council has utilised a series of Finance Committee meetings to review the documents. This approach has worked well and it is recommended that Council adopt a similar approach for the 2011/12 financial year.

A flowchart and associated timeline has been developed for the preparation of the 2011/12 documents (refer to attachment to this report). The flow chart is split between deadlines for staff and meeting dates for Councillors. The staff deadlines are operational matters and do not need to be considered by Council.

An overview of the purpose of each of the Councillor meetings is as follows.

#### **Finance Committee (1)**

The Finance Committee meetings allow Councillors to identify preferred positions on a range of core matters relating to the future priorities and budget.

Any recommendations from the Finance Committee meetings are then submitted to the next Ordinary meeting of Council as the Committee meetings do not have any delegated authority.

It is recommended that the first Finance Committee meeting focus on matters such as:

- a) Water and Sewer Charges – Council has adopted long term strategic business plans for both these operations and increases in charges outlined in those plans can be reviewed at this meeting.
- b) Ordinary Rates - Brief review of the existing rating structure and to consider any possible changes for 2011/12.
- c) Waste Charges – Council is working through a waste strategy and needs to consider the current and future operational and financial strategy for our waste services.
- d) Commercial Opportunities and Community /infrastructure reserves - Update the current projects to be funded from these reserves and the forecast cash flow following the workshop held in November 2010.
- e) Financial Planning Policy - Staff have been working on a series of benchmarks that Council may consider adopting as targets. The benchmarks, if achieved, are aimed at maintaining the organisation in a satisfactory financial position.

#### **Finance Committee (2)**

The purpose of this meeting is to review how resources are allocated against existing programs and whether or not Council wishes to reconsider the allocation of those resources; i.e. the recurrent programs and budgets.

Council will also be provided with an indicative capital works program.

A draft copy of the entire fees and charges document should also be available at this meeting.

#### **Finance Committee (3)**

This meeting will focus on the key indicators and targets for the Delivery Program and Operational Plan, along with the format of the documents.

#### **Finance Committee (4)**

This meeting provides an opportunity to review the draft documents prepared for exhibition and to re-cap any matters outstanding. This meeting is optional and typically has not been used in recent years.

All the Finance Committee meetings identified in this report will be open to the public. As the Finance Committee does not have delegated authority to make decisions any recommendations will be submitted to the next available ordinary meeting. This provides two opportunities for the public to comment on the items presented, along with another opportunity during the exhibition phase.

Additional public meetings or consultation can also be factored in at any time. Once the draft Delivery Program / Operational Plan are placed on public exhibition Council has traditionally held public meetings at each of the main population centres.

### **Sustainability Considerations**

- **Environment**  
The Delivery Program details Council's environmental, social and economic activities.
- **Social**  
As above
- **Economic**  
As above

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

The Operational Plan is the key resource allocation document adopted by Council each year.

### **Consultation**

All the scheduled meetings will be open to the public and Council in recent years has conducted public meetings at Wardell, Alstonville, Ballina and Lennox Head as part of the public exhibition of the document. It is intended to again hold these public meetings.

### **Options**

The options are to endorse the draft timeline as presented or amend it. The preferred option is to endorse it as a preliminary program and if additional meetings are needed they can be scheduled, as required.

### **RECOMMENDATIONS**

That Council endorse the preliminary 2011/12 Delivery Program and Operational Plan timeline as attached to this report.

### **Attachment(s)**

1. Draft 2011/12 Delivery Program Timeline

**10.13 Delivery Program and Operational Plan - 31 December 2010 Review**

<b>File Reference</b>	Integrated Planning and Reporting - 2010/11
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Governance
<b>Objective</b>	The purpose of this report is to inform how Council is performing against the adopted Delivery Program and the 2010/11 Operational Plan

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**Background**

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

***Delivery Program***

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

This report represents the second review of the 2010/11 - 2013/14 Delivery Program and the 2010/11 Operational Plan, with reviews being conducted on a quarterly basis. The information contained in the report is based on work undertaken up to 31 December 2010.

The review information is included as a separate attachment to this report and the document provides an overview of all the programs included in the Delivery Program and Operational Plan, with comments provided by the relevant group and section manager.

**Key Issues**

- The purpose of this report is to compare actual results against the goals and priorities adopted by Council.

**Information**

The Delivery Program and Operational Plan are the two key corporate documents that establish Council's goals and priorities for the term of the Council and the current financial year.

The attachment to this report provides a comprehensive overview of the actions being progressed, with the information also being linked to Council's Community Strategic Plan (CSP) Objectives.

The attachment has two main sections being:

- Program Actions - This section provides a comment on the status of all the major actions in the Operational Plan
- Service Delivery Targets - This section provides details on the key indicators within the Operational Plan.

Generally many of the actions are on track and the report does highlight the wide range of activities undertaken by Council. The format of the attachments has also been improved to include traffic lights and graphs for the KPIs.

In respect to the Operational Plan there are a total of 86 major actions listed in the Plan and the following two tables provide an overview of the status of those actions on a number and percentage basis.

#### Program Actions Overview - By Number of Tasks

Group / Status	GM	Reg	Civil	Strategic	Total
Green	23	9	21	8	61
Amber	2	0	3	2	7
Red	1	0	7	7	15
To be removed	1	1	0	1	3
<b>Total Tasks</b>	<b>27</b>	<b>10</b>	<b>31</b>	<b>18</b>	<b>86</b>

#### Program Actions Overview - By Percentage

Group / Status	GM	Reg	Civil	Strategic	Total
Green	85	90	68	44	71
Amber	7	0	10	11	8
Red	4	0	22	39	17
To be removed	4	10	0	6	4
<b>Percentage Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

In respect to the Service Delivery Targets there are a total of 78 targets identified in the Operational Plan and the following two tables provide an overview of how Council is performing against those targets, again on a number and percentage basis.

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

Group / Status	GM	Reg	Civil	Strategic	Total
Green	15	19	18	3	55
Amber	6	2	5	0	13
Red	2	4	4	0	10
<b>Total Tasks</b>	<b>23</b>	<b>25</b>	<b>27</b>	<b>3</b>	<b>78</b>

#### Service Delivery Targets Overview - By Percentage

Group / Status	GM	Reg	Civil	Strategic	Total
Green	65	76	67	100	71
Amber	26	8	19	0	17
Red	9	16	14	0	12
<b>Percentage Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

This is a relatively crude summary of Council's performance and Councillors should analyse each of the areas concerned to have a better understanding of the status of the actions and KPIs. Many of the actions behind schedule are of a complex nature and deadlines will be exceeded often due to circumstances beyond Council's control.

### **Sustainability Considerations**

- **Environment**

There is a range of environmental, social and economic outcomes identified in the Delivery Program and Operational Plan.

- **Social**

As above.

- **Economic**

As above.

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

The Operational Plan identifies the allocation of Council's resources and finances.

### **Consultation**

The purpose of this report is to provide the community with information on how Council is performing in respect to the Delivery Program and Operational Plan.

### **Options**

The report is primarily for information purposes. In summary, considering the overall level of resources and capacity of Council to deliver outcomes to the community, the level of compliance with the Delivery Program and Operational Plan is considered to be satisfactory.

### **RECOMMENDATIONS**

Council notes the contents of the 31 December 2010 review of the Delivery Program and Operational Plan.

### **Attachment(s)**

1. Delivery Program - Operational Program Actions and Status of the Service Delivery Targets (separate attachment)

**10.14 Capital Expenditure - Quarterly Update**

<b>File Reference</b>	Integrated Planning and Reporting - 2010/11
<b>CSP Linkage</b>	Responsible and efficient use of resources
<b>Delivery Program</b>	Governance
<b>Objective</b>	To provide a quarterly status report on the progress of the capital expenditure included in Council's 2010/11 Operational Plan.

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**Background**

The capital works program forms a major part of Council's budget each year. To ensure the Council is informed on the planning and completion rates for capital expenditure a status report on all the works included in the Operational Plan is presented to Council on a quarterly basis. This report is for the six month period ending 31 December 2010.

**Key Issues**

- Status of works
- Planned time frames

**Information**

Completing capital expenditure is not just a matter of providing the budget as many projects require significant lead times to finalise designs, obtain planning approval and confirm the procurement arrangements for the works. Often the physical construction is the quickest part of the project.

Factors that can lead to variations in delivering the program may include the timeframe to obtain planning consent, matching the works against available resources, weather and balancing other priorities, such as private works or major incidents that result in a need to re-organise schedules.

To assist in understanding the likely delivery timeframes it is important that we have information on the current status and estimated lead times for each of the major components of a capital works project. The attachments to this report are designed to provide that information.

As per those attachments (General, Water and Sewer) information is provided on the following items:

- Original budget - represents the budget as per Council's adopted Operational Plan

- Approved variations - represents changes approved by Council to date, either as part of the quarterly review process, carry forwards from the previous financial year, or separate reports.
- Proposed changes - recommended budget changes as per this report
- Latest estimate - represents the sum of the original budget plus budget changes
- Expenditure to date - expenditure to date of report
- % Expended - Percentage of budget expended to date
- Milestone Dates - Represents target dates for completion of the major milestones listed. In certain cases items such as Design (i.e. detailed design), Consent (Planning consent), Procurement (if being completed in-house this may not be applicable) may not be relevant, however where possible key dates have been included to assist Council in monitoring the progress of these works.
- Status - Allows additional comments to be provided, where necessary

Points of interest in respect to the information outlined in the attachments include:

*Property - Commercial*

There are recommended budget adjustments within some of the major projects for this activity, with the total budget reducing by \$360,000. The increase in the budget for the preparation of the land to be sold to Harvey Norman is due to the amount of section 94 contributions that have to be paid by one arm of Council to the other. The adoption of a new Section 94 Road Contributions Plan during 2010 resulted in this figure increasing substantially.

The overall net budget reduction of \$360,000 helps to retain funds in the property reserves, which have significant outlays forecast for the next two to three years.

*Property - Community*

Council already has planning consent for the Ballina Surf Club, however following discussions with the Land and Property Management Authority, there may be an opportunity to provide an improved structure than what was originally planned. Improvements under consideration relate largely to improved access and visible to the beach, along with an improved commercial (café) component, that should assist in offsetting operating costs through increased rentals.

This revised proposal is now scheduled to be submitted for planning consideration during February/March 2011.

*Ballina Airport*

Preliminary terminal works have been completed to improve pedestrian movements around the checked baggage screening facility.

*Urban Roads*

Many of these projects are underway or scheduled for the first six months of 2011.



In respect to the larger projects, Council has recently accepted a tender (December Ordinary Meeting) for the Wollongbar Link Road works which will ensure this project advances rapidly.

As to Cumbalum Way planning approval is still to be obtained and negotiations are continuing with the developers of the land, as Council recommended at the July Facilities Committee that for this project to proceed, the developers would need to fully finance any shortfall in Section 94 contributions. This recommendation was then endorsed at the August Ordinary meeting.

#### *Footpaths and Cycleways*

Many of these projects are tied up with the Coastal Shared Path and Coastal Walk projects. The current status of this work is that Council has confirmed preferred route options and the Civil Services Group is currently in the process of appointing a consultant to prepare all the necessary documentation to allow a development application to be submitted and to obtain any other necessary approvals.

#### *Open Spaces and Reserves*

The majority of the play equipment projects are completed and quotes are now being sought for the shade shelter at the Ballina skate park.

#### *Water Operations*

A number of these projects are on hold due to matters outside the control of Council (i.e. legal case on fluoridation, Pacific Pines receivership), which has resulted in limited works being completed to date.

#### *Sewer Operations*

The focus for this program has been on the Ballina and Lennox Head sewer upgrades. With the tender for that work being submitted to the January 2011 Ordinary meeting, Council can expect significant expenditure to occur during the period February to June this year.

### **Sustainability Considerations**

- **Environment**  
Many of the works listed have positive environmental outcomes
- **Social**  
Certain items provide significant social benefits (i.e. community centres, surf clubs)
- **Economic**  
Improved infrastructure can benefit the local economy (i.e. walking tracks, cycleways, main street improvements etc).

**Legal / Resource / Financial Implications**

The report reflects current budget allocations in the majority of cases with changes recommended for the Commercial Property program.

**Consultation**

This report is presented for public information.

**Options**

The purpose of this report is to provide a timely update on capital expenditure therefore the purpose of the report is largely for noting.

**RECOMMENDATIONS**

1. That Council notes the contents of the Capital Expenditure - Quarterly Update report for December 2010.
2. That Council approves the budget changes to the Commercial Property program as outlined in attachment one.

**Attachment(s)**

1. Capital Expenditure - General Fund
2. Capital Expenditure - Water Fund
3. Capital Expenditure - Sewer Fund

**11. Civil Services Group Reports**

**11.1 Energy Savings - Hot Water Heating Systems**

<b>File Reference</b>	Energy Savings Action Plan
<b>CSP Linkage</b>	A built environment contributing to health and wellbeing
<b>Delivery Program</b>	Engineering Works
<b>Objective</b>	To respond to a resolution regarding the provision of energy efficient hot water heating systems

---

**Background**

At the February 2010 Ordinary meeting Council considered a report on a range of environmental initiatives. As result of that report solar panels have now been installed on the Ballina Library, Ballina Community Services Centre and the Alstonville Leisure and Entertainment Centre and further installations have been ordered for the Waste Centre and the Council property located at 71 Tamar Street (adjacent to the main Council Administration Centre).

The final component of the original resolution that has not yet been addressed is for Council to consider a report on the costs/benefits of replacing existing hot water systems with either solar or gas hot water systems.

This report responds to that resolution.

**Key Issues**

- Condition and life cycle of existing hot water units
- Budgets and Government rebates

**Information**

Council has a wide variety of built assets incorporating an array of water heating systems. The majority of the systems are located in community and sporting facilities which are leased directly to the community organisations (club houses etc).

Many of the sporting facilities already have either Quantum Heat pump systems or instantaneous gas, which are relatively efficient. The remaining buildings and facilities have systems ranging from boiling water units through to electric storage systems.

There are opportunities for energy reduction with many of these systems, by controlling the time of operation in line with usage. This can afford considerable savings without changing the system.

For example, sporting groups generally do not require hot water Monday to Friday, however at weekends or special events they require large amounts in short periods of time. In this situation instantaneous gas is the normally the most efficient source of heating. Council staff are currently liaising with all the users of these facilities to provide advice on reducing energy consumption.

### Government Rebates

There are Federal and State rebates available for replacement hot water units installed in a place of residence. The amount of rebate and availability is dependant on the applicant meeting certain conditions such as, the system being replaced must be electric, the applicant must be the owner or tenant of the dwelling where the system was installed at the time the system was installed and to be eligible for the NSW water rebate the applicant must not have already claimed the rainwater tank rebate.

Federal rebates and renewable energy certificates (RECs) are also available under similar conditions. RECs are available for solar hot water units installed in business premises.

Council owns seven residential rental properties, some of which would meet the criteria for the government rebates and RECs. These changes would result in environmental benefits to the community and financial savings to the tenant in reduced energy consumption.

An investment in this would not provide any direct financial benefit to Council to offset the financial cost of any changeover as the lessee is responsible for electricity costs, albeit that there would be environmental benefits.

### Solar or Gas

*A residential case study – Council's Gallans Road residence (one bathroom)*

**Solar** - Cost to upgrade from the existing off-peak electric storage hot water system to a roof mounted solar system.

The approximate cost to install a 300 litre roof mounted solar system is \$5,086 before RECs and rebates have been deducted. The current REC value is approximately \$792 and assuming all application criteria are met, the NSW rebate would be \$300 and the Federal Rebate \$1,000.

Total net cost after RECS and rebates - Approximately \$2,994

**Gas** - Cost to upgrade from the existing off-peak electric storage hot water system to a five star continuous flow gas instantaneous system.

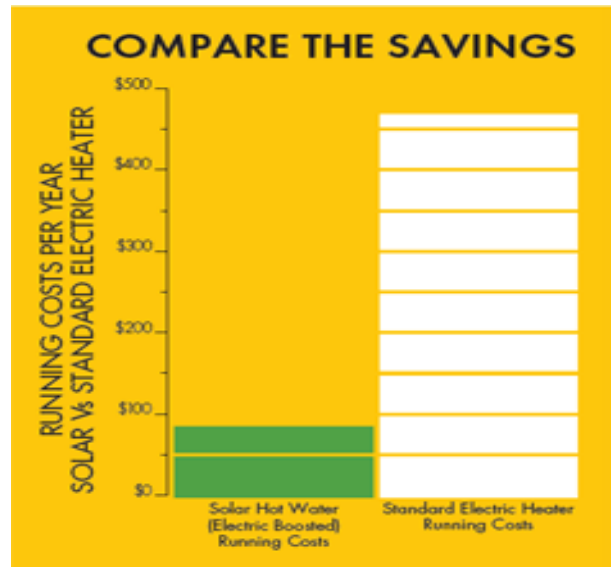
The approximate cost to install a Rinnai five star continuous flow LPG gas system would be approximately \$1,880 less \$300 NSW rebate. Plus 2 x LPG bottles \$220 and bottle hire @ \$88 per annum.

Total net cost after rebate - Approximately \$1,888

In terms of operating costs solar based systems with electric or gas back up, tend to be the most cost efficient. Graph one, as follows, illustrates the running cost in dollars per year for a solar hot water system compared to a standard off peak two electric storage system.

Based on this graph the financial savings the tenant would achieve by installing solar or gas heating in Council's residential properties would be approximately \$400 per annum, per property.

**Graph One**  
**Savings comparison solar versus off peak two electric storage heater**

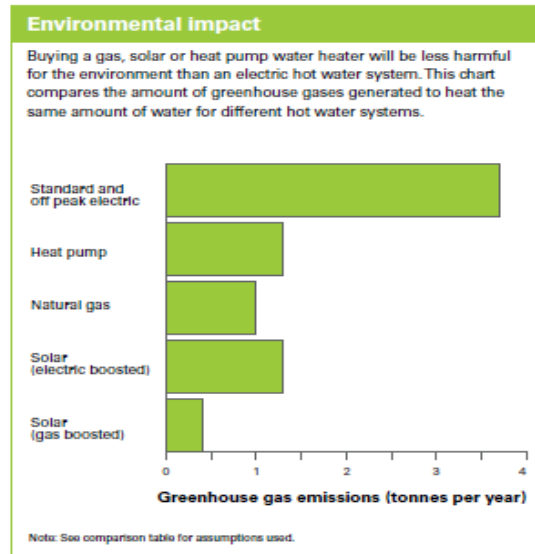


*Energy savings based on NSW Off Peak 2 for system E2F136W2AO. Guide only based on current average energy costs. This chart does not account for increase in electricity or gas costs in coming years.*

**Source:** [http://www.ecosmart.com.au/why\\_ecosmart.html](http://www.ecosmart.com.au/why_ecosmart.html)

The environmental benefits achieved from the various types of hot water systems correlates with the energy efficiency and operating costs of the systems. Graph two highlights the efficiency of solar based systems in terms of greenhouse gas emissions when compared to other system types.

**Graph Two**  
**Hot water system household gas emissions per year**



**Source: Energy Australia** <http://www.energyaustralia.com.au/State/NSW/Residential>

Graph two highlights that environmentally the residential properties would achieve a reduction in gas emissions of approximately 2.5 tonnes per annum, for each off-peak electric storage system, replaced with solar heating.

The price to install gas systems in a residential premise is substantially less than solar hot water systems however the government incentives are greater for solar and solar is the most efficient option for our climate.

As the operating efficiencies of solar hot water systems are greater compared to gas systems, priority should be given to the installation of these systems when current systems reach the end of their useful lives or when the economies of scale prove greater for a particular site.

The example provided is for residential properties however the direct financial benefit for Council would be to replace systems that form part of buildings that are funded by Council's recurrent budgets. Examples include the Council Administration Centre, Depot, Visitor Information Centre, Waste Centre, Sewer Treatment Plants etc.

Council staff are in the process of reviewing how the existing systems are operating and as part of this on-going audit, correct system selection and controlled use processes are being implemented.

For example the Administration Centre has two 250 litre electric hot water storage tanks with maintained electricity supply 24 hours per day. Although the supply of electricity to the Administration Centre is under contract with Country Energy and Council receives very competitive electricity tariffs for peak, shoulder and off peak periods, there are obvious energy savings available by installing time control panels on these units. This work is being carried out as part of the existing building maintenance budget.

Another example is the Alstonville Leisure and Community Centre, which has an instantaneous gas hot water unit supplying the kitchen area. This is considered to be the most energy efficient system available for hot water usage in that area. There are also two 250 litre off-peak storage hot water units supplying the change rooms and amenities adjacent the sports hall.

Speaking with the management of the centre there is a trend for patrons not to shower on site and therefore storage of hot water is not the most efficient method of supplying hot water for that area. These two units are ageing and failure of the systems would prompt replacement with instantaneous gas units, which would provide hot water when it was required. It is therefore planned to replace those units with more efficient systems in the not to distant future.

### **Sustainability Considerations**

- **Environment**  
Reduction in greenhouse gas emissions and sustainable use of natural resources
- **Social**  
Leadership in renewable resource usage
- **Economic**  
Sustainable use of Council resources

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

Minor replacements can be undertaken within in existing budgets

### **Consultation**

Estimates received from local businesses for hot water system options.

### **Options**

In summary there are on-going actions that are being implemented as opportunities arise. Also more pro-active actions are being taken to ensure that existing systems are operating efficiently.

The main options available are for Council to allow funding, estimated at \$60,000 to \$100,000, which would then allow a mass replacement of existing systems.

The other option is to continue with the current strategy which is to replace systems as the need arises, from existing budgets, and continue to strive towards achieving maximum efficiency from the existing systems.

Overall this later option is considered to be the preferred approach as Council is making steady process in replacing systems and it would be difficult to justify replacing all existing systems, when many are still in good condition and through timing adjustments, they can then operate efficiently.

The recommendation that follows confirms this approach.

**RECOMMENDATIONS**

1. That Council notes the contents of this report
2. That Council confirms its commitment to an on-going hot water system replacement and efficiency program that results in more sustainable systems being installed.

**Attachment(s)**

Nil



**11.2 Policy (Review) - Markets**

<b>File Reference</b>	Markets
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Open Space and Reserves
<b>Objective</b>	To consider the review of the market policy.

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**Background**

At the September 2010 Ordinary Meeting of Council a report was submitted on the review of the Markets Policy. Council at that meeting resolved to conduct a councillor workshop to further discuss issues in relation to the policy.

From the workshop no further changes were made to the policy.

The Council resolution from the September 2010 Council meeting did not provide any further treatment of the policy such as an exhibition period to seek public comment.

The purpose of this report is to obtain Council approval for the public exhibition of the reviewed Markets Policy.

**Key Issues**

- Whether the current policy meets Council and community needs.

**Information**

Council adopted this policy in 2006 to provide a documented process on how market organisers may obtain approval to hold a market in Ballina Shire on both privately owned land and land owned or managed by Ballina Council.

The policy was prepared to ensure that market organisers were aware of Council's requirements so as to assist and encourage the efficient organisation of markets and to ensure that market organisers receive requisite approvals in a timely and orderly manner.

The policy introduced the provision that only 'not for profit' groups would be eligible to operate a market that are held on public land and that funds raised from the operation of the market after running costs were covered would be allocated to nominated not for profit group/s.

This aspect of the policy has proved to be successful with the Westpac Surf Lifesaving Helicopter Service being awarded the Lennox Head market. The market has been enhanced and returns funds to the Rescue Helicopter Service.

There are minor changes to the 2006 policy in the form of rewording some section of the policy and the Environmental Health information. These changes have not altered the intent of the original policy.

Changes have also been made to align the policy with the provisions contained in the draft LEP and again this has not altered the intent of the original policy.

### **Sustainability Considerations**

- **Environment**  
Proper management of markets reduced the impacts to the environment from the operation of the market.
- **Social**  
Markets provide an opportunity for social connections within the community. This policy also seeks to support community groups.
- **Economic**  
Markets contribute to the economy of the Shire.

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

The policy aims to manage the resources required by Council to manage the markets and assist to ensure that market activities are compliant with the regulatory framework. There are no financial implications associated with the revision of this policy.

### **Consultation**

The recommendation includes public exhibition of the policy.

### **Options**

Council can either accept the policy as presented or recommend further changes.

The preferred option is to include the minor changes outlined in this report as the policy is considered to be operating effectively.

As only minor changes are proposed it is recommended that Council adopt the policy **and** place it on exhibition for public comment. However, if no submissions are received as a result of the exhibition process, no further action is required.

**RECOMMENDATIONS**

1. That Council adopt the amended Markets Policy, as attached to this report.
2. That Council place this policy on exhibition for public comment, with any submissions received to be resubmitted back to Council. If no submissions are received then no further action is required.

**Attachment(s)**

1. Updated Policy - Markets

**11.3 Tender- Wastewater Treatment Plants Upgrade**

<b>File Reference</b>	Tenders & Quotations, Ballina Sewage Treatment Plant, Lennox Head Sewage Treatment Plant
<b>CSP Linkage</b>	Responsible and efficient use of resources
<b>Delivery Program</b>	Sewer Services
<b>Objective</b>	To report to council on the Tender to Design and Construct a new Waste Water Treatment Plant at Ballina, and a Recycled Water Plant at Lennox Head WWTP

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**Background**

In 2000, Council commenced a process to develop the Ballina Shire Urban Water Management Strategy (UWMS). The purpose of the Strategy was to establish the long-term direction for policies and infrastructure related to integrated urban water cycle planning for Ballina Shire. Council endorsed the UWMS in September 2003.

Following this the Ballina / Lennox Head Recycled Water Master Plan was adopted by Council in September 2007. The Master Plan includes a commitment to provide urban dual reticulation (UDR) to all new major subdivisions in Ballina and Lennox Head. The Master Plan targets 80% dry weather re-use of treated wastewater from the Ballina and Lennox Head Waste Water Treatment Plants by the year 2026. This is to be achieved by providing UDR to an estimated 7,242 new lots. The recycled water, subject to final Council approval, will be used for garden watering, toilet flushing, car washing and the cold tap of washing machines.

In addition to the Urban Dual Reticulation (UDR), Urban Open Space (UOS) irrigation will be expanded to some 173 ha including playing fields, parks/gardens and the Ballina Golf Club, and 160 hectares of Vegetation Regeneration (VR) is proposed in order to meet the 80% reuse target.

The 2026 dry season water balance in the Master Plan 2026 is as follows:

Urban Dual Reticulation (UDR)	24%
Urban Open Space (UOS)	29%
Vegetation Regeneration (VR)	27%
Discharge to ocean	9%
Discharge to estuary	11%

UDR re-use is considered to have the highest value of the three streams nominated in the Master Plan, as it directly replaces potable water use and supplements Rous's water supply.

At the October 2009 Council Meeting a report was presented to Council regarding the procurement strategy and the proposed technology for the replacement of the Ballina WWTP and the construction of the Lennox Head Recycled Water Plant.

At that meeting a Design and Construct (D&C) procurement methodology was endorsed for a Membrane Bio-Reactor type WWTP at Ballina. Micro or Ultra filtration is proposed for Lennox Head RWP with the details to be determined during the design and construct stage.

Subsequent to these decisions an Expressions of Interest (EOI) and an Early Tender Involvement (ETI) phase was conducted with the development of suitable documentation to allow the tender process to proceed in a timely manner.

Twelve submissions were received during the EOI and a panel of four were selected to be involved in the ETI process. The four selected were:

- Haslin Construction Pty Ltd
- John Holland Pty Ltd
- EGL Infrastructure Pty Ltd
- Tenix Australia Pty Ltd

Selective tenders were sent out to the ETI participants on 6 August 2010 closing on the 8 October 2010.

The development application process has been running in parallel with the EOI, ETI and tender phases. A part five application was lodged with Council's Development Services and a conditioned approval was granted at the October 2010 Council Meeting.

The report that now follows details the outcomes from the tender process.

### **Key Issues**

- Award the tender in accordance with the Local Government (General) Regulations (2005)
- Engage suitably qualified and experienced contractors that having regard to the circumstances provides the most advantageous tender.

### **Information**

Selective tenders were called following the EOI and ETI phases on the 6 August closing on 7 October 2010. The following information is a summary of the tender assessment process.

### **Tenders Received**

Tenders were called on 06 August 2010 and closed at 9.30 am on 07 October 2010. Four tenders were received as follows:

Tenderer	A.B.N.	Tender Amount 4	Assessed Tender Amount 1	Total Score <sup>2</sup>	Recommended Tender Amount 3
Haslin Constructions P/L	85 051 102 124	\$45,007,464	\$55,631,551	98.31	\$45,437,315
John Holland P/L	11 004 282 268	\$50,549,644	*Minimum \$61,986,752	91.65	
UGL Infrastructure P/L	96 096 365 972	\$49,319,234	*Minimum \$62,824,677	87.42	
Tenix Australia P/L	65 075 194 857	\$36,336,911	Non-conforming	N/A	

Notes:

1. The 'Assessed Tender Amount' is the Tender Amount plus (or minus) the Assessed Values of qualifications and departures (anomalies) in the tender, any loadings that apply, including NPV. \*Also refer Section 4.3.
2. The 'Total Score' includes the scores for price and non-price criteria.
3. The 'Recommended Tender Amount' is the Tender Amount plus (or minus) adjustments offered by the Preferred Tenderer to withdraw qualifications and departures plus the accepted options – Refer to Section 5.1.
4. Tender Amount is the submitted price for the whole of the works.

**Examination of the Tenders**

Pre-Evaluation Actions and Background

The tendering process was required to comply with the *Local Government (General) Regulation 2005 (the Regulation)*.

Council decided to call tenders from contractors shortlisted following an Expressions of Interest process, in accordance with clause 168 of the *Regulation*.

The evaluation method included weighted price and non-price criteria with a price: non-price ratio of 85:15. A two envelope system was adopted, that is, where price information was held by an independent officer and not provided to the Tender Evaluation Committee (TEC) until the evaluation of non-price criteria was completed.

Tenderers submitted an overall price for the whole of the works made up as follows:

- New Ballina WWTP (Milestone 1)
- Decommission and demolish old Ballina WWTP (Milestone 2)
- Lennox Head Recycled Water Plant (RWP) (Milestone 3)
- Ballina WWTP Sludge Dewatering Facility (Milestone 4)
- Schedule of Rate Items for removal of sludge and placement of topsoil.

Tenderers also submitted a compulsory separable price for a Bio-solids Dryer (Solar dryer).

Tenderers were required to submit four Mandatory Alternative Tenders as follows:

No.	Mandatory Alternative Tender	Tender Evaluation Methodology
1	Whole of Works plus Biosolids Solar Dryer	Considered if viable over 20 year life cycle
2	Whole of Works less decommissioning and demolition of old Ballina WWTP (Milestone 2)	Considered if price for whole of works exceed Councils Budget
3	Whole of Works less Lennox Head RWP (Milestone 3)	Considered if price for whole of works exceed Councils Budget
4	Whole of Works less decommissioning and demolition of old Ballina WWTP and Lennox Head RWP (Milestones 2 and 3)	Considered if price for whole of works exceed Councils Budget

A Tender Evaluation Plan (TEP) consistent with the *Regulation* and the Conditions of Tendering in the RFT documents was prepared and endorsed by the Tender Evaluation Committee prior to close of tenders. The TEP allowed for consideration of Alternative Tenders in view of Councils Budget.

Six addenda were issued during the tender period. They included additional information and drawings, and clarifications of items within the tender document without changing the scope of the works. Therefore the pre-tender estimate was not revised.

#### Initial Evaluation

All tenders were received prior to the closing time. All tenders acknowledged the six addenda that were issued.

Except for the issue identified in the Evaluation of Non-price Criteria below, and the qualifications and departures dealt with in Evaluation of Price, all tenders met the requirements of the RFT documents in respect to submission. As discussed below the tender from Tenix was not sufficiently conforming to be considered after significant departures were identified.

#### Non-Price Criteria

The information submitted by the tenderers was evaluated against the specified non-price criteria, in accordance with the Tender Evaluation Plan.

The total non-price scores are summarised below.

Tenderer	Total normalized non-price score	Rank
Haslin Constructions P/L	13.31	2
John Holland P/L	15.00	1
UGL Infrastructure P/L	11.88	3
Tenix Australia P/L	10.59	Non-conforming

During the course of the non-price assessment it became evident that the tender of Tenix Australia P/L departed significantly from the requirements of the specification, and therefore scored low in the assessment.

### 11.3 Tender- Wastewater Treatment Plants Upgrade

The TEC unanimously determined in accordance with the TEP that the tender of Tenix Australia P/L was not sufficiently conforming (Section 3.4 Tendering Guidelines for NSW Local Government) and did not meet the minimum requirements of the Request for Tender, and was subsequently passed over.

#### Evaluation of Price

The amounts tendered for the Whole of the Works and Alternative Tenders are summarised in the table below.

Item	Description	Amount Tendered			
		Tenix \$	UGL \$	John Holland \$	Haslin \$
A	Whole of Works	36,336,911	49,319,234	50,549,644	45,007,464
B	Biosolids Solar Dryer	-	Included above	475,469	412,534
C	Mandatory Alternative Tender 1 - Whole of Works plus Biosolids Dryer	-	49,319,234	51,025,113	45,419,998
D	Mandatory Alternative Tender No.2 - Whole of Works less decommissioning and demolition of existing Ballina Wastewater Treatment Plant	-	48,482,375	49,267,296	44,202,972
E	Mandatory Alternative Tender No.3 - Whole of Works less Lennox Head RWP	-	40,399,922	41,889,909	36,590,230
F	Mandatory Alternative Tender No.4 - Whole of Works less decommissioning and demolition of existing Ballina Wastewater Treatment Plant and Lennox Head RWP	-	39,844,463	41,041,470	36,299,280
G	NPV Values	-	13,505,443	11,437,108	10,578,847

The tender of UGL Infrastructure P/L did not include the schedule of rate items in the total provided on the Tender Form. These amounts have been included in the Tendered Amount above.

The tender of UGL Infrastructure P/L included a biosolids solar dryer as standard within their base tender, therefore did not provide a separate price within the mandatory alternative schedule for this item.

#### *Item 4.1 - Assessment of Mandatory Alternative Tenders*

The viability of Mandatory Alternative 1, the Biosolids Solar Dryer, was determined by comparing the difference between the 20-year Life Cycle Cost of the inclusion of the alternative compared to its exclusion.

The significant life operational cost associated with the assessment is the transport cost for removal of the dried sludge.



As these are comparatively very low for Ballina Shire Council, Council staff have concluded that the inclusion of the solar dryer was not viable, no further consideration of the option to include the solar drier was conducted.

It is noted that this decision did not affect the relativity of the tenders.

As the Tendered Amount of all tenderers was within Council's budget, the Assessed Tender Amount shall be based on the 'whole of works' in accordance with the TEP. The remainder of the mandatory alternative tenders were therefore not considered in terms of selecting a preferred tender.

The option to award the tender based on one of the alternatives remains open to Council.

*Item 4.2 - Examination of Tendered Amounts and Rates*

The amounts tendered in the Prices Schedule were compared with the pre-tender estimate (see Appendix A). The total tender amounts are relatively consistent with the pre-tender estimate. The comparison revealed significant differences in some of the individual line items (eg: all other items not included elsewhere), however as this schedule is for a guide for payment purposes, these variances are not of concern.

The rates tendered in the Schedule of Rates were also compared with the pre-tender estimate. The comparison revealed no differences of concern.

A sensitivity analysis confirmed that the relativity of tenders is not affected by changes in the scheduled quantities, within the expected range.

*Item 4.3 - Assessment of Qualifications and Departures*

Each of the tenders contained qualifications and departures (anomalies) and did not fully meet the requirements in the RFT Documents. Clause 178 of the *Regulation* requires Council to accept the most advantageous tender. In order to identify which tender was 'most advantageous' for the specified work, the qualifications and departures were assessed and added to the original Tender Amounts.

The qualifications and departures of Haslin Constructions P/L were mainly of a technical nature, typical relating to the equipment to be supplied. These were noted for information purposes and were technically conforming as noted in the Qualifications and Departures Tables.

The tenders of John Holland P/L and UGL Infrastructure P/L contained thirty-two and two hundred and forty qualifications and departures respectively.

These were reviewed, however the TEC determined that there was no reason to fully assess the financial value of these qualifications and departures as it would only increase the value of their assessed tender amount, and would not change the relativity of the tenderers. The qualifications and departures did not raise issues that would affect the other tenders.

The qualifications of John Holland P/L have been noted for information in the Qualifications and Departures Tables. The Qualifications and Departures from UGL did not identify any commercial risk or problem with the tender document.

The TEC determined to continue the assessment based on a Minimum Assessed Tender Amount for the tenders of John Holland P/L and UGL Infrastructure P/L.

*Item 4.4 - Determination of Loadings*

Council has not adopted a local preference policy for its procurement activities, and no other loadings were applicable to any of the tenders.

*Item 4.5 - Normalised Price Scores*

The tenders were compared on the basis of the Assessed Tender Amounts, calculated by adding the NPV values (calculated by the Tenderers themselves) and the assessed values of qualifications and departures to the original Tender Amounts for the Whole of the Works.

The Assessed Tender Amounts were used to calculate the weighted and normalised price scores using the method set out in the Tender Evaluation Plan. The price scores are summarised below.

<b>Tenderer</b>	<b>Weighted price score</b>	<b>Ranking</b>
Haslin Constructions P/L	85.00	1
John Holland P/L	76.65	2
UGL Infrastructure P/L	75.54	3

Selection of the Most Advantageous Tender

Total scores were obtained for each of the three tenders by adding the normalised total non-price score and weighted price score. The total scores are summarised below.

<b>Tenderer</b>	<b>Total normalized non-price score</b>	<b>Weighted price score</b>	<b>Total score</b>	<b>Ranking</b>
Haslin Constructions P/L	13.31	85.00	98.31	1
John Holland P/L	15.00	76.65	91.65	2
UGL Infrastructure P/L	11.88	75.54	87.42	3

The tenderer with the highest total score was Haslin Constructions P/L and was therefore identified as the most advantageous.

Haslin Constructions P/L's Adjusted Tender Amount is 8.0% below the pre-tender estimate which is considered reasonable.

*Item 5.1 - Post Tender Discussions and Additions and Deductions*

After the identification of the most advantageous tenderer, a detailed technical review of the concept report and technical schedules was completed to identify any outstanding issues with the tender of Haslin Constructions P/L.

The tender of Haslin Constructions P/L also included a number of options for Council to consider. These options included upgrades of equipment, the provision of standby equipment, the removal of potentially unnecessary equipment, and are considered improvements to the works.

Council acceptance of some of the options plus an agreed payment to Haslin for extended tender validity results in a Recommended Tender Amount of \$45,437,315. This is detailed at Appendix B, and is summarized as follows:

Tender Amount – Whole of Works	=	\$45,007,464
Extended Tender Validity	=	\$ 24,200
Additions from Accepted Options	=	\$ 579,771
Deductions from Accepted Options	=	(\$ 174,120)
<b>Total</b>		<b><u>\$45,437,315</u></b>

Haslin Constructions P/L has confirmed their agreement to the Recommended Tender Amount, and has confirmed the validity of their tender until close of business (COB) Monday 28 February 2011.

#### Tenderer's Capability

Referee reports indicate satisfactory past performance by Haslin Constructions Pty Ltd on recent contracts.

A financial assessment by Kingsway Financial Assessments Pty Ltd is currently being completed on Haslin Constructions P/L.

Haslin Constructions P/L has OHS and Environmental Management Systems accredited by the NSW Government, and has demonstrated satisfactory Occupational Health and Safety management and satisfactory environmental management on previous projects. This is recorded in the completed *Checklist for Reviewing Tenderer's OHS Management Performance* and the completed *Checklist for Reviewing Tenderer's Environmental Management Performance*.

The resources proposed for the work have been reviewed and the Tender Evaluation Committee considers Haslin Constructions P/L capable of completing the contract satisfactorily.

#### **Sustainability Considerations**

- **Environment**

Upgrade of the Ballina WWTP and provision of a Recycled Water Plant at Lennox Head will reduce the load on the environment whilst reducing the demand for potable water to those properties served by the recycled water infrastructure.

- **Social**

Upgrades to critical infrastructure assist Council to achieve social benefits and public health outcomes.

- **Economic**

The economic benefits of the contract include stimulus to the economy during the construction stage of the project.

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

This report is provided to assist Council to meet its statutory requirements in regard to procurement.

As indicated, these works form some of the key components for the delivery of the UWMS. The facility at Ballina is at capacity and significant inflows from West and North Ballina are currently diverted to Lennox Head for treatment.

Furthermore, Council is not able to commence the supply of dual reticulation services without this upgrade.

In addition to this program of works, provision has been made for project management of the construction works. This has been provided for in the program budget and suitable staff to resource our requirements are currently being sought (two engineering staff to be employed on two year fixed term contracts).

In preparing the tender specification, attempts were made to identify separable portions of work that could allow deferral if the total capital expense was not the preference of Council at this time. These options are discussed below.

The first option relates to the decommissioning and demolition of the existing Ballina WWTP. This would avoid a cost now (using the Haslin tendered amounts) of \$804,492. Whilst it is preferable to complete this task now satisfactory operation arrangements can be made if the work was deferred. Given site re-establishment, supervision and other costs it is reasonable to expect that deferral would increase the cost of this activity.

The second option relates to works at Lennox Head. The tender value for these works is \$8,417,234. This is a substantial project in itself and therefore the economies of scale for site establishment and deferral are not as significant.

The impact of not doing the work is to delay the provision of recycled water to the dual reticulation service. If that delay is acceptable to the Council, the main consideration is price inflation versus loan interest costs. This is difficult to predict, although it is fair to say that interest costs are relatively low at this time and further the construction market is relatively competitive at the moment and favourable to the Council.

As indicated in this report, the tender outcomes are consistent with the planned expenditure for this work and the financial implications for this project are discussed as follows.

One of the models presented to the Finance Workshop held in November 2010 indicated that the key factor, amongst several, to managing the impact on sewer charges going forward was the retention of an operating surplus and a gradual draw done on reserves. This objective can be achieved and was relatively insensitive to the extent of capital works proposed in the earlier separable portions.

A further Finance Committee meeting is scheduled for February 2011 where it is intended to confirm the financial planning strategy for Council's Sewer Operations. Council had approximately \$16 million available in Sewer Reserves and Section 64 contributions available as at 1 July 2010 to assist in funding this work.

Approximately \$7.5 million of the \$16 million represents funding from an interest free loan provided by the NSW State Government.

As per earlier reports to Council and as discussed at the workshop held in November 2010 it will be necessary to finance a major component of this works program from loan funds. The loan borrowings required for the total program are estimated at approximately \$70 million.

Council has not yet secured this entire level of loan funding from a financial institution and it is intended to call expressions of interest during the next three months to secure a portion of these funds.

As advised to Council at the November 2010 workshop there have been instances (i.e. Tweed Council) where councils have not received any response to expressions of interest for loans. Therefore there is a risk that Council could approve a tender and then not be in a position to secure loan funds.

Overall this is considered to be a relatively low risk for the following reasons:

- Councils who have **not** been successful in obtaining loan funding have typically already had significant loan indebtedness
- Ballina Council is not in that position as we have a low overall level of debt
- The financial strategy for sewer operations endorsed at the November 2010 workshop was based on using a combination of loans and a gradual drawdown of reserves. This means that Council will be able to spread out its loan borrowings over the life of the contract, rather than having to borrow substantial funds up front
- Access to loan funds continues to improve as the world economy makes a slow economic recovery
- Discussions by staff with financial institutions indicates there is interest in responding to an expression of interest
- The works in this tender represent approximately \$45 million out of a total program estimated at approximately \$75m to \$80m and a large component of the remaining works relate to the components that can be deferred (i.e. open space reuse, vegetation regeneration).
- This tender will take at least two years to implement which provides time for Council to continually review its financing options.

On this basis it is considered that Council can be confident that loan funds will be available for the tender, as and when required.

### **Consultation**

A public tender process was conducted.

### **Options**

1. Under the Local Government (General) Regulations 2005 Council must either accept the tender that appears to be most advantageous or decline to accept any of the tenders.
2. The tender of Haslin Construction Pty Ltd has been assessed as most advantageous to Council, and as such Council has the option of accepting Haslin's tender for the works including:
  - The new Ballina WWTP (Milestone 1)
  - Decommissioning and demolition of the old Ballina WWTP (Milestone 2)
  - The new Lennox Head Recycled Water Plant (Milestone 3)
  - The schedule of rates items for removal of sludge and placement of topsoil.

This recommendation is made on the basis that the works have been programmed for some time and are considered to be essential infrastructure. The current treatment plant servicing Ballina is operating at capacity and significant flows from north and west Ballina are currently being diverted to Lennox Head WWTP for processing. The UWMS has been endorsed by Council on numerous occasions and the construction of both the Ballina WWTP and Lennox Head RWP are crucial to allowing the delivery of the objectives of that program.

3. As discussed in the above report, Council may also opt to only commission components of this work. Given the delay in providing services and additional costs this is not recommended.

The recommendation that follows is to accept this tender. It is also recommended that Council hold a further workshop to discuss the scope of works in this project which will further assist in Council's understanding of the depth of the works involved in what is a total estimated expenditure of \$45 million.

**RECOMMENDATIONS**

1. That the tender submitted by Tenix Australia P/L be passed over as not meeting the minimum requirements; and
2. That Council accepts the tender being RFT / Contract Number 0902774 being for Design and construction of MBR WWTP at Ballina and submitted by Haslin Constructions P/L for the Recommended Tender Amount of \$45,437,315.00 including GST, for Contract No. 0902774 for the Ballina WWTP Upgrade subject to finance.
3. That Council authorises the General Manager to sign the contracts and attach the Council seal to the documents.
4. That a workshop be convened to present to Council information regarding the risk management approach prepared for this project and to examine any questions regarding the design and scope of works.

**Attachment(s)**

- Appendix A. Itemised tender amounts as against estimates (separate A3 attachment provided)
- Appendix B. Revised cost of Haslin tender including inclusions and exclusions

**11.4 Tender - Kerbside Organics and Green Waste Collection Service**

<b>File Reference</b>	Tenders & Quotations, Ballina Landfill
<b>CSP Linkage</b>	Transparent and accountable governance
<b>Delivery Program</b>	Waste Services
<b>Objective</b>	For Council to consider tenders for the kerbside collection of organics and green waste.

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**Background**

At the Council meeting of August 26 2010 Council resolved:

- *That Council confirms its waste collection service for the urban areas will consist of a weekly green/organics service, a fortnightly waste service and a fortnightly recycling service from July 2011 onwards, and*
- *That Council invite tenders for the provision of the collection of green waste and organics waste services.*

Accordingly a specification and tender documentation was prepared and advertised. The following report provides an assessment of the response to the tender process.

Tenders closed on Tuesday 21 December 2010 with Council receiving three submissions from suitably qualified and experienced organisations.

**Key Issues**

- Consider tenders in accordance with the Local Government (General) Regulations 2005.

**Information**

Three conforming submissions were received from organisations that are all providing services of a similar nature to the one required by Council.

The three organisations that submitted tenders were:

- Transpacific Cleanaway Pty Ltd
- Solo Resource Recovery, and
- Lismore City Council

In addition to the conforming tenders a number of non conforming tenders or offers that included options were presented by two of the three tenderers.



These included an offer from Lismore City Council to haul the loads direct to their Wyrallah Road Depot for processing with the offer inclusive of costing to undertake the processing of the organics and green waste.

There were also options from Transpacific Cleanaway to extend the contracts for longer periods of 9 and 10 years for a reduced per service cost.

The panel determined that the non conforming tender options did not offer a substantial advantage to Council and as such no further consideration was given to these options.

Council is seeking interest from the market in respect of processing (refer to next report in this agenda) and resources available at Lismore for processing is of interest and is one of the options considered within that report.

The contract term is for seven years and an extension to eight or nine was not considered to add any significant value to the tender. Seven years is a standard term for this type of contract as it often coincides with the life of the trucks.

The contract specification included provision of a either a 140 or 240 litre Mobile Garbage Bin (MGB) to all urban properties within the LGA, and for the provision of a weekly organics / green waste service to all urban properties, with the collected material to be delivered to the Ballina Waste Management Centre on Southern Cross Drive for processing.

Whilst the provision of a kitchen tidy bin was not included in the original tenders, all tenderers have offered this as an option.

It will be recommended that Council negotiate with the successful tenderer to have the provision of a kitchen tidy bin to each entitled property provided with the service and that the successful tenderer be asked to provide an adjusted per service rate to accommodate this provision. This service will assist in the dissection of waste for householders.

A Tender Evaluation Plan was prepared and a panel of suitably experienced staff assisted in the tender evaluation. The tenders were evaluated on the basis of:

- Details of current and previous relevant experience
- Referee responses
- Staff resources
- Vehicle, plant and equipment, and depot resources
- Improvement and innovation strategies
- OH&S
- Proposed method of service delivery
- Licences, accreditations and insurances
- Subcontractors if proposed
- Other resources including technical skills
- Industrial Relations
- Current & future workload
- Contract program and transition plan
- QA

- Contamination management strategies
- Financial capacity
- Tendered price
- Environmental management and performance proposals
- ESD proposals
- Contract risk
- Customer service experience and capacity
- Education experience and
- Mobile bin details.

All tenderers were found to have satisfied the key selection criteria and as the performance requirements of the contract were relatively prescriptive, price is therefore the major area of differentiation between the submissions.

The present value cost to provide the service for seven years is included for each submission in the attached table. This cost has been annualised to inform the decision making and budget processes of Council and all costs are GST exclusive.

<b>Tenderer</b>	<b>Lismore City Council</b>	<b>Transpacific Cleanaway</b>	<b>Solo Resource Recovery</b>
Seven year contract cost for collection	6,332,726	5,754,834	3,992,044
Cost per service per year 140 l MGB collection only	70.47 (\$1.35 per service)	68.38 (\$1.31 per service)	45.94 (\$0.88 per service)
Cost per service per year 240 l MGB collection only	70.99 (\$1.36 per service)	68.38 (\$1.31 per service)	45.94 (\$0.88 per service)
*Additional cost for a new MGB 120 litre	43.08	39.71	40.00
*Additional cost for a new MGB 240 litre	49.50	45.65	45.00
**Special on property service – additional cost over service cost – collection only	8.00	0	2.50

\* *New MGBs will only need to be provided for new or additional services as the annual service cost includes the initial provision and maintenance of a MGB for the duration of the contract*

\*\* *The special on property service would only be provided in exceptional circumstances and is not currently provided.*

In addition to assessing the above tenders, an analysis was undertaken of the likely cost for Council to deliver this service using internal resources. A summary of that analysis follows.

The internal service costs in the following table are based on Council's current service costs to provide the weekly waste service, and are adjusted to incorporate the cost of providing and maintaining the additional Mobile Garbage Bin (MGB).

For the purposes of comparison fixed overhead costs associated with the provision of an internal service were not included in the cost assessment as these are likely to remain whether the service is performed by day labour or contract.

The next table itemises Council's costs of providing the waste service to 12,800 properties.

Item	Cost per annum	Cents per service
DWM pickup cost	576,040	0.86
Bin distribution	5,400	0.01
Bin purchase & maintenance	45 per bin, 5 maint P/A	0.20
Supervision @ admin	29,056	0.045
Total		1.11

### Sustainability Considerations

- **Environment**  
Green waste collection will assist in the diversion from landfill.
- **Social**  
Green waste services appeared to be desired by the community and this tender allows Council to deliver those services in the most cost effective manner.
- **Economic**  
Efficient Council services reduce the charges to businesses and residents which assists economic development.

### Legal / Resource / Financial Implications

This report aims to assist Council to meet its statutory and other legal obligations.

The decision to collect and process green waste material was in part supported because of the positive assessment of the cost of providing the service when compared to land filling costs. The service will not commence in this financial year and therefore there are no current budget implications. Future budgets will need to recognize the provision of the service.

Financial models previously presented to Council made allowance for the introduction of this service and the tender pricing is in accordance with the earlier budget predications which were based on the internal service delivery costs.

### Consultation

A public tender process was undertaken.

### **Options**

The options for Council are set out within the Local Government (General) Regulations 2005.

The tender assessment indicates that a reliable market exists for the collection service contract. The tenders also show that a significant saving can be made by going to contract for delivery of the collection service rather than having Council undertake the service.

By operating **internal** waste collection and **external** green waste collection, Council will have the opportunity for direct local comparison of these options to assist in future management decisions regarding service delivery.

The submission received from Solo Resource Recovery is the best value option to Council as providing the cheapest cost to provide the collection service. Solo Resource Recovery is a very capable company who are undertaking collection service contracts of a similar nature in 20 other Local Government Areas. It is fair to say that Solo has submitted a very competitive tender to Council for this service.

Accordingly it has been recommended to accept the tender from Solo Resource Recovery. If that recommendation is not acceptable to the Council, then the range of options within the regulations will apply.

### **RECOMMENDATIONS**

1. That Council award the contract for collection of kerbside organics and green waste to Solo Resource Recovery.
2. That Council authorise the General Manager to negotiate with Solo Resource Recovery for the supply and distribution of an in-house kitchen tidy bin to be supplied with the mobile garbage bin, and that these costs be incorporated into the current contract provided acceptable terms are achieved.
3. That Council authorises the seal to be attached to the contract and associated documents.

### **Attachment(s)**

Nil

**11.5 Registration of Interest - Organics Processing**

<b>File Reference</b>	Waste Management
<b>CSP Linkage</b>	Responsible and efficient use of resources
<b>Delivery Program</b>	Waste Services
<b>Objective</b>	To advise council of the results of the Registration of Interest (ROI) for the processing of green waste, organics and bio-solids for reuse.

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**Background**

Council has made a number of decisions regarding the introduction of a green waste and organics collection service and the processing options for the product collected. This process has included investigations into the feasibility of producing biochar through pyrolysis. To further advance that analysis it was determined to seek market interest regarding alternate options. Relevantly the Council has resolved the following.

At the August 2010 Meeting Council resolved:

- That Council confirms its waste collection service for the urban areas will consist of a weekly green waste / organics service, a fortnightly waste service and a fortnightly recycling service from July 2011.

At the September 2010 Meeting Council resolved:

- That Council seek EOI (expressions of interest) from waste management companies in regards to processing our organics.

In response to this resolution in November a Registration of Interest (ROI) was sought through advertising in the Northern Star, Advocate, Sydney Daily Telegraph and Courier Mail, from suitably qualified and experienced organisations to process and remove for beneficial reuse approximately 10,000 tonnes per annum of combined green waste and organics and approximately 3,000 tonnes of bio-solids per annum. Submissions closed on the 14 December with five responses.

Council has an existing MoU with Pacific Pyrolysis in respect of that project and therefore Pacific Pyrolysis was advised that they did not need to respond to the ROI. Further, Council has previously received a submission from RDM Environmental regarding a proposal to develop a vertical composting / organic fertiliser plant. Like Pacific Pyrolysis, RDM were advised that it was not necessary for Council to receive a further submission from them.

This report discusses the response to the ROI process.

### **Key Issues**

- To present the outcomes of the ROI process in order to allow Council to make an informed decision on providing direction on how to process green waste, organics and bio-solids for beneficial reuse.

### **Information**

The ROI was advertised in November closing on 14 December 2010. An assessment criterion was put together to evaluate the submissions based on the following considerations:

1. Capability and Methodology

- Previous experience on projects of a similar nature
- Proposed methodology
- Scale and scope of projects handled previously
- Resources to be allocated to the project
- OH&S history and management
- Proposed site
- References from past projects

2. Staffing, Experience and Past Performance

- Experience of staff proposed for involvement in the project and their role in previous projects
- Number of staff proposed
- The qualifications of staff proposed to be involved in the project for setup and delivery
- Any additional information

3. Financial Capacity

- Sufficient liquid assets to meet demands
- Positive profit / operating expense ratio
- History of profitable trading
- Not overly burdened by debt
- Capitalisation

4. Proposed Reuse Options for Product

- Proposed outlets and options for reuse
- contingencies

Submissions were received from:

- Transpacific Industries Pty Ltd (TPI)
- Keppel Seghers Australia Pty Ltd (KSA)
- Tropical Mulch Group (TMG)
- Lismore City Council (LCC) &
- Western Composting Technology Pty Ltd (WCT).

An outline of each proposal including the proposed technology and any costs included in their proposals is listed below.

#### TPI Submission

The technologies proposed include tunnel composting and / or the Gore cover system, however the Gore system was preferred for Ballina based on the positive results offered for a lower relative cost. The final proposal would be based on tenders with the constraints being the proposed site and the cost. Both technologies appear reliable and proven.

Tunnel composting is the placement of sorted, shredded and mixed organic materials which includes biosolids, organics and green waste, into a large tunnel where the moisture levels and temperature can be controlled to allow the material to compost over a period of weeks. The temperature is controlled by adding moisture or by using extraction fans with ducting under the floor to allow air to be drawn through the static pile. The compost is maintained at a temperature of between 55 and 60 degrees for a fixed period and this kills off all pathogens and seed in the material. Gas that is generated can either be extracted through bio-filters to remove odour or captures for power generation.

Once the material is removed from the tunnel it is trolled and sorted into the various grades of compost for sale. This is the same as the system operating at Hasting Council and is a very successful operation if somewhat capital intensive.

Tunnel composting relies on a number of tunnels being in operation to allow loading, processing and the composting stages.

The Gore system uses a large membrane which is spread over the static pile to achieve the same purpose. It is a simplified version of tunnel composting which comes with less capital cost and less control.

TPI is a large, financially stable corporation with extensive multinational experience in the delivery of this type of service. TPI currently process in excess of 500,000 tonnes of material of a similar nature to those proposed by Council per annum.

No cost per tonne was included.

#### Keppel Seghers Australia Pty Ltd Submission

KSA is a subsidiary of a large multi national corporation that has extensive experience in processing waste and in waste to energy technology. They have offered to tailor a specific solution for Council based around the provision of a Dano Drum to pre-treat Council's green waste and organic material. This shreds the material and is typically used as pre-treatment prior to an anaerobic digestion, sorting, waste to energy or a baling process.

KSA has not offered one particular solution or a method of reuse but has offered to discuss with Council their preferred options.

No cost per tonne for processing was included however this form of high end capital intensive process is typically very expensive (\$100 – \$200 per tonne), with the process forming a stage of the overall operation rather than a solution for processing and reuse as asked for in the ROI.

KSA is a large multi national corporation that has submitted a significant amount of financial information to establish viability and credibility.

#### Tropical Mulch Group

TMG is a small private company that undertake similar services to those requested in the ROI for a number of local and coastal councils including Rockhampton Regional Council, Gladstone Regional Council, Maryborough and Hervey Bay Regional Council, Tweed Shire Council, Byron Shire Council and Richmond Valley Shire Council.

TMG's proposal is to mulch the incoming stream to produce usable products which would be marketed to the local area. The proposal includes the separation of all timber for use in cogeneration with the rest taken off site for composting at a registered for purpose site.

The removal of material from site for composting is seen as a strong point as this would remove a number of key risks associated with the process, particularly in relation to leachate management.

Council currently has a shredding contractor with approximately 15 months to run on their contract and as such negotiations would need to be undertaken to further advance this option.

#### Lismore City Council

LCC run a windrow composting operation on their site at Wyrallah Road, East Lismore. The material would be processed using the current technology and methodology of shredding, windrow composting followed by tromelling. The shredding would be undertaken on Ballina's site and then transported to Lismore for composting, sorting and sale.

LCC are proposing to extend their current pad to allow them to accommodate the additional material if awarded the contract. Their current operations are performing to their satisfaction. The major risk is the ability for LCC to sell the final product, although contractually it would be proposed to transfer that risk to LCC. Notwithstanding that transfer, in the event of issues, given the relationship between the Councils it is usually more difficult to require the complete execution of the contract terms.

The indicative cost to provide this service is \$55 per tonne plus \$10 per tonne haulage. The submission is not specific on whether this includes the initial shredding prior to haulage and this would need to be clarified prior to any arrangement being put in place.

The removal of material from the Ballina site for composting is seen as a strong point as this would remove a number of key risks associated with the process, particularly in relation to leachate management, product resale and licence compliance issues.



Western Composting Technology Pty Ltd

WCT have proposed the use of a tunnel bioreactor similar to that operated at Hastings Shire. They have also suggested that anaerobic digestion and pyrolytic processes could be combined with the tunnel bioreactors to further enhance the process allowing the capture of gases. This is typical of high end capital intensive projects for the processing of organics, green waste and bio-solids.

This process is a well proven process and WCT are undertaking work of this nature at a number of sites.

The proposal includes the establishment of this facility on the current site or as close by as possible with a requirement of at least 4 hectares of land. The resourcing proposed is extensive, including 4 – 5 staff, 2 wheeled loaders, 5 purpose built bioreactor tunnels, facilities for staff, bio-filters to address odour, a concrete pit and rotary augers to mix biosolids and organic material, a shredder, trommel and the ability to process inputs and outputs.

This option would achieve Council's desired outcomes but would be expensive. No cost per tonne was included with the submission. It is unlikely that the amount of land required would be available at the current site.

Summary of Evaluation of Submissions

All of these submissions are worthy of further consideration, although the submission from KSA does not appear to suit Council's purposes based on predicted cost and that as it is essentially a pre treatment process does not achieve the objectives that Council is seeking.

For the WCT option, Council would need to understand the extent of the potential additional benefits that would justify further examination of that proposal. If the Council was to proceed in the direction of composting, it would appear the most appropriate way to do that would be initially via the lower capital options such as vertical or windrow processes and examine the development to more complex processes and product quality at a later time.

Next Steps

The purpose of the ROI was to gain a preliminary view of what other options may exist in the market as an alternative to the pyrolysis investigation. The ROI process is constrained in respect to pricing information as commercial operators will not submit their best prices when the Council is not in a position to accept those prices.

From the industry knowledge of staff and the information that is available regarding costs, it would appear that the least expensive options still result in a net cost to Council of approximately \$40 per tonne, which is typically the cost for the standard composting process. This is consistent with the figure that has been used to date as a target for comparison for the pyrolysis business case.

The potential benefits associated with pyrolysis have been reported previously and are not discussed further here. The direction of Council has been to proceed with the pyrolysis investigation in a staged manner with planning for an interim arrangement until that investigation is concluded. The result of the ROI would suggest that this direction is still preferred.

At this stage Council can at least include in its forward estimates the cost of the composting options and procure that from the market in the event that the investigation of the pyrolysis determines that the project should not proceed when required.

In terms of interim arrangements the preferred options would be windrow composting because of the small capital costs involved. This could be done either directly by Council or through a negotiated arrangement with LCC.

If the work were to be undertaken on the Ballina Waste Management Centre site, whether by contract or internally, Council would need to establish the operations area including the development of policies and procedures, the construction of operational pads incorporating leachate management, and the negotiation of whatever licence and approvals required to allow the work to occur. A preliminary estimate for the cost of those arrangements is \$35 to \$40 per tonne.

Whilst it may be more expensive than this estimate, to avoid the risks and effort in commencement, the recommendation to this report suggests that staff seek to negotiate with LCC through the existing MoU with the view of establishing an agreement to enable the processing to be completed using the LCC facility with this agreement in place for the duration of the pyrolysis investigation and development.

This is considered to be a far more suitable interim arrangement until Council makes a final decision on pyrolysis. Also Council does not need to go through a public tender process in respect to a contract with Lismore, as cooperative arrangements between councils are exempt from the tendering regulations.

### **Sustainability Considerations**

- **Environment**  
The processing of green waste, organics and bio-solids for beneficial reuse will ensure the diversion from landfill.
- **Social**  
The processing of green waste and organics will ensure the public that the collection is a valued service and that the material collected is being used beneficially.
- **Economic**  
Efficient Council services reduce charges to businesses and residents which assists economic development.

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

There are no specific legal, resource or financial implications associated with the recommendation to this report. This ROI process, and the pyrolysis investigation form part of a review that is determining the way forward for Council to process green waste having regard to a range of factors including cost and legal requirements.

### **Consultation**

A formal exhibition process was conducted as part of this report.

### **Options**

1. Continue the ROI process and call for formal pricing of submissions.
2. Discontinue the ROI process at this time and continue to investigate the pyrolysis proposal. This option would include Council undertaking windrow composting either using internal resources or Lismore City Council facilities as an interim measure.

For the reasons set out in the above report, option two forms the basis of the recommendations to this report.

The existing resolutions regarding the pyrolysis investigation have essentially been placed on hold while the ROI process was conducted. Should the Council endorse the recommendations below, arrangements will be made to advance those existing resolutions which will facilitate the next steps in the investigation.

This option is largely dependent on reaching agreement with Lismore Council. If an agreement cannot be reached Council will either need to go to formal tender or provide an interim solution in house until the pyrolysis review is completed.

**RECOMMENDATIONS**

1. That the Council not proceed, at this time, to the pricing phase for any of the submissions received in response to the request for Registration of Interest for the processing of green waste and organics, for the following reasons:
  - a. The ROI process has not identified any process substantially different to those already known to Council
  - b. Council has not yet finalised its pyrolysis investigations
  - c. Lismore City Council is in a position to provide an interim solution until the pyrolysis investigation is completed.
2. That the General Manager seek negotiations with Lismore City Council regarding arrangements to process Council's green waste and organics for a period sufficient for Council's investigation into the feasibility of pyrolysis to be completed.
3. That Council receive a further report advising of the outcomes of the negotiations from point two above.

**Attachment(s)**

Nil

12. Public Question Time

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**12. Public Question Time**

**13. Motions on Notice**

**13.1 Notice of Motion - Visitor Information Centre**

**File Reference** Notice of Motion/Visitor Information Centre

**Councillor** Cr Susan Meehan

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I move

That Council call for expressions of interest for a local tourism / arts and craft / produce business to lease space within the Visitor Information Centre. Any surplus funds generated from the lease are to be contained within Council's tourism budget to assist with on-going main street enhancements such as flags, banners, lights, Christmas decorations etc.

**Councillor Comment**

The tourism workshop that was held in 2010 confirmed that there was support from Councillors and staff to increase the utilisation of the space available at the Ballina Visitor Information Centre (VIC) by leasing out a section of the building. Large numbers of visitors (in excess of 50,000) attend the VIC each year and this should provide a good commercial opportunity for a complementary business to operate from the building.

Recently Clarence River Tourism won a tourism excellence award for a centre such as this and with the number of Australian and International visitors to Ballina Shire growing, a quality outlet for souvenirs is necessary.

Generally speaking Council's core work is not commercial business such as is envisaged here. A commercial operator would ensure an optimum outcome, while generating valuable rent. As the building is on crown land, Council may forgo 50% of the rental income to the Land and Property Management Authority, but nevertheless any surplus funds can then be used to assist with on-going main street enhancement activities. The tourism budget has limited funding for items such as banners, flags, etc and the additional funds could assist with supporting these activities on an on-going basis, as they can add vibrancy and colour to our town centres.

**COUNCILLOR RECOMMENDATION**

That Council call for expressions of interest for a local tourism / arts and craft / produce business to lease space within the Visitor Information Centre. Any surplus funds generated from the lease are to be contained within Council's tourism budget to assist with on-going main street enhancements such as flags, banners, lights, Christmas decorations etc.

**Attachment(s)**

Nil

**13.2 Notice of Motion - Raising the Minimum Floor Level for new DAs**

**File Reference**                      Notices of Motion

**Councillor**                         Cr Jeff Johnson

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I move that

1. Council acknowledge that the frequency and severity of flooding on Ballina Island is likely to increase due to sea level rise and a predicted increase in severe weather events associated with climate change.
2. Council acknowledge the increasing risk that this poses to public infrastructure, private property and the ability to evacuate the Island during severe floods
3. Due to these increased risks, Council raise the minimum floor level height on Ballina Island in line with the NSW Governments Sea Level Rise Policy for all new developments excluding additions/renovations.

**Comment**

The recent flooding events in Queensland and Eastern Australia highlight the dangers to both life and property in flood prone areas. Ballina Island, due to its location on a low lying river delta is particularly at risk of periodic flood events. The predicted rise in sea level (NSW Government Policy predicts a 90cm rise by 2100) and the likelihood of increased weather events means that the severity and frequency of major flooding in Ballina will only increase.

Currently Ballina Council is approving new developments on Ballina Island based on a predicted 20cm Sea Level rise scenario. Various reasons have been given for not increasing the minimum floor level height to reflect the changes to NSW State Government policy including visual amenity and overshadowing of existing buildings. These reasons ignore the serious risk to life and property associated with periodic flooding and inundation.

Raising the minimum floor level height in line with the NSW State Government Policy is the best way to minimize the risk to private property and the environment.

Furthermore, I have received legal advice (2009 and 2010 NSW Coastal Conferences) that local Councils are at risk of litigation from the costs associated with flood damage and inundation if it has failed to update its Development Control Plan in accordance with the latest Government information. The NSW State Government has a policy that predicts a 90cm Sea Level Rise by 2100 and therefore this should form the basis of determining the minimum floor level height for new developments on Ballina Island, not the outdated figure of 20cm.

Council has a legal and moral obligation to inform and protect new developments from avoidable flood damage and the associated costs. Continuing to approve new developments on Ballina Island using outdated Sea Level Rise estimates exacerbates the cost to our environment, the community, Council, and the number of buildings and people that would need to be evacuated in a major flooding event.

Council has previously resolved to increase the minimum floor level height for Greenfield sites (rezonings) but has failed to address the issue in the current urban zone. This is proof that Council is aware of the increasing flood risk. Theoretically this means that one side of the road would have a different minimum floor level height than the other even though the risk of inundation is obviously the same for both the existing urban area and Greenfield sites.

### **Staff Comments**

The NSW Government has provided councils with guidelines to manage its risks through the preparation of Coastal Hazard and Floodplain Management Plans. Council has continued to develop those plans consistent with the guidelines. These processes include assessing the risks associated with climate change. As per the advice when a similar motion has previously been submitted to Council, it is the view of staff that appropriate legal protection is available to Council given its continued compliance with the published Government guidelines.

It is also noted that the Government does not specify a minimum floor height within its sea level policy. The purpose of that policy is to provide advice in respect of the expected sea level rise on NSW coastline which then becomes a key input into the studies that in turn inform the management plans.

Furthermore, dependant on position within the floodplain, the increase in flood levels associated with sea level rise will be different to the sea level rise itself. For this reason it is important that Council's Integrated Flood Study is used in the development of policy associated with minimum floor levels, not the sea level prediction itself.

Given the above, staff would recommend that Council does not need to take any further action at this time other than to continue to progress the preparation of the floodplain and coastal hazard management plans.

### **COUNCILLOR RECOMMENDATION**

1. Council acknowledge that the frequency and severity of flooding on Ballina Island is likely to increase due to sea level rise and a predicted increase in severe weather events associated with climate change.
2. Council acknowledge the increasing risk that this poses to public infrastructure, private property and the ability to evacuate the Island during severe floods
3. Due to these increased risks, Council raise the minimum floor level height on Ballina Island in line with the NSW Governments Sea Level Rise Policy for all new developments excluding additions/renovations.



**13.3 Notice of Motion - Moratorium on Coal Seam Gas Mining**

**File Reference** Notices of Motion

**Councillor** Cr Jeff Johnson

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I move that

1. Ballina Council unreservedly support the request of the NSW Farmers Association for a moratorium on all Coal Seam Gas (CSG) mining in NSW.
2. Write to the Premier, the Minister for Environment Climate Change, the Leader of the Opposition, the Shadow Minister for the Environment, our Local Member to strongly urge a moratorium on CSG mining and particularly the practice of hydraulic fracturing in NSW until an extensive and independent environmental impact statement has been concluded on the effects of CSG mining on the environment and in particular the effects of CSG mining on groundwater.

**Comment**

The State Government has given approval for a company to search for Coal Seam Gas (CSG) in the Keerrong Valley between Lismore and the Channon. The method used in the process is called Hydraulic Frackuring (or fracking).

There is mounting evidence that this process and the chemicals used have a negative impact on the local environment, the water table and potentially our water supply.

During this process, large amounts of water, sand and proprietary chemicals are injected, under high pressure, into a well. The pressure fractures the shale and props open fissures that enable natural gas to flow more freely out of the well.

Over 4000 of these test 'well's have been sunk in Queensland and thousands more in the US and around the world. Just days ago, 46 members of the US Congress wrote a letter in support of Interior Secretary Ken Salazar's request that natural gas companies be required to disclose what chemicals they use in the controversial natural gas drilling process. The EPA in US has stated that Hydraulic Fracking is associated with drinking water pollution in many states. A documentary has been produced, called Gasland, that highlights the negative effects of this process.

Oil and gas companies continue to assure us that their drilling projects are safe, but those same companies refuse to back up their assertions by disclosing the chemicals used in the hydraulic fracturing process.

Given the known natural gas reserves in the surrounding area and the fact that Ballina is located 'down stream' from potential CSG drilling operations, this process poses an unacceptable risk to our creeks, water ways, and potentially our drinking water.

The NSW Farmers Federation have called for a moratorium of all CSG exploration in NSW due to the potential negative affects on the environment, agricultural land, and the water table. A full investigation into the chemicals used and the risks associated with this process needs to be undertaken before any more approvals are given.

#### **COUNCILLOR RECOMMENDATION**

1. Ballina Council unreservedly supports the request of the NSW Farmers Association for a moratorium on all Coal Seam Gas (CSG) mining in NSW.
2. Write to the Premier, the Minister for Environment Climate Change, the Leader of the Opposition, the Shadow Minister for the Environment, our Local Member to strongly urge a moratorium on CSG mining and particularly the practice of hydraulic fracturing in NSW until an extensive and independent environmental impact statement has been concluded on the effects of CSG mining on the environment and in particular the effects of CSG mining on groundwater.

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

Nil

**13.4 Notice of Motion - Backlog Sewer**

**File Reference** Notices of Motion/Backlog Sewer

**Councillor** Cr Alan Brown

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I move

That Council investigate the ability to spread the recovery of costs for the Backlog Sewer program on small commercially rated properties over an extended period, ie 10 years, based on the individual circumstances of the property owner, and presentation of a case by that owner for consideration by Council.

If Council sees merit in allowing such arrangements to be put in place and the financial system is capable of providing the flexibility to do so, then the General Manager be authorised to put such arrangements in place based on the circumstances of each case. All debts will need to be recorded and paid on sale of any property.

**Councillor Comment**

A recent delegation of small commercial property owners approached the Mayor seeking a meeting with him (the Mayor) and A Ward councillors. At that time Councillors Meehan and Hordern were unable to attend on the date suggested and Cr. Silver and myself met with the delegation on Friday 3 December last. Those attending the meeting comprised business proprietors within the marine industrial precinct in Smith Drive, West Ballina and the proprietor of the Golf Driving Range, as well as Mr. Steve Barnier, Group Manager of Council's Strategic & Community Services Department.

The concern of the people with whom we met pleaded hardship in the repayment of the cost of the Backlog Sewer as it is now being levied against the rates over the next 5 years. In putting their case it was clear that this impost of an additional \$3,000 (approximate) per annum on their commercial properties was creating serious financial hardship on their the small businesses in Smith Drive having also recently suffered during the financial downturn. They also had further concerns regarding the infrastructure in Smith Drive which is presented in a further notice of motion.

In January 2009 Council resolved to adopt the recommendation of staff in relation to the provision of the Backlog Sewer Program into a number of areas within Ballina Shire including Smith Drive. It was resolved that residential properties were to pay 20% of the cost and Commercial properties to pay 100% of the costs, with the charge to be levied against the rates over a five year period. These works have now been completed in March 2010 by a local contractor.

As the full cost imposed on these Smith Drive properties they have asked if Council would consider flattening out the recovery of these costs over a longer period of time, say 10 years, this would allow them to meet their commitments to pay for the Backlog Sewer and have indicated that if Council were able to do this it would assist them greatly, a number of them barely able to successfully continue in their businesses.

The cost to commercial landowners in this locality for the implementation of the backlog sewerage scheme has been excessive, and in any event, greater flexibility in the arrangements for reimbursement to the Council is warranted.

### **Staff Comment**

There are a total of 17 **business** properties subject to the backlog sewer charge. 15 of these properties, have been charged \$13,800 for the backlog sewer program and the remaining two have been charged \$16,476 and \$23,633 respectively. These figures exclude the three not for profit businesses to whom Council donates the annual backlog charge. 12 of the 17 business properties are located at Smith Drive, with all Smith Drive properties having been charged the \$13,800 figure.

There are currently five properties that have arrears relating to the backlog charge. As per the Councillor comments the current policy position of Council is to spread the cost over five years. Redistributing the cost over ten years would have minimal impact on Council's sewer operations and from an administrative perspective the change can be made quite easily. Ideally if the change was to occur the preference for staff would be to commence in 2011/12 as the rates and charges have been levied for the current financial year.

The primary question for Council is to determine whether or not the additional time proposed is a reasonable position for Council to take as it effectively provides an interest free loan for the period in question.

Currently with the sale of any of these properties the backlog sewer charge is listed as a debt on the property and the individual parties (vendor / purchaser) determine whether they wish to finalise the backlog payment as part of the settlement.

### **COUNCILLOR RECOMMENDATION**

That Council investigate the ability to spread the recovery of costs for the Backlog Sewer program on small commercially rated properties over an extended period, ie 10 years, based on the individual circumstances of the property owner, and presentation of a case by that owner for consideration by Council.

If Council sees merit in allowing such arrangements to be put in place and the financial system is capable of providing the flexibility to do so, then the General Manager be authorised to put such arrangements in place based on the circumstances of each case. All debts will need to be recorded and paid on sale of any property

**13.5 Notice of Motion - Smith Drive, Ballina**

**File Reference** Notices of Motion

**Councillor** Cr Alan Brown

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I move

That an urgent report be prepared relating to the condition of Smith Drive infrastructure including the repair or replacement of flood gates and draining, road widening and pavement maintenance. That this report be reflected in the funding to be considered in the 2011-2012 budget for the financing of the upgrade for the whole of Smith Drive.

**Councillor Comment**

As per the previous notice of motion the Mayor and I met with a number of business operators located at Smith Drive, Ballina. The thrust of their concerns regarding infrastructure within this locality was as follows:

- The condition of Smith Drive is, in their view, exceptionally poor and remedial works are warranted as a high priority within Council's Works Program
- Verge maintenance along Smith Drive, including adjacent to its intersection with the Pacific Highway, is very poor and, as well as being unsightly, is impacting site distance at the intersection
- Council should be preparing and implementing plans to improve the appearance of the entrance to this area and acknowledging the "identity" of the precinct, given its increased prominence associated with the Ballina Bypass project
- Their businesses are being hindered by the restricted water access to the properties resulting from the shallow water at the confluence of Emigrant

Other issues were raised, included Council's inability to secure the new marina for Ballina and also dissatisfaction with the conditions Council had imposed on one of their recent development applications (requiring sealing of their access driveway at significant cost). It is suggested further these matters need not be included in any motion, but are matters they could follow up separately.

The golf driving range located at the very end of Smith Drive is popularly patronised by many within the region and during holiday periods visited by tourists. The condition of the road surface in order to get to this driving range could be described as dangerous and unsightly, not giving a very good impression of the Shire's other more pleasant areas.

During the course of the meeting with these people the Mayor suggested that, from an economic development perspective, Council might investigate doing more to support and promote this industry sector.

The whole of Smith drive has suffered over the years and lacked maintenance generally from Council's operations. Several new developments have occurred more recently and a condition of approval has been the widening of the roadway adjacent to their development and where other long term businesses have existed the roadway is narrow and constantly requiring regular maintenance.

It is considered that now would be the appropriate time for the planning and upgrading of Smith Drive, particularly during construction of the Ballina Bypass where entry at the intersection of the now Pacific Highway is included in plans as part of the Ballina Bypass Alliance's works.

#### **Staff Comment**

Council needs to be careful in selecting individual roads as there are many roads across the Shire that numerous residents would like to see brought forward for rehabilitation works. Council has been very successful over many years in relying on engineering assessments of work priorities as this ensures that the process is technically, rather than emotionally, driven. This is important as Council is not in a position to finance everyone's demands in respect to road infrastructure.

There are a number of issues with Smith Drive in respect to the current and future upgrades of the Pacific Highway. Flood gate improvements are still to be completed as part of the current bypass works and ultimately the RTA has plans to connect Smith Drive to Pimlico Road as part of the Woodburn to Ballina upgrade. This work may well result in the RTA needing to fund improvements to Smith Drive.

If the motion was supported staff would prepare a report on Smith Drive and submit it to one of the Finance Committee meetings scheduled for February / March 2011 as part of the 2011/12 budget deliberations. This would then ensure that Smith Drive was considered as part of the total budget.

#### **COUNCILLOR RECOMMENDATION**

That an urgent report be prepared relating to the condition of Smith Drive infrastructure including the repair or replacement of flood gates and draining, road widening and pavement maintenance. That this report be reflected in the funding to be considered in the 2011-2012 budget for the financing of the upgrade for the whole of Smith Drive.

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

Nil

**13.6 Notice of Motion - Draft Policy - Concealed Water Leaks**

**File Reference** Notices of Motion/Policies - Draft

**Councillor** Cr Alan Brown

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I move

That Council receive a further report on a draft policy to be advertised for public comment on Concealed Water Leaks, similar to that presented to the December 2007 Ordinary meeting of this Council, in order to rationalise certain anomalies dealing with concealed water leaks.

**Councillor Comment**

This draft policy was put to a meeting of this Council to advertise for public comment at a meeting on 3 December 2007 and was not supported by the then Council.

The present practice of Council (not written in policy) is that should a leak occur after water has passed through a water meter then the owner of that property is responsible for the cost of such water leaked. In addition it is presently the case that when water leaked under these circumstances the threshold for the future rating is increased. This occurs even though it could be proved that the owner was not aware of the leak as it was not evident until the water meter revealed such a leak had taken place.

This motion was prompted by a consumer becoming aware that a water leak had occurred having passed through the water meter but this was a concealed water leak which occurred and water leaking into the drainage system which flowed immediately into Shaws Bay. It was clear that such a leak was indeed only detected when the meter was read.

The owner of the property immediately attended to the repair of the pipe leaking at his cost and paid the resulting costs of water leaked, but because there was an excessive amount of water passing through this consumer was placed on a higher threshold in future water and sewer charges during this financial year.

It was considered that this was an unfair assessment in these circumstances due to the fact that the leak in this case was not evident and was immediately repaired at the cost paid by the owner and the amount of water used in this instance which is accepted as the responsibility of the owner.

The present situation with undetected concealed water leaks once there is an excess then payment is required however for the financial year the water and, at times, the sewer rate is increased substantially as a further penalty. This appears to be unfair and the draft which was presented to Council at the 2007 December meeting attempted to correct that anomaly being the increase in the threshold.

In particular circumstances such leaks are undetectable and in many instances the owners suffer a further penalty when they have already paid the excess water used as well as the cost of the repairs, usually a substantial plumber's account and a number of these people are pensioners and others who can ill afford a further penalty in the increase of the water and sewer charges.

In some instances consumers, with leaks, are confronted with very large bills. In these cases the maximum relief in accordance with the proposed policy would be relatively minor. However, the goodwill created by the draft policy could be considered worthwhile.

### **Staff Comment**

Current practice is that owners / residents are entirely responsible for managing their water consumption. A report was submitted to Council in December 2007 to consider options where there may be reasons to adjust water bills due to leaks, however that policy was not supported for exhibition (Council noted the report only).

The issue being referred to in the Councillor comments relates to the fact that Council's water billing system, in accordance with State Government guidelines for best practice water demand management, provides for an increased tariff once consumption reaches above a certain threshold per annum. The 2010/11 water billing structure, for water consumption, is as follows:

- Usage up to 350 kilolitres per annum - \$1.52 per kl
- Usage over 350 kilolitres - \$2.28 per kl over 350 kls

These figures are based on a 12 month cycle, therefore if someone has a water leak early in the year and exceeds the 350 kilolitres, they would then be responsible for paying the remaining consumption for that year at the higher rate (\$2.28).

The higher water consumption does not impact on residential sewer charges, as that is a fixed annual charge per annum. However the sewer charge for non-residential (i.e. business) properties is based on a fixed charge and a usage charge. The usage charge is determined based on water consumption. This means there could be an increase in the sewer usage charge for that year also for non-residential properties.

However this is not always the case as the current practice for non-residential sewer usage charges is that the account is reduced if there is excess consumption caused by a leak and the "excess" water isn't output to our sewer system. Water charges are not adjusted in the same case as the usage is an exact measure whereas sewer usage is an estimate of water used that returns to the sewer system.

The introduction of a policy is supported as it would formalise many of the procedures currently in place, although it is probably not practical to cover every scenario that may occur in one policy.



**COUNCILLOR RECOMMENDATION**

That Council receive a further report on a draft policy to be advertised for public comment on Concealed Water Leaks, similar to that presented to the December 2007 Ordinary meeting of this Council, in order to rationalise certain anomalies dealing with concealed water leaks.

**Attachment(s)**

Nil

**13.7 Notice of Motion - Improving Ratepayer Communication**

**File Reference** Notices of Motion

**Councillor** Cr Ben Smith

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I move

That council investigate a system that will enable ratepayers to provide direct feedback via their annual rates notices, what they would like to be seen done in the shire with their money, potentially in the form of a survey of sorts that would then be used in turn to provide the ratepayer with targeted information/updates on their issue and what's being done in council quarterly/annually.

**Councillor Comment**

The ongoing political narrative that's spoken about all the time is people are happy to pay taxes (or in our case rates) as long as they're getting some kind of value from them.

Most people don't know where they're money is being spent and how it makes a difference across the shire.

Sometimes people feel that certain things aren't being done within their field of perception and this creates dissatisfaction. If they can't see it in front of them, then it's not being done in their mind. To make the issue worse, most people rarely seek out information or take action to see that they are done or being done.

For the vast majority of the population in the shire the only form of ongoing communication between council and themselves is via the rates notices.

So therefore on this basis, I'm proposing that we ask people in an essence "what they want done with their money", this will enable people to take ownership of an issue, feel empowered, increase their perceived value of their rates and in turn increase satisfaction.

This could be seen as the next step in our community connect newsletter ala community connect 2.0

In a basic example, if a ratepayer saw some roads in the Ballina CBD as an issue, identified it in a survey on their rates notice, then received either a quarterly/yearly specifically targeted update on the issue letting them know "thanks to their rates and a commonwealth grant etc we've been able to fix up x y z roads" then I believe it'll make most people feel much more satisfied with their contribution to the shire.

It's a relatively simple concept, that'll improve ratepayers shire knowledge and increase satisfaction.

**COUNCILLOR RECOMMENDATION**

That Council investigate a system that will enable ratepayers to provide direct feedback via their annual rates notices, what they would like to be seen done in the shire with their money, potentially in the form of a survey of sorts that would then be used in turn to provide the ratepayer with targeted information/updates on their issue and what's being done in council quarterly/annually.

**Attachment(s)**

Nil

14. Advisory Committee Minutes

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**14. Advisory Committee Minutes**

Nil items

**15. Reports from Councillors on Attendance on Council's behalf**

**15.1 Mayoral Meetings**

<b>File Reference</b>	Mayoral
<b>Councillor</b>	Cr Phillip Silver

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Activities since the December 2010 Ordinary meeting:

<u>Date</u>	<u>Function</u>
17/12/10	ABC Radio, Telstra Tower
21/12/10	Paradise FM Radio, Christmas message
21/12/10	Deputation with staff, Logistics centre
22/12/10	Deputation with staff, Jockey Club
24/12/10	ABC Radio, flooding
6/1/11	Minister Albanese, flood meeting in Lismore
7/1/11	Flood briefing in Ballina
11/1/11	Deputation with staff, signage
13/1/11	Deputation with staff, bulky goods storage
13/1/11	Contractor grievance meeting with staff
13/1/11	Northern Rivers Community Gallery, Exhibition opening
17/1/11	Minister Crean, flood recovery meeting in Grafton
19/1/11	Scott McGregor, Australia Day briefing
21/1/11	Marine Rescue Art Show opening in Ballina
25/1/11	Deputation with staff, LEP lot size
26/1/11	Australia Day celebrations

**RECOMMENDATION**

That Council notes the contents of the report on Mayoral meetings.

**Attachment(s)**

Nil

**15.2 Cr Jeff Johnson - 2010 NSW Coastal Conference**

**File Reference** Councillor Development

**Councillor** Cr Jeff Johnson

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The NSW Coastal Conference was held in Bateman's Bay on 10 -12 November 2010. The theme of the conference was 'Coastal Management all aboard, making it work'. The conference attracted approximately 200 delegates from NSW and beyond, comprising academics, lawyers and representatives from the private and public sectors, with a particularly strong local government contingent.

The main focus of the papers presented and of discussions, related to the social, environmental and economic pressures being exerted on coastal communities associated with climate change as well as the continuing 'sea change' trend.

A number of speakers provided information concerning the socio-economic impacts associated with the rapidly increasing populations within coastal communities being compounded by sea level rise. The key issues here were councils' capacity to pay for adaptation measures, housing affordability and the ageing population.

One of the key note speakers was Professor Graham Pearson who spoke about the mis-information that is often reported in the media. He stressed that it is important that one gets their information about climate change from credible sources such as CSIRO, Bureau of Meteorology and NASA to name a few.

Sea Level rise is currently tracking along the upper estimates of the IPCC's projections. His paper expressed the view that the IPCC's predictions concerning climate change broadly, including more intense (but less frequent) weather events and changes to ecosystem values, are now "certain" (as distinct from being "likely") in terms of probability.

He also stated that the IPCC (International Panel on Climate Change) has concluded that there is a 50% chance that 20-30% of all species will be at risk with a global warming of between 1.5 – 2.5 Degrees Celsius. He compared this risk with boarding an aircraft. Would you get on a plane if you were told that there was a 50% chance that 20-30% of all passengers were at risk? I certainly wouldn't.

Mr Andrew Beatty, a partner in the legal firm Baker & McKenzie presented a legal view concerning the risks Local Government faces in regards to sea level rise. He clearly stated that 'if Councils allow buildings to be developed in areas that the science has said are 'likely to be affected' then it is liable to being sued'. In the event that a local Council is sued he suggested that the Council join the NSW Government in the action.

Professor Bruce Thom, Chair of the Australian Coastal Society declared that the science is in and that the scenarios are getting worse. He suggested that now is not the time for Governments to turn a blind eye and stick its metaphorical head in the sand.

Professor Barbara Norman, Founding Chair of Urban and Regional Planning, University of Canberra described how we are 'at a tipping point in regards to managing urban growth along the coast. She spoke about critical social infrastructure and a hierarchy of coastal developments. An important part of her talk was about sensible coastal planning. Of most concern was the issue of critical infrastructure such as hospitals and aged care facilities. For example it is not recommended that you build new hospitals or nursing homes in flood prone areas due to the difficulty in evacuating these facilities and the critical need to maintain the supply of electricity to these facilities.

This last point should be of concern for Ballina Island that is increasing the number of aged care beds in flood prone areas, or locations that are likely to experience periodic flooding in the future.

Overall, it was a very informative conference and a reminder that the science is clear about climate change despite what may be getting reported in the media. Australia's top scientific research bodies, CSIRO and the Bureau of Meteorology are quite clear that Australia is warming and the seas are rising.

The presentations by Mr Andrew Beatty and Professor Barbara Norman were particularly informative and very relevant to the situation in the Ballina Shire.

The issues of urban planning and legal liability are areas that I am particularly concerned with in regards to Ballina Island. Staff and Councillors have both received numerous presentations by WMB CCM, clearly showing the impacts of sea level rise on Ballina Island. What is most troubling is that Ballina Council continues to approve new DA's on Ballina Island based on a predicted sea level rise scenario of only 20cm. The NSW Government has a policy predicting a rise of 90cm by 2100. Numerous speakers have reiterated that the 90cm rise should form the basis of new development approvals. Approving new DA's based on outdated information poses a future liability risk for Council who could be sued for approving these developments. The other issue is the environmental and social risks to our community.

Approving new DA's that will experience increasing periodic flooding, particularly industrial developments, is bad planning and will ultimately exacerbate water quality issues in the Richmond River and surrounding wetlands when these developments experience periodic flooding in the future.

Ballina Council should be basing all future planning decisions based on the latest information and the policy documents released by the NSW State Government.

### **RECOMMENDATION**

That Council notes the contents of the report from Cr Jeff Johnson on his attendance at the 2010 NSW Coastal Conference.

16. Questions Without Notice

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**16. Questions Without Notice**



**17. Confidential Session**

In accordance with Section 9 (2A) of the Local Government Act 1993, the General Manager is of the opinion that the matters included in the Confidential Business Paper, and detailed below are likely to be considered when the meeting is closed to the public.

Section 10A(4) of the Local Government Act, 1993 provides that members of the public are allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

A brief summary of each of the reports recommended for consideration in confidential session follows:

Item 17.1 - Property Acquisition - Road Widening

Item 17.2 - Property Acquisition - Airport Operations

Both of these reports contain information relating to negotiations relating to the proposed purchase of land and if released to the public could prejudice those negotiations.

**RECOMMENDATION**

That Council moves into committee of the whole with the meeting closed to the public, to consider the following items in accordance with Section 10A (2) of the Local Government Act 1993.

**17.1 Property Acquisition - Road Widening**

**Reason for Confidentiality**

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

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as Council is currently involved in commercial negotiations in respect to the contents of the report.

**17.2 Property Acquisition - Airport Operations**

**Reason for Confidentiality**

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

- (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business

and in accordance with 10D(2)(c), on balance, the discussion of the matter in an open meeting is not considered to be in the public interest as Council is currently involved in commercial negotiations in respect to the contents of the report.